



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

No. 109, 2012

**An Act to provide for a new payment under the
Paid Parental Leave Act 2010, to make other
changes to that Act and the *Fair Work Act 2009*,
and for other purposes**

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

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**An Act to provide for a new payment under the
Paid Parental Leave Act 2010, to make other
changes to that Act and the *Fair Work Act 2009*,
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[Assented to 22 July 2012]

The Parliament of Australia enacts:

*Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other
Measures) Act 2012 No. 109, 2012 1*

1 Short title

This Act may be cited as the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012*.

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.	22 July 2012
2. Schedule 1	1 October 2012.	1 October 2012
3. Schedule 2, Part 1	At the same time as the <i>Paid Parental Leave Act 2010</i> commences.	1 October 2010
4. Schedule 2, Part 2	The day after this Act receives the Royal Assent.	23 July 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Dad and partner pay

Part 1—Dad and partner pay

Paid Parental Leave Act 2010

1 Title

Repeal the title, substitute:

An Act to provide for a paid parental leave scheme, and for related purposes

2 Division 1A of Part 1-1 (heading)

Repeal the heading, substitute:

Division 1A—Objects of this Act

3 Section 3A (heading)

Repeal the heading, substitute:

3A Objects of this Act

4 Before subsection 3A(1)

Insert:

- (1A) This Act establishes a paid parental leave scheme with 2 payments—parental leave pay, and dad and partner pay.
- (1B) The objects of the paid parental leave scheme are to:
 - (a) 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
 - (b) promote equality between men and women and balance between work and family life.

5 Subsection 3A(1)

Omit “this Act”, substitute “parental leave pay”.

6 Paragraph 3A(1)(c)

Omit “workforce; and”, substitute “workforce.”.

7 Paragraph 3A(1)(d)

Repeal the paragraph.

8 Subsection 3A(2)

Repeal the subsection, substitute:

- (2) 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:
- (a) increase the time that fathers and partners take off work around the time of birth or adoption; and
 - (b) create further opportunities for fathers and partners to bond with the child; and
 - (c) allow fathers and partners to take a greater share of caring responsibilities and to support mothers and partners from the beginning.

9 Section 4 (first paragraph under the heading “Overview”)

Omit “to a person”, substitute “and dad and partner pay”.

10 Section 4 (after the last paragraph under the heading “Overview”)

Insert:

Dad and partner pay is a one-off payment that relates to a period of up to 2 weeks. The period is called the person’s DAPP period. The person’s DAPP period may be the full 2 weeks or a lesser period (if the person is not eligible for dad and partner pay for that full period).

Dad and partner pay is paid at the national minimum wage for each week day during the person’s DAPP period. Dad and partner pay is paid by the Secretary.

11 Section 4 (before the heading “Chapter 4—Compliance and enforcement”)

Insert:

Chapter 3A—Dad and partner pay

Chapter 3A sets out when dad and partner pay is payable to a person. The key provisions for the Chapter are found in Part 3A-1.

A person can only be paid dad and partner pay if the Secretary makes a determination that dad and partner pay is payable to the person. Part 3A-2 has rules about when the Secretary can make that determination.

The Secretary cannot make that determination if the person is not eligible for dad and partner pay. Part 3A-3 has the rules about eligibility. For the main case, to be eligible a person must (broadly):

- (a) satisfy the work test, the income test and the Australian residency test; and
- (b) be caring for the child; and
- (c) not be working.

The Secretary also cannot make that determination if the person has not made a claim for dad and partner pay. Part 3A-4 has the rules about claims.

Part 3A-5 sets out how dad and partner pay is paid to a person. Generally, dad and partner pay is paid by the Secretary as a single payment.

**12 Section 4 (last paragraph under the heading “Chapter 4—
Compliance and enforcement”)**

Omit “parental leave pay scheme”, substitute “paid parental leave scheme”.

**13 Section 4 (third paragraph under the heading “Chapter 6—
Miscellaneous”)**

Schedule 1 Dad and partner pay

Part 1 Dad and partner pay

After “parental leave pay”, insert “, or a payment of dad and partner pay,”.

14 Section 6

Insert:

caring: see subsections 115CL(1) and (4).

15 Section 6 (definition of *claim*)

Repeal the definition, substitute:

claim means:

- (a) for parental leave pay—a primary claim, a secondary claim or a tertiary claim for parental leave pay for a child; or
- (b) for dad and partner pay—a claim for dad and partner pay for a child.

16 Section 6 (definition of *claimant*)

Omit “or tertiary claimant”, substitute “, tertiary claimant or DAPP claimant”.

17 Section 6

Insert:

dad and partner pay means payments of dad and partner pay under this Act.

18 Section 6

Insert:

DAPP claimant means a person who has made an effective claim for dad and partner pay for a child.

19 Section 6

Insert:

DAPP period: see subsection 115AE(1).

20 Section 6 (definition of *effective claim*)

Repeal the definition, substitute:

effective claim means:

- (a) for parental leave pay—a claim that is made in accordance with Part 2-4; or
- (b) for dad and partner pay—a claim that is made in accordance with Part 3A-4.

21 Section 6 (definition of *eligible*)

Repeal the definition, substitute:

eligible:

- (a) for parental leave pay—see section 31; or
- (b) for dad and partner pay—see section 115CB.

22 Section 6 (definition of *income test*)

Repeal the definition, substitute:

income test: see sections 37 and 115CG.

Note: Division 4 of Part 3A-3 (which includes section 115CG) is relevant in applying the income test to claimants for dad and partner pay.

23 Section 6 (definition of *initial eligibility determination*)

Repeal the definition, substitute:

initial eligibility determination:

- (a) for parental leave pay—see section 26; or
- (b) for dad and partner pay—see section 115BL.

24 Section 6

Insert:

maximum DAPP period: see subsection 115AE(3).

25 Section 6

Insert:

maximum DAPP period end day: see subsection 115AE(5).

26 Section 6

Insert:

maximum DAPP period start day: see subsection 115AE(4).

27 Section 6 (definition of *nominated start date*)

Repeal the definition, substitute:

nominated start date:

- (a) for parental leave pay—see subsection 57(1); or
- (b) for dad and partner pay—see subsection 115DG(1).

28 Section 6

Insert:

not working: see section 115CM.

29 Section 6 (definition of *payability determination*)

Repeal the definition, substitute:

payability determination means:

- (a) for parental leave pay—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; or
- (b) for dad and partner pay—a determination made under section 115BB that dad and partner pay is, or is not, payable to a person for a child.

30 Section 6 (definition of *reference income year*)

Repeal the definition, substitute:

reference income year:

- (a) for a primary claimant or a secondary claimant—see section 39; or
- (b) for a DAPP claimant—see section 115CH.

31 Section 6 (definition of *reference period*)

Repeal the definition, substitute:

reference period:

- (a) for a person claiming parental leave pay—see subsection 47(2); or
- (b) for a person claiming dad and partner pay—see subsection 115CL(2).

32 Section 6 (definition of *relevant PPL income limit*)

Repeal the definition, substitute:

relevant PPL income limit:

- (a) for a primary claimant or a secondary claimant—see section 40; or
- (b) for a DAPP claimant—see section 115CJ.

33 Section 6 (definition of *saved amount*)

Repeal the definition, substitute:

saved amount:

- (a) for parental leave pay—see subsection 97(2); or
- (b) for dad and partner pay—see subsection 115EK(2).

34 Section 6 (definition of *work test*)

Repeal the definition, substitute:

work test: see Division 3 of Part 2-3 and sections 115CE and 115CF.

Note: Sections 115CE and 115CF and other provisions of Division 3 of Part 3A-3 are relevant in applying the work test to claimants for dad and partner pay.

35 Section 6 (definition of *work test period*)

Repeal the definition, substitute:

work test period:

- (a) for a primary claimant or a secondary claimant—see section 33; or
- (b) for a DAPP claimant—see section 115CD.

36 Section 21 (heading)

Repeal the heading, substitute:

21 Parental leave pay is already payable to the person etc.

37 Subsection 21(1)

Repeal the subsection, substitute:

Schedule 1 Dad and partner pay

Part 1 Dad and partner pay

- (1) The Secretary must not make a payability determination that parental leave pay is payable to a person for a child if:
- (a) 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
 - (b) if the person is the primary claimant—there is in force a payability determination that parental leave pay is payable to:
 - (i) the person’s partner for the child; or
 - (ii) the person’s former partner (when he or she was the person’s partner) for the child; or
 - (c) if the person is the secondary claimant—there is in force a payability determination that parental leave pay is payable to:
 - (i) the person’s partner for the child (other than as the primary claimant to which the person’s secondary claim relates); or
 - (ii) 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).

38 Section 22

After “payability determination”, insert “about parental leave pay”.

39 Section 23

After “A payability determination”, insert “about parental leave pay”.

40 Section 24

After “payability determination”, insert “about parental leave pay”.

41 Division 5 of Part 2-2 (heading)

Repeal the heading, substitute:

Division 5—Initial eligibility determinations about parental leave pay

42 Section 27

After “eligibility determination”, insert “about parental leave pay”.

43 Section 28

After “determination”, insert “about parental leave pay”.

44 Section 29

After “eligibility determination”, insert “about parental leave pay”.

45 Section 30

Omit “pregnancy.”, substitute “pregnancy (see section 36A) or if the person is already eligible for dad and partner pay (see section 36B).”.

46 Section 30

Omit “indexed”, substitute “indexed. A special rule applies if the person is already eligible for dad and partner pay (see subsection 37(2))”.

47 Before subsection 31(2)

Insert:

Eligible

48 After subsection 31(4)

Insert:

Not eligible—overlap with DAPP period

- (4A) 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 parental leave pay for the child on a day that is in the DAPP period.

Not eligible—excess days

- (4B) Despite subsections (2), (3) and (4), if:
- (a) 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; and
 - (b) combined, the total days in the DAPP period and the reference period for the person’s claim for parental leave pay for the child exceed 126;
- then:

Schedule 1 Dad and partner pay

Part 1 Dad and partner pay

- (c) the Secretary must exclude from the reference period the excess number of days; and
- (d) the person is not *eligible* for parental leave pay for the child on a day excluded by the Secretary.

Not eligible—claimant deceased

49 Section 32 (method statement, step 1)

Repeal the step, substitute:

Step 1. Work out the person’s work test period.

Note: *Work test period* is defined in section 33 for primary claimants and secondary claimants and in section 115CD for DAPP claimants.

50 Section 32 (note)

Omit “Note”, substitute “Note 1”.

51 Section 32 (note)

Omit “section 36A”, substitute “sections 36A (for claimants for parental leave pay) and 115CE (for DAPP claimants)”.

52 At the end of section 32

Add:

Note 2: 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. An equivalent provision is in section 115CF for a DAPP claimant who is already eligible for parental leave pay.

53 At the end of subsection 33(3)

Add:

Note: For the *work test period* for a DAPP claimant, see section 115CD.

54 At the end of Division 3 of Part 2-3

Add:

36B Claimant for parental leave pay who is already eligible for dad and partner pay

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.

Note: See section 115CF for an equivalent provision for a DAPP claimant.

55 Section 37

Before “A person”, insert “(1)”.

56 At the end of section 37

Add:

- (2) 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.

Note: See subsection 115CG(2) for an equivalent provision for a DAPP claimant.

57 At the end of section 39

Add:

Note: For the *reference income year* for a DAPP claimant, see section 115CH.

58 At the end of section 40

Add:

Note: For the *relevant PPL income limit* for a DAPP claimant, see section 115CJ.

59 At the end of section 52

Add “for parental leave pay”.

60 Subsection 53(1)

After “claims”, insert “for parental leave pay”.

61 Subsections 55(1), (2) and (3)

After “A claim”, insert “for parental leave pay”.

62 Subsection 56(1)

Schedule 1 Dad and partner pay

Part 1 Dad and partner pay

After “The claim”, insert “for parental leave pay”.

63 Subsection 59(1)

After “The claim”, insert “for parental leave pay”.

64 Section 60

After “A claim”, insert “for parental leave pay”.

65 Subsection 61(1)

After “effective claim”, insert “for parental leave pay”.

66 Subsection 61(3)

After “claim”, insert “for parental leave pay”.

67 After Chapter 3

Insert:

Chapter 3A—Dad and partner pay

Part 3A-1—Key provisions

Division 1—Guide to this Part

115AA Guide to this Part

This Part has the key provisions for this Chapter (which deals with dad and partner pay).

A person can only be paid dad and partner pay if the Secretary makes a determination that dad and partner pay is payable to the person. Part 3A-2 has the rules about when the Secretary can make that determination.

The Secretary cannot make that determination if the person has not made a claim for dad and partner pay.

If the Secretary makes a determination that dad and partner pay is payable to a person for a child, the amount of dad and partner pay is worked out by reference to the period for which the person is

eligible for dad and partner pay. This period is the person's DAPP period. The maximum period for which any person may be eligible for dad and partner pay is 2 weeks. A person's DAPP period may be the full 2 weeks or a lesser period (if the person is not eligible for dad and partner pay for that full period).

Generally, dad and partner pay is paid by the Secretary as a single payment.

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

115AB A determination must be made for dad and partner pay to be payable to a person

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 section 115BB.

Note: See Part 3A-2 for the rules about when the Secretary can make a determination that dad and partner pay is, or is not, payable to a person.

115AC For the determination to be made, the person must be eligible

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.

Note: See Part 3A-3 for the rules about when a person is eligible for dad and partner pay.

115AD For the determination to be made, the person must claim

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.

Note: See Part 3A-4 for the rules about how to make an effective claim.

115AE The determination must specify the person's *DAPP period*

- (1) 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***.

Note: For a DAPP claimant's DAPP period, see subsection 115BB(3).

- (2) A person's DAPP period must be the same as, or within, the maximum DAPP period for the child.
- (3) The ***maximum DAPP period*** for a child is the period that:
- (a) starts on the child's maximum DAPP period start day; and
 - (b) ends on the child's maximum DAPP period end day.
- (4) The ***maximum DAPP period start day*** for a child is the later of the following days:
- (a) the day the child was born;
 - (b) the claimant's nominated start date.
- (5) The ***maximum DAPP period end day*** for a child is the earlier of the following days:
- (a) the day that is 13 days after the maximum DAPP period start day;
 - (b) 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

115BA Guide to this Part

This Part is about the Secretary making determinations about whether dad and partner pay is payable to a person. These determinations are payability determinations. A person cannot be paid dad and partner pay unless there is a payability determination that dad and partner pay is payable to the person.

Division 2 has the rules that apply to the Secretary when making a payability determination.

Division 3 has restrictions that apply in particular circumstances to prevent the Secretary from making a payability determination that dad and partner pay is payable to a person (for example, where the child's birth has not been verified or the person has already been paid dad and partner pay for the child).

Division 4 has general rules that apply to payability determinations (for example, if the Secretary makes a determination, the Secretary must give a notice of it to the claimant).

Division 5 deals with initial eligibility determinations. These determinations can be made by the Secretary before the Secretary makes a payability determination. The Secretary can make an initial eligibility determination if the Secretary is satisfied that the person satisfies, or will satisfy, particular eligibility criteria (the work test, the income test and the Australian residency test). If the Secretary makes a determination, the Secretary must give a notice of it to the claimant.

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

115BB Determination on a claim for dad and partner pay

When Secretary must make determination

- (1) 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.

When dad and partner pay is payable to DAPP claimant

- (2) 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.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

DAPP claimant's DAPP period

- (3) The Secretary must specify in the determination under subsection (2) that the claimant's DAPP period:
- (a) starts on the child's maximum DAPP period start day; and
 - (b) ends on:
 - (i) 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—the child's maximum DAPP period end day; or
 - (ii) 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—the last day in the child's maximum DAPP period that the DAPP claimant was or will be eligible for dad and partner pay.

When dad and partner pay is not payable to DAPP claimant

- (4) 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

115BC The child's birth has not been verified

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.

Note: See subsection 18(2) for how a person *verifies* a child's birth.

115BD The child was born before 1 January 2013

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.

115BE Multiple births

The Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if:

- (a) the child and another child are born during the same multiple birth; and
- (b) dad and partner pay is or was payable to the person or another person for the other child.

115BF Dad and partner pay is already payable to the person etc.

- (1) The Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if:
 - (a) 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
 - (b) there is in force a payability determination that dad and partner pay is payable to another person for the child.
- (2) Paragraph (1)(b) does not apply to a claim that is made in circumstances prescribed by the PPL rules.

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

115BG Assumptions when making the determination

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.

115BH When the determination is in force

A payability determination about dad and partner pay comes into force on the day it is made and continues in force unless it is:

- (a) revoked under section 115BK (which deals with revoking a payability determination on the DAPP claimant's request); or
- (b) set aside under Chapter 5 (which deals with review of decisions).

115BJ Notice of the determination

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:

- (a) whether dad and partner pay is payable; and
- (b) if dad and partner pay is payable—the DAPP claimant’s DAPP period; and
- (c) that the DAPP claimant may apply for review of the determination in the manner set out in Chapter 5.

115BK Revoking the determination on request

- (1) If:
 - (a) a payability determination is made that dad and partner pay is payable to a person; and
 - (b) the person requests the Secretary to revoke the determination; and
 - (c) the request is made:
 - (i) before the start of the person’s DAPP period; and
 - (ii) in a manner approved by the Secretary;then the Secretary must revoke the determination.
- (2) 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

115BL Initial eligibility determinations

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:

- (a) satisfies:
 - (i) the work test; and
 - (ii) the income test; and
 - (iii) the Australian residency test; or
-

- (b) will satisfy those tests on the day immediately before the person's nominated start date.

115BM Assumptions when making the initial eligibility determination

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.

115BN When the initial eligibility determination comes into force

An initial eligibility determination about dad and partner pay comes into force on the day it is made.

115BP Notice of the initial eligibility determination

If the Secretary makes an initial eligibility determination about dad and partner pay, 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

115CA Guide to this Part

This Part sets out when a person is eligible for dad and partner pay. The Secretary cannot make a payability determination that dad and partner pay is payable if the person is not eligible for it.

Division 2 sets out when a person is eligible for dad and partner pay. Subsection 115CB(2) deals with the main case and requires that for a person to be eligible for dad and partner pay for a child, the person must (broadly):

- (a) satisfy the work test, the income test and the Australian residency test; and

(b) be caring for the child; and

(c) not be working.

There are other eligibility criteria that apply for more unusual cases—see subsection 115CB(3) (which deals with when a child is stillborn or dies) and subsection 115CB(4) (which allows the PPL rules to prescribe eligibility criteria).

The work test is mostly in Division 3 of Part 2-3, but Division 3 of this Part has provisions relevant to DAPP claimants. To satisfy the work test, a person must have performed enough paid work or taken enough paid leave in a particular period before the person's nominated start date for dad and partner pay. Special rules apply in the case of premature birth or complications or illness related to the pregnancy (see section 115CE) or if the person is already eligible for parental leave pay (see section 115CF).

The income test is mostly in Division 4 of Part 2-3, but Division 4 of this Part has provisions relevant to DAPP claimants. To satisfy the income test, the person's income for a particular income year must not be more than the PPL income limit (which is \$150,000 until 30 June 2014 and then indexed). A special rule applies if the person is already eligible for parental leave pay (see subsection 115CG(2)).

The Australian residency test is in Division 5 of Part 2-3. To satisfy this test, the person must be an Australian resident or be in a special class of visa holder.

Division 6 of this Part sets out when a person is caring for a child. For the main case, a person will not be eligible for dad and partner pay if the person is not caring for the child.

Division 7 of this Part sets out when a person is not working. For the main case, a person will not be eligible for dad and partner pay if the person performs one hour or more of work other than for a purpose of performing the work for a business that the person carries on and that consists of overseeing the business or is an occasional administrative task.

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

115CB When a DAPP claimant is *eligible* for dad and partner pay

- (1) This section sets out when a DAPP claimant is eligible for dad and partner pay for a child on a day.

Eligible

- (2) First, a DAPP claimant is *eligible* for dad and partner pay for a child on a day if, on that day:
- (a) the claimant satisfies the work test (see Division 3 of Part 2-3 and sections 115CD, 115CE and 115CF); and
 - (b) the claimant satisfies the income test (see Division 4 of Part 2-3 and sections 115CG, 115CH and 115CJ); and
 - (c) the claimant satisfies the Australian residency test (see Division 5 of Part 2-3); and
 - (d) the claimant is caring for the child (see Division 6 of this Part); and
 - (e) the claimant is not working (see Division 7 of this Part).
- (3) Second, a DAPP claimant is *eligible* for dad and partner pay for a child on a day if:
- (a) the child is stillborn or has died before that day; and
 - (b) on that day, the claimant would be eligible under subsection (2) for dad and partner pay for the child, if paragraphs (2)(d) and (e) were disregarded; and
 - (c) the claimant would have been caring for the child on that day had the child not been stillborn or died.
- (4) Third, a DAPP claimant is *eligible* for dad and partner pay for a child on a day if, on that day, the claimant satisfies:
- (a) the work test (see Division 3 of Part 2-3 and sections 115CD, 115CE and 115CF); and
 - (b) the income test (see Division 4 of Part 2-3 and sections 115CG, 115CH and 115CJ); and
 - (c) the Australian residency test (see Division 5 of Part 2-3); and
 - (d) the conditions prescribed by the PPL rules.

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Not eligible—overlap with PPL period

- (5) 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.

Not eligible—overlap with DAPP period for another child

- (6) 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.

Not eligible—excess days

- (7) Despite subsections (2), (3) and (4), if:
- (a) 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; and
 - (b) combined, the total days in the PPL period and the reference period for the person's claim for dad and partner pay for the child exceed 126;
- then:
- (c) the Secretary must exclude from the reference period the excess number of days; and
 - (d) the person is not **eligible** for dad and partner pay for the child on a day excluded by the Secretary.

Not eligible—claimant deceased

- (8) 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

115CC When a DAPP claimant satisfies the work test

To work out whether a DAPP claimant satisfies the work test on a day in accordance with section 32, use the method statement in section 32 with the work test period in section 115CD.

Note: Sections 115CE and 115CF in this Division are alternative ways of satisfying the work test for DAPP claimants.

115CD The work test period

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 immediately before the claimant's nominated start date.

Note: Sections 115CE and 115CF in this Division are alternative ways of satisfying the work test for DAPP claimants.

115CE Premature birth

A DAPP claimant also satisfies the *work test* on a day if:

- (a) the Secretary is satisfied that the child was born prematurely; and
- (b) the Secretary is 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.

115CF DAPP claimant who is already eligible for parental leave pay

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.

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

115CG When a DAPP claimant satisfies the income test

- (1) To work out whether a DAPP claimant satisfies the income test in subsection 37(1) on a day, use the income test in subsection 37(1)

with the reference income year in section 115CH and the relevant PPL income limit in section 115CJ.

- (2) 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.

115CH The reference income year

The *reference income year* for a DAPP claimant is the income year that ended before the earlier of the following days:

- (a) the day the DAPP claimant made the claim for dad and partner pay;
- (b) the DAPP claimant's nominated start date.

115CJ The relevant PPL income limit

The *relevant PPL income limit* for a DAPP claimant is the PPL income limit that applies on the earlier of the following days:

- (a) the day the DAPP claimant made the claim for dad and partner pay;
- (b) the DAPP claimant's nominated start date.

Note: For *PPL income limit*, see section 41. The PPL income limit 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

115CK When a DAPP claimant satisfies the Australian residency test

To work out whether a DAPP claimant satisfies the Australian residency test on a day, use the Australian residency test in sections 45 and 46.

Division 6—Caring for a child

115CL When a DAPP claimant is caring for a child

- (1) 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.

- (2) 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 DAPP claimant's claim.
- (3) 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.
- (4) Despite subsection (1), a person is not *caring* for a child on a day if, before that day, the child has died.

Division 7—Not working

115CM When a DAPP claimant is *not working*

- (1) A DAPP claimant is *not working* on a day if neither of the following apply on that day:
 - (a) 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);
 - (b) the DAPP claimant is on paid leave.
- (2) However, the PPL rules may prescribe circumstances in which a DAPP claimant is taken to be *not working* even though paragraph (1)(a) or (b) applies to the claimant.

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

Division 1—Guide to this Part

115DA Guide to this Part

This Part is about claims for dad and partner pay. A person cannot be paid dad and partner pay unless the person has first made a claim for it.

Division 2 sets out the rules about claims. Section 115DD sets out who can make a claim for dad and partner pay.

The Secretary cannot make a payability determination on a claim unless it is an effective claim. To be effective, the claim must be made by the right person and satisfy the requirements in the provisions listed in section 115DE. One of those requirements is that the claim must be in the form, and contain the information, required by the Secretary (see section 115DF). Another requirement is that the claim must be made in the period set out in section 115DK.

Division 2—Claims for dad and partner day

115DB Who can claim

Only a natural person can make a claim for dad and partner pay.

115DC Form of claim

A claim for dad and partner pay must be made in the form approved by the Secretary for claims for dad and partner pay.

115DD Who can make a claim for dad and partner pay

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

- (a) the biological father of the child;
- (b) the partner of the child's birth mother;
- (c) an adoptive parent of the child;
- (d) a person who satisfies circumstances prescribed by the PPL rules.

115DE When a claim is effective

- (1) A claim for dad and partner pay is not effective unless the requirements of the following provisions that apply to the claim are satisfied:
 - (a) section 115DF (which deals with the form etc. of the claim);
 - (b) section 115DG (which deals with the nominated start date);
 - (c) section 115DH (which deals with expected or actual date of birth);

- (d) section 115DJ (which deals with tax file number statements);
 - (e) section 115DK (which deals with when to make the claim).
- (2) A claim for dad and partner pay is also not effective if it is made by a person who cannot make a claim under section 115DD.
 - (3) A claim for dad and partner pay that is not effective is taken not to have been made.

115DF Requirements of the claim

The claim for dad and partner pay must:

- (a) be made in the form approved, and the manner required, by the Secretary for dad and partner pay; and
- (b) contain any information required by the Secretary; and
- (c) be accompanied by any documents required by the Secretary.

115DG Nominated start date

- (1) 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.
- (2) The nominated start date must be on or after:
 - (a) if the claim is made before the child is born—the expected date of birth of the child; or
 - (b) if the claim is made after the child is born—the child’s actual date of birth.
- (3) 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.
- (4) 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.

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115DH Expected or actual date of birth

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.

115DJ Tax file number statement

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 subsection 59(2), (3) or (4).

115DK When to claim

A claim for dad and partner pay for a child must be made in the period that:

- (a) starts on the day that is 97 days before the expected date of birth of the child; and
- (b) ends on the day before the child's first birthday.

115DL Claim may be withdrawn or varied

- (1) After making an effective claim for dad and partner pay, the person may withdraw or vary the claim before a payability determination is made on it.
- (2) The person may only do so in a manner approved by the Secretary.
- (3) 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

115EA Guide to this Part

This Part is about the payment of dad and partner pay.

Generally, dad and partner pay is paid by the Secretary as a single payment.

The amount is worked out by reference to the period for which the person is eligible for dad and partner pay.

Division 2—Payment of dad and partner pay

115EB Payment of dad and partner pay

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).

115EC Amount of dad and partner pay

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.

Note: See subsection 65(2) for the *daily national minimum wage amount* for a day.

115ED Method of payment of dad and partner pay

- (1) 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.
- (2) The Secretary may direct that the whole or a 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.
- (3) A direction made under subsection (2) is not a legislative instrument.

115EE Giving person record of payment

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.

115EF Effect of extending DAPP period after review

- (1) If:
 - (a) the Secretary has made a payability determination that dad and partner pay is payable to a person; and
 - (b) 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.
- (2) To avoid doubt, any difference worked out under subsection (1) is also dad and partner pay.

115EG Protection of payment

- (1) A payment of dad and partner pay is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Note: Section 115EK (which deals with the effect of a garnishee etc. order) also provides a protection for an account into which dad and partner pay has been paid.

- (2) Subsection (1) has effect subject to section 115EH.

115EH Deductions for PAYG withholding

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 1953*.

115EJ No other deductions

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

115EK Effect of garnishee etc. order

- (1) If:
- (a) dad and partner pay has been paid to the credit of an account;
and
 - (b) a court order in the nature of a garnishee order comes into
force in relation to the account;
- the court order does not apply to the saved amount (if any) in the
account.
- (2) The *saved amount* is worked out as follows:

Method statement

- Step 1. Work out the total amount of dad and partner pay that has
been paid to the credit of the account during the 4 week
period immediately before the court order came into
force.
- Step 2. Subtract from the step 1 amount the total amount
withdrawn from the account during the same 4 week
period: the result is the *saved amount*.

**115EL Exemption from operation of workers' compensation and
accident compensation laws**

- (1) The payment of dad and partner pay is not to be taken into account
for the purposes of the following provisions or laws:
- (a) a provision of a law of the Commonwealth, a State or a
Territory, if the provision deals with:
 - (i) workers' compensation; or
 - (ii) accident compensation;
 - (b) a law, or a provision of a law, prescribed by the PPL rules, to
the extent that the law or provision deals with a matter
referred to in paragraph (a).
- (2) The PPL rules may provide that subsection (1) does not apply in
relation to a prescribed provision of a law of the Commonwealth, a
State or a Territory.

115EM DAPP period is not a period of paid leave

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.

68 Section 116

After “Subdivision C of Division 2 imposes an obligation on a person to whom instalments of parental leave pay are payable”, insert “, or to whom dad and partner pay is payable,”.

69 Section 117

Before “The Secretary”, insert “(1)”.

70 At the end of section 117

Add:

- (2) 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 following:
 - (a) 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;
 - (b) determining whether dad and partner pay is or was payable to a person;
 - (c) ensuring the Secretary can pay dad and partner pay into the bank account of a person to whom dad and partner pay is payable.

71 Paragraph 122(1)(a)

Omit “paragraph 117(d) (which deals”, substitute “paragraph 117(1)(d) or (2)(c) (which deal”.

72 Paragraph 123(a)

After “pay”, insert “or dad and partner pay”.

73 At the end of subsection 124(2)

Add:

- ; (c) to detect cases in which dad and partner pay has been paid when it should not have been paid;
- (d) to verify, in relation to persons who have made effective claims for dad and partner pay, the eligibility of those persons for that pay.

74 Subsections 125(1) and (2)

Repeal the subsections, substitute:

- (1) 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 the following things:
 - (a) anything that causes the person to cease to be eligible for parental leave pay on a day;
 - (b) anything that is likely to have the effect described in paragraph (a).
- (2) 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 the following things:
 - (a) anything that causes the person to cease to be eligible for dad and partner pay on a day;
 - (b) anything that is likely to have the effect described in paragraph (a).

75 Section 133 (heading)

Repeal the heading, substitute:

133 Repayment of instalment of parental leave pay, PPL funding amount or dad and partner pay

76 At the end of paragraph 133(1)(b) (before the note)

Add:

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; or (iii) 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.

77 Paragraph 138(2)(a)

Omit “or a PPL funding amount”, substitute “, a PPL funding amount or dad and partner pay”.

78 Section 164

Omit “the parental leave pay scheme”, substitute “the paid parental leave scheme”.

79 Section 164

After “overpayments or mistaken payments of parental leave pay”, insert “or dad and partner pay”.

80 Section 164

Omit “or PPL funding amounts”, substitute “, PPL funding amounts or dad and partner pay”.

81 Section 165

Omit “or a PPL funding amount”, substitute “, a PPL funding amount or dad and partner pay”.

82 After section 168

Insert:

168A Dad and partner pay debts

- (1) This section applies if:
- (a) 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
 - (b) 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 Part 3A-5 (which deals with the payment of dad and partner pay by the Secretary).

Note: 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.

- (2) An amount equal to the amount of the excess is a debt due to the Commonwealth by the person.

Example: 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.

- (3) The debt under subsection (2) arises:
- (a) if the person has a DAPP period for the child—immediately after the end of the person’s DAPP period; or
 - (b) otherwise—when subsection (1) starts to apply in relation to a Secretary payment.

Note 1: 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: This section 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 AAT Act.

83 Section 169 (heading)

Repeal the heading, substitute:

169 Wrong person receives parental leave pay instalment, PPL funding amount or dad and partner pay

84 Paragraph 169(1)(a)

Omit “or a PPL funding amount”, substitute “, a PPL funding amount or dad and partner pay”.

85 Paragraph 171(a)

After “instalment”, insert “or by way of dad and partner pay”.

86 Paragraph 192(1)(a)

Omit “or a PPL funding amount”, substitute “, a PPL funding amount or dad and partner pay”.

87 Paragraph 192(2)(a)

Omit “or PPL funding amount”, substitute “, PPL funding amount or dad and partner pay”.

88 After subparagraph 215(2)(a)(vii)

Insert:

- (viiia) subparagraph 115BK(1)(c)(ii);
- (viiib) section 115DC;
- (viiic) section 115DF;
- (viiid) subsection 115DL(2);

89 Subparagraph 273(1)(a)(i)

After “pay”, insert “or dad and partner pay”.

90 Subparagraph 273(1)(a)(ii)

After “pay”, insert “, or dad and partner pay,”.

91 Paragraph 273(1)(c)

After “pay”, insert “or dad and partner pay”.

92 After subsection 277(1)

Insert:

(1A) If:

- (a) a claim is made for dad and partner pay for a child; and
 - (b) before or after the claim is made, the child is stillborn or dies;
- then this Act (other than 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.

Note: Section 115CB deals with eligibility for dad and partner pay and section 115CL defines when a person is caring for a child for the purposes of dad and partner pay.

93 At the end of subsection 277(2)

Add “or (1A)”.

94 Section 279

After “(who are people who can receive payments of instalments of parental leave pay”, insert “, or payments of dad and partner pay,”.

95 Paragraph 280(1)(a)

Omit “of this Act”, substitute “of parental leave pay or dad and partner pay, or both”.

96 Paragraph 280(1)(b)

Before “direct”, insert “if the appointment is for parental leave pay—”.

97 At the end of subsection 280(1)

Add:

; and (c) if the appointment is for dad and partner pay—direct that the whole or a specified part of a payment of dad and partner pay payable to the nominee’s principal be paid to the nominee.

98 Subsection 281(1)

Omit “of this Act”, substitute “of parental leave pay or dad and partner pay, or both”.

99 Division 3 of Part 6-2 (heading)

Repeal the heading, substitute:

Division 3—Payment to payment nominee

100 After section 284

Insert:

284A Payment of dad and partner pay to payment nominee

(1) If:

- (a) a person has a payment nominee; and
- (b) the whole or a part of a payment of dad and partner pay is payable to the person; and
- (c) the Secretary has given a direction in relation to the payment under section 280;

the payment must be paid in accordance with the direction.

(2) A payment of dad and partner pay paid to the payment nominee of a person:

- (a) is paid to the payment nominee on behalf of the person; and

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- (b) is taken, for the purposes of this Act (other than this Part), to have been paid to the person and to have been so paid when it was paid to the nominee.
- (3) 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.
- (4) The Secretary may direct that the whole or a 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.
- (5) A direction given under subsection (4) is not a legislative instrument.

101 Section 285

Repeal the section, substitute:

285 Actions of correspondence nominee on behalf of principal

Correspondence nominee for parental leave pay

- (1) 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.

Note: 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.

- (2) 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 this Act in relation to parental leave pay may be made by that correspondence nominee on behalf of the person, and an application or claim so made is taken to be made by the person.
- (3) 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.

Correspondence nominee for dad and partner pay

- (4) 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.

Note: 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.

- (5) 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 pay may be made by that correspondence nominee on behalf of the person, and an application or claim so made is taken to be made by the person.
- (6) 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.

Effect of acts done by correspondence nominee

- (7) 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.

102 Subsection 286(1)

Repeal the subsection, substitute:

- (1) 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.
- (1A) 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

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give to the person in relation to dad and partner pay may be given by the Secretary to that correspondence nominee.

103 Subsection 286(2)

Omit “The notice”, substitute “A notice given under subsection (1) or (1A)”.

104 Paragraphs 286(3)(a) and (4)(a)

After “(1)”, insert “or (1A)”.

105 Subsection 289(1)

After “an instalment”, insert “, or a payment of dad and partner pay,”.

Part 2—Consequential amendments

Data-matching Program (Assistance and Tax) Act 1990

106 Subsection 3(1) (after paragraph (e) of the definition of *personal assistance*)

Insert:

; or (f) dad and partner pay under the *Paid Parental Leave Act 2010*;

Income Tax Assessment Act 1997

107 Subsection 995-1(1)

Insert:

dad and partner pay has the meaning given by the *Paid Parental Leave Act 2010*.

Social Security Act 1991

108 Subsection 8(1)

Insert:

dad and partner pay means dad and partner pay under the *Paid Parental Leave Act 2010*.

109 After paragraph 8(8)(d)

Insert:

(da) dad and partner pay;

110 After paragraph 93WC(2)(aa)

Insert:

; and (ab) includes dad and partner pay; and

111 Points 1064-F14, 1066A-G14, 1067G-H20, 1067L-D16, 1068-G7AR, 1068A-E12 and 1068B-D18 (definitions of *leave payment*)

Repeal the definitions, substitute:

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

- (a) an instalment of parental leave pay; or
- (b) dad and partner pay.

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

Add:

; and (g) dad and partner pay.

113 After paragraph 1228(2)(ca)

Insert:

(cb) dad and partner pay; or

Taxation Administration Act 1953

114 After paragraph 12-110(1)(ca) in Schedule 1

Insert:

(cb) *dad and partner pay; or

115 Subsection 16-155(3) (heading) in Schedule 1

Repeal the heading, substitute:

Parental leave pay or dad and partner pay paid in error

116 Paragraph 16-155(3)(a) in Schedule 1

After “pay”, insert “or *dad and partner pay”.

117 Paragraph 16-160(3)(a) in Schedule 1

After “pay”, insert “or *dad and partner pay”.

118 Subparagraph 18-65(1)(b)(ii) in Schedule 1

After “pay”, insert “or *dad and partner pay”.

119 Subparagraph 18-70(1)(b)(ii) in Schedule 1

After “leave”, insert “pay or *dad and partner pay”.

Veterans' Entitlements Act 1986

120 Subsection 5H(1)

Insert:

dad and partner pay means dad and partner pay under the *Paid Parental Leave Act 2010*.

121 After paragraph 5H(8)(d)

Insert:

(da) dad and partner pay;

122 After paragraph 45UUC(2)(aa)

Insert:

; and (ab) includes dad and partner pay;

123 At the end of subsection 46AB(1)

Add:

; or (h) an instalment of parental leave pay; or
(i) dad and partner pay.

124 After paragraph 205(1)(cb)

Insert:

(cc) an amount has purported to have been paid by way of dad and partner pay that was not lawfully so payable; or

125 Paragraph 205(2)(a)

After "(cb)", insert ", (cc)".

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

Omit "or (cb)", substitute ", (cb) or (cc)".

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

Omit "or (cb)", substitute ", (cb) or (cc)".

Schedule 2—Other amendments

Part 1—Amendments commencing at the same time as the Paid Parental Leave Act 2010

Paid Parental Leave Act 2010

1 Section 6 (definition of *work test*)

Omit “section 32”, substitute “Division 3 of Part 2-3”.

2 Section 30

Omit “secondary claimant)”, substitute “secondary claimant). Special rules apply in the case of premature birth or complications or illness related to the pregnancy”.

3 Paragraph 31(2)(a)

Omit “or subsection (4A) applies to the person”.

4 Subparagraph 31(4)(a)(i)

Omit “or subsection (4A) applies to the person”.

5 Subsection 31(4A)

Repeal the subsection.

6 At the end of section 32

Add:

- Note: A person may also satisfy the work test despite not satisfying the test in step 5, if:
- (a) the child was born prematurely; or
 - (b) while the person was pregnant with the child, the person had complications or illness related to the pregnancy which prevented the person from performing paid work.

See section 36A.

7 At the end of Division 3 of Part 2-3

Add:

36A Premature birth or pregnancy-related complications or illness

A person also satisfies the *work test* on a day if:

- (a) the person is the birth mother of the child; and
- (b) the Secretary is satisfied that either or both of the following circumstances existed:
 - (i) the child was born prematurely;
 - (ii) while the person was pregnant with the child, the person had complications or illness related to the pregnancy which prevented the person from performing paid work; and
- (c) the Secretary is satisfied that the person would have satisfied the work test on the day in accordance with section 32 if that circumstance, or those circumstances, had not existed.

8 At the end of section 257

Add:

- (7) A failure to comply with subsection (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

Fair Work Act 2009

9 Section 12

Insert:

keeping in touch day: see subsections 79A(2) and (3).

10 Section 70 (note 1)

Repeal the note, substitute:

Note 1: Entitlement is also affected by:

- (a) section 67 (which deals with length of the employee's service);
and
- (b) for pregnancy and birth—subsection 77A(3) (which applies if the pregnancy ends other than by the child being born alive, or if the child dies after birth); and
- (c) for adoption—section 68 (which deals with the age etc. of the adopted child).

11 Subsection 71(2) (note)

Repeal the note, substitute:

Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

Note 2: Periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

12 Subsection 71(3)

Repeal the subsection, substitute:

- (3) If the leave is birth-related leave for a female employee who is pregnant with, or gives birth to, the child, the period of leave may start:
 - (a) up to 6 weeks before the expected date of birth of the child;
or
 - (b) earlier, if the employer and employee so agree;but must not start later than the date of birth of the child.

- Note 1: If the employee is not fit for work, she may be entitled to:
- (a) paid personal leave under Subdivision A of Division 7; or
 - (b) unpaid special maternity leave under section 80.
- Note 2: If it is inadvisable for the employee to continue in her present position, she may be entitled under section 81:
- (a) to be transferred to an appropriate safe job; or
 - (b) to paid no safe job leave.
- Note 3: Section 344 prohibits the exertion of undue influence or undue pressure on the employee in relation to a decision by the employee whether to agree as mentioned in paragraph (3)(b) of this section.

13 Subsection 72(2) (note)

Repeal the note, substitute:

- Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).
- Note 2: Periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

14 Subparagraph 72(3)(a)(i)

After “may start up to 6 weeks before the expected date of birth of the child,”, insert “or earlier if the employer and employee so agree,”.

15 At the end of subsection 76(1)

Add:

- Note: Extended periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

16 After section 77

Insert:

77A Pregnancy ends (other than by birth of a living child) or child born alive dies

Application of this section

- (1) This section applies to unpaid parental leave, if:
- (a) the leave is birth-related leave; and
 - (b) either:
 - (i) the pregnancy ends other than by the child being born alive; or

- (ii) the child dies after being born.

Cancellation of leave

- (2) Before the leave starts:
- (a) the employee may give the employer written notice cancelling the leave; or
 - (b) the employer may give the employee written notice cancelling the leave.

Example: Subsections (2) and (3) do not apply if:

- (a) the child dies after being born; and
- (b) the employee is the female employee who gave birth to the child.

This is because in this case the leave must not start later than the date of birth of the child (see subsection 71(3)).

- (3) If the employee or employer does so, the employee is not entitled to unpaid parental leave in relation to the child.

Note: If the employee is the female employee who was pregnant with the child and the employee is not fit for work, she may be entitled to:

- (a) paid personal leave under Subdivision A of Division 7; or
- (b) unpaid special maternity leave under section 80.

Return to work

- (4) The employee may give the employer written notice that the employee wishes to return to work:
- (a) after the start of the period of leave, but before its end; and
 - (b) within 4 weeks after the employer receives the notice.
- (5) The employer:
- (a) may give the employee written notice requiring the employee to return to work on a specified day; and
 - (b) must do so if the employee gives the employer written notice under subsection (4);
- unless the leave has not started and the employer cancels it under subsection (2).
- (6) The specified day must be after the start of the period of leave, and:
- (a) if subsection (4) applies—within 4 weeks after the employer receives the notice under that subsection; or
 - (b) otherwise—at least 6 weeks after the notice is given to the employee under subsection (5).
-

- (7) The employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

Interaction with section 77

- (8) This section does not limit section 77 (which deals with the employee ending the period of unpaid parental leave with the agreement of the employer).

17 After subsection 78(1)

Insert:

- (1A) However, this section does not apply if section 77A applies to the unpaid parental leave (because the unpaid parental leave is birth-related leave and either the pregnancy ends other than by the child being born alive or the child dies after being born).

18 At the end of Subdivision B of Division 5 of Part 2-2

Add:

79A Keeping in touch days

- (1) This Subdivision does not prevent an employee from performing work for his or her employer on a keeping in touch day while he or she is taking unpaid parental leave. If the employee does so, the performance of that work does not break the continuity of the period of unpaid parental leave.
- (2) A day on which the employee performs work for the employer during the period of leave is a ***keeping in touch day*** if:
- (a) the purpose of performing the work is to enable the employee to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave; and
 - (b) both the employee and the employer consent to the employee performing work for the employer on that day; and
 - (c) the day is not within:
 - (i) if the employee suggested or requested that he or she perform work for the employer on that day—14 days after the date of birth, or day of placement, of the child to which the period of leave relates; or

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(ii) otherwise—42 days after the date of birth, or day of placement, of the child; and

(d) the employee has not already performed work for the employer or another entity on 10 days during the period of leave that were keeping in touch days.

The duration of the work the employee performs on that day is not relevant for the purposes of this subsection.

Note: The employer will be obliged, under the relevant contract of employment or industrial instrument, to pay the employee for performing work on a keeping in touch day.

(3) The employee's decision whether to give the consent mentioned in paragraph (2)(b) is taken, for the purposes of section 344 (which deals with undue influence or pressure), to be a decision to make, or not make, an arrangement under the National Employment Standards.

(4) For the purposes of paragraph (2)(d), treat as 2 separate periods of unpaid parental leave:

(a) a period of unpaid parental leave taken during the employee's available parental leave period; and

(b) a period of unpaid parental leave taken as an extension of the leave referred to in paragraph (a) for a further period immediately following the end of the available parental leave period.

Note: Performance of work on keeping in touch days is also dealt with, for the purposes of parental leave pay, in sections 49 and 50 of the *Paid Parental Leave Act 2010*.

79B Unpaid parental leave not extended by paid leave or keeping in touch days

If, during a period of unpaid parental leave, an employee:

(a) takes paid leave; or

(b) performs work for his or her employer on a keeping in touch day;

taking that leave or performing that work does not have the effect of extending the period of unpaid parental leave.

19 After section 84

Insert:

84A Replacement employees

Before an employer engages an employee to perform the work of another employee who is going to take, or is taking, unpaid parental leave, the employer must notify the replacement employee:

- (a) that the engagement to perform that work is temporary; and
- (b) of the rights:
 - (i) the employer; and
 - (ii) the employee taking unpaid personal leave; have under subsections 77A(2) and (3) (which provide a right to cancel the leave if the pregnancy ends other than by the birth of a living child or if the child dies after birth); and
- (c) of the rights the employee taking unpaid parental leave has under:
 - (i) subsections 77A(4) to (6) (which provide a right to end the leave early if the pregnancy ends other than by the birth of a living child or if the child dies after birth); and
 - (ii) section 84 (which deals with the return to work guarantee); and
- (d) of the effect of section 78 (which provides the employer with a right to require the employee taking unpaid parental leave to return to work if the employee ceases to have any responsibility for the care of the child).

20 Section 344 (note)

Repeal the note, substitute:

- Note 1: This section is a civil remedy provision (see Part 4-1).
- Note 2: This section can apply to decisions whether to consent to performing work on keeping in touch days (see subsection 79A(3)).

21 Subsection 536(1) (note)

Repeal the note, substitute:

- Note 1: This subsection is a civil remedy provision (see Part 4-1).
- Note 2: Section 80 of the *Paid Parental Leave Act 2010* requires an employer to give information to an employee to whom the employer pays an instalment under that Act.

Paid Parental Leave Act 2010

22 Section 6

Insert:

vocational placement means a placement that is:

- (a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and
- (b) undertaken as a requirement of an education or training course; and
- (c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

23 Paragraph 50(c)

Repeal the paragraph, substitute:

- (c) the day is not within:
 - (i) if the person suggested or requested that he or she perform work for the entity on that day—14 days after the day the child was born; or
 - (ii) otherwise—42 days after the day the child was born.

24 At the end of section 50

Add:

- Note 1: Performance of work on keeping in touch days is also dealt with, for the purposes of unpaid parental leave, in section 79A of the *Fair Work Act 2009*.
- Note 2: The employer will be obliged, under the relevant contract of employment or industrial instrument, to pay the employee for performing work on a keeping in touch day.
- Note 3: Section 344 of the *Fair Work Act 2009* prohibits the exertion of undue influence or undue pressure on the person in relation to a decision by the person whether to consent to performing work on keeping in touch days: see subsection 79A(3) of that Act.
- Note 4: That section, and section 343 of that Act, contain other prohibitions on coercion and undue influence or pressure.

25 Paragraph 82(2)(c)

Repeal the paragraph, substitute:

- (c) in the manner set out in a written notice given to the employer under subsection (2B).
-

26 After subsection 82(2)

Insert:

- (2A) The Secretary must approve a manner of notification that an employer must use when notifying the Secretary of an event under this section.
- (2B) The Secretary must, by written notice, notify the employer of the approved manner of notification.

27 Application and transitional provision

Application provision

- (1) The amendments made by items 25 and 26 of this Schedule apply in relation to notices that must be given to the Secretary under subsection 82(1) of the *Paid Parental Leave Act 2010* on or after the commencement of this item.

Transitional provision

- (2) The Secretary is taken to give an employer a written notice under subsection 82(2B) of the *Paid Parental Leave Act 2010* setting out a manner of notification if the Secretary:
 - (a) publishes on a PPL agency's website a notice setting out that manner; or
 - (b) notifies the employer of that manner by another means that the Secretary considers appropriate.
- (3) Subitem (2) does not apply if the Secretary made the relevant employer determination later than 6 months after the commencement of this item.

Delegation

- (4) Subsections 303(1) and (2) of that Act (which deal with delegation) apply in relation to this item in the same way as they apply in relation to section 82 of that Act.

28 After subsection 105(2)

Insert:

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Part 2 Amendments commencing the day after Royal Assent

(2A) The notice given to the employer must also be dated. The date of the notice must be the date the preparation of the notice was completed.

29 Subsection 105(3)

After “give the notice”, insert “to the Secretary”.

30 Paragraph 131(1)(a)

Omit “protected”.

31 Paragraph 131(1)(b)

Omit “Subdivision”, substitute “Division”.

32 At the end of Division 8 of Part 4-3

Add:

201A Debts arising from civil penalty orders

This Part does not apply to a debt arising from a civil penalty order.

33 After subparagraph 215(2)(a)(v)

Insert:

(va) subsection 82(2A);

34 Section 278

Before “This Act”, insert “(1)”.

35 At the end of section 278

Add:

(2) However, for the purposes of working out for the purposes of paragraph 101(1)(c) (which deals with when the Secretary must make an employer determination) whether the person has, or will have, been employed by the Commonwealth agency for at least 12 months:

- (a) treat the reference in that paragraph to the employer as being a reference to the Commonwealth; and
- (b) disregard subsection (1) of this section.

36 Paragraph 280(1)(b)

Omit “to the nominee’s principal”, substitute “by the Secretary to the nominee’s principal under Part 3-3”.

37 Before subsection 303(1)

Insert:

General powers

38 Subparagraph 303(1)(b)(iii)

Omit “Commonwealth;”, substitute “Commonwealth.”.

39 Paragraph 303(1)(b)

Omit all the words after subparagraph (iii).

40 After subsection 303(1)

Insert:

(1A) Paragraphs (1)(a) and (b) do not apply to the Chief Executive Centrelink, Chief Executive Medicare or an APS employee in the Human Services Department.

41 Before subsection 303(3)

Insert:

Powers under Division 3 or 5 of Part 4-2

42 After subsection 303(3)

Insert:

(3A) 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 neither:

- (a) an SES employee; nor
- (b) an acting SES employee.

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- (3B) If the Secretary delegates any of his or her powers under Division 3 or 5 of Part 4-2 to the Chief Executive Medicare, the Chief Executive Medicare cannot, despite any provision in the *Human Services (Medicare) Act 1973*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:
- (a) an SES employee; nor
 - (b) an acting SES employee.

Power under paragraph 128(1)(b)

43 Subsection 303(5)

Omit “the power mentioned in subsection (4)”, substitute “his or her power under paragraph 128(1)(b)”.

44 Subsection 303(5)

Omit “other”.

45 Subsection 303(5)

Omit “the *Human Services (Centrelink) Act 1997*” (second occurring), substitute “that Act”.

46 Subsection 303(6)

Omit “the power mentioned in subsection (4)”, substitute “his or her power under paragraph 128(1)(b)”.

47 Subsection 303(6)

Omit “other”.

48 Subsection 303(6)

Omit “the *Human Services (Medicare) Act 1973*” (second occurring), substitute “that Act”.

*[Minister's second reading speech made in—
House of Representatives on 22 March 2012
Senate on 18 June 2012]*

(44/12)