





# **Paid Parental Leave Amendment (Flexibility Measures) Act 2020**

**No. 53, 2020**

**An Act to amend the law relating to paid parental  
leave, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# **Paid Parental Leave Amendment (Flexibility Measures) Act 2020**

**No. 53, 2020**

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## **An Act to amend the law relating to paid parental leave, and for related purposes**

*[Assented to 16 June 2020]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act is the **Paid Parental Leave Amendment (Flexibility Measures) Act 2020**.*

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 June 2020
2. Schedules 1 and 2	1 July 2020.	1 July 2020

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **Schedule 1—Flexible paid parental leave**

### *A New Tax System (Family Assistance) Act 1999*

#### **1 Subsection 3(1)**

Insert:

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

#### **2 Subsection 3(1) (definition of *eligible for parental leave pay*)**

Repeal the definition.

#### **3 Subsection 3(1)**

Insert:

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

#### **4 Clause 28C of Schedule 1**

Omit “occurs during a PPL period applying”, substitute “is a day for which parental leave pay is payable”.

#### **5 Subparagraphs 35A(9)(b)(i) and (ii) of Schedule 1**

Repeal the subparagraphs, substitute:

- (i) if the person has a PPL period, and has a continuous PPL period, for the child, and the total number of week days in that PPL period and the person’s continuous flexible period for the child is at least 65—at least 13 weeks; or
- (ii) if the person has a PPL period, and has a continuous PPL period, for the child, and the total number of week days in that PPL period and the person’s continuous flexible period for the child is less than 65—a period equal to the total number of those week days; or
- (iii) otherwise—the whole of the person’s PPL period for the child.

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

**6 Subsection 3(1)**

Insert:

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

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

**7 Paragraph 39(4)(b)**

Repeal the paragraph, substitute:

- (b) the claimant, or the claimant's partner, is given a notice under section 24 of that Act in relation to the claim for parental leave pay that states that:
  - (i) if the claim is a claim for parental leave pay in relation to the maximum PPL period for the child—parental leave pay is not payable and no determination of the kind mentioned in paragraph 13(4)(b), 14(4)(b), 14(7)(b), 15(2)(b), 15(6)(b) or 16(5)(b) of that Act has been made; or
  - (ii) if the claim is a claim for parental leave pay for a flexible PPL day for the child—parental leave pay is not payable and no determination of the kind mentioned in paragraph 17A(4)(b) or 17B(5)(b) of that Act has been made; and

**8 Paragraphs 41(3)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) if the Secretary determines under that Act that parental leave pay for the child is payable to the person who made the claim for parental leave pay:
    - (i) if the person has a PPL period for the child—the person's PPL period starts; or
    - (ii) if the person does not have a PPL period for the child but parental leave pay is payable to the person for one or more flexible PPL days for the child specified in the claim—the instalment period (within the meaning of
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- that Act) for the instalment of parental leave pay that relates to the first of those days has ended; or
- (iii) the Secretary revokes the determination under section 25 of that Act;
  - (d) the claimant, or the claimant's partner, is given a notice under section 24 of that Act in relation to the claim for parental leave pay that states that:
    - (i) if the claim is a claim for parental leave pay in relation to the maximum PPL period for the child—parental leave pay is not payable and no determination of the kind mentioned in paragraph 13(4)(b), 14(4)(b), 14(7)(b), 15(2)(b), 15(6)(b) or 16(5)(b) of that Act has been made; or
    - (ii) if the claim is a claim for parental leave pay for a flexible PPL day for the child—parental leave pay is not payable and no determination of the kind mentioned in paragraph 17A(4)(b) or 17B(5)(b) of that Act has been made;

## ***Paid Parental Leave Act 2010***

### **9 Subsection 3A(1)**

Omit “newborn and newly adopted”.

### **10 At the end of subsection 3A(1)**

Add:

; and (d) provide those carers with greater flexibility to balance work and family life.

### **11 Section 4 (paragraph beginning “This Act”)**

Omit “in the first year after”, substitute “following”.

### **12 Section 4**

Omit:

Parental leave pay is paid to a person for a particular period. That period is called the person's PPL period. The maximum period for which any person may be paid parental leave pay is 18 weeks. A person's PPL period may be the full 18 weeks or a lesser period

(e.g. where the person is not eligible for parental leave pay for that full period).

Parental leave pay is paid in instalments at the national minimum wage for each week day during the person's PPL period. It is paid by either the person's employer or the Secretary.

substitute:

Parental leave pay is payable to a person for a child for a particular period, which is called the person's PPL period for the child. That period may be a maximum of 12 weeks long. Parental leave pay is also payable to the person for a flexible PPL day for the child. The number of flexible PPL days for the child for which parental leave pay can be paid cannot exceed 30.

Parental leave pay is paid in instalments at the daily national minimum wage amount for the following days:

- (a) a week day that falls within the person's PPL period for the child;
- (b) a day that is a flexible PPL day for the child and for which parental leave pay is payable to the person.

Parental leave pay is paid by either the person's employer or the Secretary.

### 13 Section 4

Omit:

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 the child's primary carer; and
- (c) not have returned to work.

### 14 Section 4

Omit:

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There are 3 types of claims: a primary claim, a secondary claim and (in rare cases) a tertiary claim. These claims relate to each other, although the primary claim is the main one—a secondary or tertiary claim cannot be made without it. The primary claim will often be the only claim that is made. If a secondary or tertiary claim is made, that claim will be for the part of the maximum 18 week period (or lesser period) in which parental leave pay was not payable to the primary claimant.

substitute:

There are 3 types of claims: a primary claim, a secondary claim and (in rare cases) a tertiary claim. These claims relate to each other, although the primary claim is the main one. The primary claim will often be the only claim that is made.

## **15 Section 4**

Omit:

Part 3-2 sets out when a person's employer must pay instalments to the person. The employer is only required to do that if an employer determination has come into force for the employer and the person, and the employer has been paid enough by the Secretary to fund the instalment.

substitute:

Part 3-2 sets out when a person's employer must pay instalments to the person. An employer is required to pay an instalment to a person in relation to a child if:

- (a) an employer determination has come into force for the employer and the person; and
- (b) the instalment is payable in relation to either a day that falls within the person's PPL period for the child or a flexible PPL day for the child that falls within the person's continuous flexible period for the child; and
- (c) the employer has been paid enough by the Secretary to fund the instalment.

**16 Section 4 (paragraph beginning “Part 3-3”)**

Omit “The Secretary”, substitute “For instance, the Secretary”.

**17 Section 6**

Insert:

*conditional eligibility determination* means a determination of a kind mentioned in paragraph 13(4)(b), 14(4)(b), 14(7)(b), 15(2)(b), 15(6)(b), 16(5)(b), 17A(4)(b) or 17B(5)(b).

*continuous flexible period*: see subsections 6A(2) and (4).

**18 Section 6 (paragraph (a) of the definition of eligible)**

Repeal the paragraph, substitute:

- (a) for parental leave pay in relation to the maximum PPL period for a child—see section 31; or
- (aa) for parental leave pay on a flexible PPL day for a child—see section 31AA; or

**19 Section 6**

Insert:

*employer notice* means the later of any one or more of the following notices given to an employer:

- (a) a notice under section 102;
- (b) a notice under section 113;
- (c) a notice under section 114.

*expected PPL period* of a person for a child means the period the Secretary expects to specify as the person’s PPL period for the child if the Secretary were to make a payability determination under section 13, 14, 15 or 16 that parental leave pay is payable to the person in relation to the child.

*farm household allowance* has the same meaning as in the *Farm Household Support Act 2014*.

*flexible PPL day*: see subsection 11D(1).

*flexible PPL period*: see subsection 11D(2).

*has a continuous PPL period*: see subsections 6A(1) and (3).

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*has not previously satisfied the work and income tests*: a person *has not previously satisfied the work and income tests* in relation to a child if both of the following apply:

- (a) no payability determination is in force that parental leave pay is payable to the person in relation to the child;
- (b) no conditional eligibility determination is in force that relates to the person and child.

**20 Section 6 (paragraph (a) of the definition of *initial eligibility determination*)**

Repeal the paragraph, substitute:

- (a) for parental leave pay in relation to the maximum PPL period for a child—see section 26; or
- (aa) for parental leave pay for a flexible PPL day for a child—see section 26A; or

**21 Section 6 (paragraph (a) of the definition of *nominated start date*)**

After “pay”, insert “in relation to the maximum PPL period for a child”.

**22 Section 6 (paragraph (a) of the definition of *payability determination*)**

Omit “16 or 17”, substitute “16, 17, 17A, 17B or 17C”.

**23 Section 6 (definition of *PPL day*)**

Omit “subsection 63(3)”, substitute “paragraph 63(3)(a)”.

**24 Section 6**

Insert:

*social security benefit* has the same meaning as in the Social Security Act.

*social security pension* has the same meaning as in the Social Security Act.

**25 At the end of Division 2 of Part 1-2**

Add:

**6A When a person has a continuous PPL period and the person's continuous flexible period**

*Payability determination in force under section 17A, 17B or 17C*

- (1) A person **has a continuous PPL period** for a child if:
  - (a) one or more payability determinations that parental leave pay is payable to the person for a period (the **relevant period**) of one or more flexible PPL days for the child are in force under section 17A, 17B or 17C; and
  - (b) the relevant period starts on the first week day that occurs after the person's PPL period for the child ends; and
  - (c) the relevant period only consists of consecutive flexible PPL days for the child that are week days.
- (2) If a person has a continuous PPL period for a child under subsection (1), the person's **continuous flexible period** is the period that:
  - (a) starts on the first day of the relevant period referred to in that subsection; and
  - (b) ends on the earlier of the following days:
    - (i) the last day of that relevant period;
    - (ii) the day before the child's first birthday.

*Initial eligibility determination in force under section 26A*

- (3) A person **has a continuous PPL period** for a child if:
    - (a) one or more initial eligibility determinations for the person for a period (the **relevant period**) of one or more flexible PPL days for the child are in force under section 26A; and
    - (b) the relevant period starts on the first week day that occurs after the person's expected PPL period for the child ends; and
    - (c) the relevant period only consists of consecutive flexible PPL days for the child that are week days.
  - (4) If a person has a continuous PPL period for a child under subsection (3), the person's **continuous flexible period** is the period that:
    - (a) starts on the first day of the relevant period referred to in that subsection; and
    - (b) ends on the earlier of the following days:
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- (i) the last day of that relevant period;
  - (ii) the day before the child's first birthday.

**26 Section 7 (paragraph beginning "The Secretary cannot")**

Omit "—a secondary or tertiary claim cannot be made without it".

**27 Section 7**

Omit:

If the Secretary makes a determination that parental leave pay is payable to a person for a child, the parental leave pay is payable for the particular period that is specified in the determination. This period is the person's PPL period. The maximum period for which any person may be paid parental leave pay is 18 weeks. A person's PPL period may be the full 18 weeks or a lesser period (e.g. where the person is not eligible for parental leave pay for that full period).

If a secondary or tertiary claim is made, that claim will be for the part of the maximum 18 week period (or lesser period) in which parental leave pay was not payable to the primary claimant. The person's employer or the Secretary will pay instalments of parental leave pay for that period (see Chapter 3 for the rules about how the person is paid parental leave pay).

substitute:

If the Secretary makes a determination that parental leave pay is payable to a person for a child in relation to the maximum PPL period for the child, parental leave pay is payable to the person for the particular period specified in the determination. This period is the person's PPL period for the child which may be a maximum of 12 weeks long. A person's PPL period for a child may be the full 12 weeks or a lesser period (e.g. where the person is not eligible for parental leave pay for that full period).

If a secondary or tertiary claim is made in relation to the maximum PPL period for the child, that claim will be for the part of the maximum 12 week period (or lesser period) in which parental leave pay was not payable to the primary claimant for the child.

If the Secretary makes a determination that parental leave pay is payable to a person for one or more flexible PPL days for a child of the person, parental leave pay is payable for the particular days specified in the determination. The number of flexible PPL days for the child for which parental leave pay is payable cannot exceed 30.

The Secretary may only make a determination that parental leave pay is payable to a secondary claimant for one or more flexible PPL days for a child if the primary claimant for the child has given permission for secondary claims to be made.

The person's employer or the Secretary will pay instalments of parental leave pay that are payable to a person (see Chapter 3 for the rules about the payment of parental leave pay).

**28 Division 2 of Part 2-1 (at the end of the heading)**

Add "for the person's PPL period".

**29 Section 8 (at the end of the heading)**

Add "for the person's PPL period".

**30 Section 8 (note)**

Repeal the note, substitute:

Note: See Division 2 of Part 2-2 for the rules about when the Secretary can make such a determination.

**31 Section 9**

After "a determination", insert "under section 13, 14, 15, 16 or 17".

**32 Section 9 (at the end of the note)**

Add "for a child on a day that is not a flexible PPL day for the child".

**33 Section 10**

After "a determination", insert "under section 13, 14, 15, 16 or 17".

**34 Paragraphs 10(a), (b) and (c)**

Before "for the child", insert "for parental leave pay in relation to the maximum PPL period".

**35 Subsection 11(1)**

After “a determination”, insert “under section 13, 14, 15, 16 or 17”.

**36 At the end of subsection 11(1)**

Add “for the child”.

**37 Subsection 11(1) (note)**

After “PPL period” (wherever occurring), insert “for a child”.

**38 Subsection 11(2)**

After “person’s PPL period”, insert “for a child”.

**39 Paragraphs 11(4)(a), (b) and (c)**

After “pay”, insert “in relation to the maximum PPL period”.

**40 Paragraph 11(5)(a)**

Omit “125”, substitute “83”.

**41 Paragraph 11(5)(a)**

Omit “18”, substitute “12”.

**42 At the end of Part 2-1**

Add:

**Division 3—When parental leave pay for a flexible PPL day for a child is payable to a person**

**11A A determination must be made for parental leave pay for a flexible PPL day for a child to be payable to a person**

Parental leave pay is payable to a person for a flexible PPL day for a child if a determination of the Secretary that parental leave pay is payable to the person for that day is in force under section 17A, 17B or 17C.

Note: See Division 2A of Part 2-2 for the rules about when the Secretary can make such a determination.

### **11B For a determination to be made, the person must be eligible**

The Secretary cannot make a determination under section 17A, 17B or 17C that parental leave pay is payable to a person for a flexible PPL day for a child unless the person was or will be eligible for parental leave pay on that day.

Note: See Part 2-3 for the rules about when a person is eligible for parental leave pay on a flexible PPL day for a child.

### **11C For a determination to be made, the person must claim**

The Secretary cannot make a determination under section 17A, 17B or 17C that parental leave pay is payable to a person for a flexible PPL day for a child unless the person has made:

- (a) an effective primary claim for parental leave pay for that day (in which case the person is the primary claimant); or
- (b) an effective secondary claim for parental leave pay for that day (in which case the person is the secondary claimant); or
- (c) an effective tertiary claim for parental leave pay for that day (in which case the person is the tertiary claimant).

Note: See Part 2-4 for the rules about how to make an effective claim.

### **11D Flexible PPL day and flexible PPL period**

- (1) A day is a *flexible PPL day* for a child if the day occurs in the flexible PPL period for the child.
- (2) The *flexible PPL period* for a child is the period that:
  - (a) starts on:
    - (i) if the only payability determination that is in force for a claimant for the child is a payability determination under section 13 or 15—the first day after the PPL period specified in that determination ends; or
    - (ii) if 2 or more payability determinations under section 13, 14, 15, 16 or 17 are in force for 2 or more claimants for the child—the first day after whichever PPL period specified in those determinations ends the latest; or
    - (iii) if neither subparagraph (i) nor (ii) of this paragraph applies and only one initial eligibility determination under section 26 is in force for a claimant for the

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- child—the first day after the claimant’s expected PPL period for the child ends; or
- (iv) if neither subparagraphs (i) nor (ii) of this paragraph applies and 2 initial eligibility determinations under section 26 are in force for 2 claimants for the child—the first day after whichever of those claimants’ expected PPL period for the child ends the latest; or
  - (v) otherwise—the day the child is born; and
- (b) ends on the day before the child’s second birthday.

**43 Section 12 (paragraph beginning “Division 2”)**

After “payability determination”, insert “in relation to the maximum PPL period for a child”.

**44 Section 12 (before the paragraph beginning “Division 3”)**

Insert:

Division 2A has the rules that apply to the Secretary when making a payability determination in relation to whether parental leave pay is payable to a person for a flexible PPL day for a child of the person. Different rules apply depending on the type of claim. For a secondary claim, the primary claimant for the child must have given permission for such claims to be made.

**45 Section 12 (paragraph beginning “Division 3”)**

Omit “or the person has already been paid parental leave pay for the child”.

**46 Section 12 (paragraph beginning “Division 5”)**

Omit “(the work test, the income test and the Australian residency test)”.

**47 Division 2 of Part 2-2 (at the end of heading)**

Add “for a period”.

**48 Paragraph 13(1)(a)**

After “pay”, insert “in relation to the maximum PPL period”.

**49 Paragraph 13(1)(b)**

Omit “for the child”, substitute “in relation to that period”.

**50 Subsections 13(2) and (3)**

After “claimant’s PPL period” (wherever occurring), insert “for the child”.

**51 Subsection 13(4)**

Repeal the subsection (not including the heading), substitute:

- (4) If the Secretary is not satisfied of the matter in subsection (2), the Secretary must:
- (a) determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the primary claimant; and
  - (b) if the Secretary is satisfied that the primary claimant satisfies the work test and income test on the day the determination is made—determine that the primary claimant is conditionally eligible for parental leave pay for a flexible PPL day for the child.

**52 Paragraph 14(1)(a)**

After “pay”, insert “in relation to the maximum PPL period”.

**53 Paragraph 14(1)(b)**

Omit “for the child”, substitute “in relation to that period”.

**54 Paragraph 14(1)(c)**

After “pay”, insert “in relation to that period”.

**55 Subsections 14(2) and (3)**

After “claimant’s PPL period” (wherever occurring), insert “for the child”.

**56 Subsection 14(4)**

Repeal the subsection (not including the heading), substitute:

- (4) If the Secretary is not satisfied of the matter in subsection (2), the Secretary must:

- 
- (a) determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the primary claimant; and
  - (b) if the Secretary is satisfied that the primary claimant satisfies the work test and income test on the day the determination is made—determine that the primary claimant is conditionally eligible for parental leave pay for a flexible PPL day for the child.

**57 Subsections 14(5) and (6)**

After “claimant’s PPL period” (wherever occurring), insert “for the child”.

**58 Subsection 14(7)**

Repeal the subsection (not including the heading), substitute:

- (7) If the Secretary is not satisfied of the matters in subsection (5), the Secretary must:
  - (a) determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the secondary claimant; and
  - (b) if the Secretary is satisfied that the secondary claimant satisfies the work test and income test on the day the determination is made—determine that the secondary claimant is conditionally eligible for parental leave pay for a flexible PPL day for the child.

**59 Paragraph 15(1)(a)**

After “pay”, insert “in relation to the maximum PPL period”.

**60 Paragraph 15(1)(b)**

Omit “for the child”, substitute “in relation to that period”.

**61 Paragraph 15(1)(c)**

After “pay”, insert “in relation to that period”.

**62 Subsection 15(2)**

Repeal the subsection (not including the heading), substitute:

- (2) The Secretary must:

- (a) determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the primary claimant; and
- (b) if the Secretary is satisfied that the primary claimant satisfies the work test and income test on the day the determination is made—determine that the primary claimant is conditionally eligible for parental leave pay for a flexible PPL day for the child.

**63 Subsection 15(3)**

After “PPL period” (first occurring), insert “for the child”.

**64 Subparagraph 15(3)(a)(i)**

Omit “that day”, substitute “the day the determination is made”.

**65 Paragraphs 15(3)(b) and (c)**

After “PPL period” (wherever occurring), insert “for the child”.

**66 Subsection 15(5)**

After “claimant’s PPL period”, insert “for the child”.

**67 Paragraph 15(5)(a)**

Before “maximum”, insert “child’s”.

**68 Subsection 15(6)**

Repeal the subsection (not including the heading), substitute:

- (6) If the Secretary is not satisfied of the matters in subsection (3), the Secretary must:
  - (a) determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the secondary claimant; and
  - (b) if the Secretary is satisfied that the secondary claimant satisfies the work test and income test on the day the determination is made—determine that the secondary claimant is conditionally eligible for parental leave pay for a flexible PPL day for the child.

**69 Paragraph 16(1)(a)**

After “pay”, insert “in relation to the maximum PPL period”.

**70 Paragraph 16(1)(b)**

Omit “for the child”, substitute “in relation to that period”.

**71 Subsections 16(3) and (4)**

After “claimant’s PPL period” (wherever occurring), insert “for the child”.

**72 Subsection 16(5)**

Repeal the subsection (not including the heading), substitute:

- (5) If the Secretary is not satisfied of the matters in subsection (3), the Secretary must:
- (a) determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the secondary claimant; and
  - (b) if the Secretary is satisfied that the secondary claimant satisfies the work test and income test on the day the determination is made—determine that the secondary claimant is conditionally eligible for parental leave pay for a flexible PPL day for the child.

**73 Subsection 17(1)**

After “pay”, insert “in relation to the maximum PPL period”.

**74 Subsections 17(2) and (3)**

After “claimant’s PPL period” (wherever occurring), insert “for the child”.

**75 Subsection 17(4)**

Repeal the subsection (not including the heading), substitute:

- (4) If the Secretary is not satisfied of the matters in subsection (2), the Secretary must determine that parental leave pay in relation to the maximum PPL period for the child is not payable to the tertiary claimant.

## 76 After Division 2 of Part 2-2

Insert:

### **Division 2A—Determination about whether parental leave pay for a flexible PPL day is payable to a person**

#### **17A Determination on a primary claim**

*When a claim is to be determined under this section*

- (1) If:
  - (a) a primary claimant has made an effective primary claim for parental leave pay for a child; and
  - (b) one or more flexible PPL days for the child (the ***claimed days***) have been specified in the claim;the Secretary must make a determination on the primary claim under this section.

*When parental leave pay is payable to the primary claimant for one or more claimed days*

- (2) The Secretary must determine that parental leave pay is payable to the primary claimant for one or more of the claimed days if, when making the determination, the Secretary is satisfied that the primary claimant was or will be eligible for parental leave pay on those days.

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

- (3) The Secretary must specify in the determination made under subsection (2) the claimed days for which parental leave pay is payable to the primary claimant.

*When parental leave pay is not payable to the primary claimant for one or more claimed days*

- (4) If the Secretary is not satisfied of the matter in subsection (2) for one or more of the claimed days, the Secretary must:
  - (a) determine that parental leave pay is not payable to the primary claimant for those days; and
  - (b) if:

- 
- (i) the primary claimant has not previously satisfied the work and income tests in relation to the child; and
  - (ii) the Secretary is satisfied that the primary claimant satisfies the work test and income test on the day the determination is made;
- determine that the primary claimant is conditionally eligible for parental leave pay for other flexible PPL days for the child.
- (5) The Secretary must specify in the determination made under subsection (4) the claimed days for which parental leave pay is not payable to the primary claimant.

### **17B Determination on a secondary claim**

*When a claim is to be determined under this section*

- (1) If:
- (a) a secondary claimant has made an effective secondary claim for parental leave pay for a child; and
  - (b) one or more flexible PPL days for the child (the ***claimed days***) have been specified in the claim;
- the Secretary must make a determination on the secondary claim under this section.

*When parental leave pay is payable to a secondary claimant for one or more claimed days*

- (2) The Secretary must determine that parental leave pay is payable to the secondary claimant for one or more of the claimed days if, when making the determination, the Secretary is satisfied that:
- (a) the primary claimant for the child has given a permission under section 17D in relation to the child; and
  - (b) the permission has not been revoked; and
  - (c) if the determination were made, the number of flexible PPL days for the child for which parental leave pay would be payable to a person other than the primary claimant would not exceed the number of flexible PPL days specified in the permission; and
  - (d) the primary claimant:

- (i) if the primary claimant has not previously satisfied the work and income tests in relation to the child—satisfies the work test and the income test on the day the determination is made; and
- (ii) satisfies the Australian residency test on the day the child was born; and
- (iii) is, if the day the child was born is in a newly arrived resident's waiting period the primary claimant is subject to under section 31A, a person to whom subsection 31A(7) or (7A) applies on that day; and
- (e) the secondary claimant was or will be eligible for parental leave pay on those claimed days.

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

- (3) The Secretary must determine that parental leave pay is payable to the secondary claimant for one or more of the claimed days if, when making the determination, the Secretary is satisfied that:
  - (a) the primary claimant for the child:
    - (i) if the primary claimant has not previously satisfied the work and income tests in relation to the child—satisfies the work test and the income test on the day the determination is made; and
    - (ii) satisfies the Australian residency test on the day the child was born; and
    - (iii) is, if the day the child was born is in a newly arrived resident's waiting period the primary claimant is subject to under section 31A, a person to whom subsection 31A(7) or (7A) applies on that day; and
  - (b) the secondary claimant:
    - (i) made the secondary claim in exceptional circumstances; and
    - (ii) was or will be eligible for parental leave pay on those claimed days.
- (4) The Secretary must specify in the determination made under subsection (2) or (3) the claimed days for which parental leave pay is payable to the secondary claimant.

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*When parental leave pay is not payable to secondary claimant for the claimed days*

- (5) If the Secretary is not satisfied of the matters in subsection (2) or (3) for one or more of the claimed days, the Secretary must:
- (a) determine that parental leave pay is not payable to the secondary claimant for those days; and
  - (b) if:
    - (i) the secondary claimant has not previously satisfied the work and income tests in relation to the child; and
    - (ii) the Secretary is satisfied that the secondary claimant satisfies the work test and income test on the day the determination is made;determine that the secondary claimant is conditionally eligible for parental leave pay for other flexible PPL days for the child.
- (6) The Secretary must specify in the determination made under subsection (5) the claimed days for which parental leave pay is not payable to the secondary claimant.

### **17C Determination on a tertiary claim**

*When a claim is to be determined under this section*

- (1) If:
- (a) a tertiary claimant has made an effective tertiary claim for parental leave pay for a child; and
  - (b) one or more flexible PPL days for the child (the ***claimed days***) have been specified in the claim;
- the Secretary must make a determination on the tertiary claim under this section.

*When parental leave pay is payable to tertiary claimant for the claimed days*

- (2) The Secretary must determine that parental leave pay is payable to the tertiary claimant for one or more of the claimed days if, when making the determination, the Secretary is satisfied that:

- (a) a payability determination under subsection 14(5), 15(3), 16(3) or 17B(2) or (3) that parental leave pay for the child is payable to a secondary claimant is in force; and
- (b) the tertiary claimant was or will be eligible for parental leave pay on those days.

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

- (3) The Secretary must specify in the determination made under subsection (2) the claimed days for which parental leave pay is payable to the tertiary claimant.

*When parental leave pay is not payable to the tertiary claimant for the claimed days*

- (4) If the Secretary is not satisfied of the matters in subsection (2) for one or more of the claimed days, the Secretary must determine that parental leave pay is not payable to the tertiary claimant for those days.
- (5) The Secretary must specify in the determination made under subsection (4) the claimed days for which parental leave pay is not payable to the tertiary claimant.

## **17D Permission to claim flexible PPL days for a child**

*Primary claimant may give permission*

- (1) A primary claimant for a child may give permission for persons to make secondary claims for parental leave pay for flexible PPL days for the child.
- (2) The permission must:
  - (a) be given to the Secretary in the form approved by the Secretary; and
  - (b) specify the number of flexible PPL days for the child in relation to which a secondary claim may be made.

Note 1: The permission does not need to specify the persons who may make a secondary claim.

Note 2: The permission does not preclude the primary claimant from making a claim for parental leave pay for some or all of the specified number of flexible PPL days for the child.

- (3) The number of flexible PPL days for the child specified in the permission must not exceed 30.

*Revocation of permission*

- (4) If a primary claimant has given a permission under subsection (1), the primary claimant may revoke the permission.
- (5) The revocation must be given to the Secretary in the form approved by the Secretary.
- (6) If:
- (a) a payability determination that parental leave pay is payable to a person for one or more flexible PPL days for a child is in force; and
  - (b) the payability determination was made under subsection 17B(2); and
  - (c) the permission referred to in that subsection is revoked under subsection (4) of this section;
- the revocation of the permission does not affect the operation of the payability determination.

**77 After section 19**

Insert:

**19A Parental leave pay for flexible PPL days for a child not payable if child born before 1 July 2020**

The Secretary must not make a payability determination under section 17A, 17B or 17C that parental leave pay is payable to a person for one or more flexible PPL days for a child of the person if the child was born before 1 July 2020.

**78 Subsection 21(1)**

After “payability determination” (first occurring), insert “under section 13, 14, 15, 16 or 17”.

**79 Paragraphs 21(1)(a), (b) and (c)**

After “payability determination”, insert “under such a provision”.

## 80 Section 24

Repeal the section, substitute:

### 24 Notice of the determination

If the Secretary makes a payability determination about parental leave pay for a child, the Secretary must give the claimant a notice stating:

- (a) whether parental leave pay is payable; and
- (b) if parental leave pay is payable for the claimant's PPL period for the child—that period; and
- (c) if parental leave pay is payable for one or more flexible PPL days for the child—those days; and
- (d) if parental leave pay is not payable—whether a conditional eligibility determination has been made; and
- (e) that the claimant may apply for review of the determination in the manner set out in Chapter 5.

## 81 Subsection 25(1)

Repeal the subsection, substitute:

- (1) If:
  - (a) a payability determination is made that parental leave pay is payable to a person for a child; and
  - (b) the person requests the Secretary to revoke the determination; and
  - (c) the request is made:
    - (i) if the determination relates to parental leave pay payable for the person's PPL period for the child—before the start of that period; or
    - (ii) if the determination relates to parental leave pay payable for a flexible PPL day for the child—before the last day of the instalment period for the instalment that relates to that day; and
  - (d) the request is made in a manner approved by the Secretary; then the Secretary must revoke the determination.

## 82 Section 26 (at the end of the heading)

Add “in relation to the maximum PPL period for a child”.

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**83 Subsection 26(1)**

After “primary claim”, insert “in relation to the maximum PPL period for a child”.

**84 Subsection 26(1)**

Omit “for the child”, substitute “in relation to that period”.

**85 Subsection 26(2)**

After “secondary claim”, insert “in relation to the maximum PPL period for a child”.

**86 Subsection 26(2)**

Omit “for the child”, substitute “in relation to that period”.

**87 After section 26**

Insert:

**26A Initial eligibility determinations relating to flexible PPL days for a child**

The Secretary may make a determination (the *initial eligibility determination*) that a person is initially eligible for parental leave pay for one or more flexible PPL days for a child if:

- (a) the flexible PPL days for the child are specified in an effective primary claim or effective secondary claim made by the person; and
- (b) if no other initial eligibility determination under this section or section 26 is in force in relation to the person and child—the Secretary is satisfied that the person satisfies the work test and income test when making the determination; and
- (c) if the person is a primary claimant—the Secretary is satisfied that the person satisfies the Australian residency test when making the determination.

**88 Section 30**

Omit:

Division 2 sets out when a person is eligible for parental leave pay. Subsection 31(2) deals with the main case and requires that for a

person to be eligible for parental leave pay for a child, the person must (broadly):

- (a) satisfy the work test, the income test and the Australian residency test; and
- (b) be the child's primary carer; and
- (c) not have returned to work.

There are other eligibility criteria that apply for more unusual cases—see subsection 31(3) (which deals with when a child is stillborn or dies) and subsection 31(4) (which allows the PPL rules to prescribe eligibility criteria).

substitute:

Division 2 sets out when a person is eligible for parental leave pay. Section 31 sets out when a person is eligible for parental leave pay on a day other than a flexible PPL day for a child. Section 31AA sets out when a person is eligible for parental leave pay on a flexible PPL day for a child.

**89 Section 30 (paragraph beginning “Division 3”)**

After “day the person”, insert “first”.

**90 Section 30 (paragraph beginning “Division 3”)**

Omit “A previous PPL period and previous DAPP period of the person”, substitute “The person's PPL period for a previous child, a flexible PPL day for a previous child for which parental leave pay was payable to the person and the person's DAPP period for a previous child”.

**91 Section 30 (paragraph beginning “Division 7”)**

Omit “For the main case,”, substitute “In general,”.

**92 Section 31 (at the end of the heading)**

Add “on a day other than a flexible PPL day for a child”.

**93 At the end of subsection 31(1)**

Add “that is not a flexible PPL day for the child”.

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**94 Subsections 31(2), (3) and (4)**

Before “a day”, insert “such”.

**95 Subsection 31(4B)**

Repeal the subsection.

**96 After section 31**

Insert:

**31AA When a person is eligible for parental leave pay on a flexible PPL day for a child**

- (1) A person is *eligible* for parental leave pay on a flexible PPL day for a child if:
  - (a) the person is eligible for parental leave pay on the day under subsection (2), (3), (4) or (5); and
  - (b) the person is not ineligible for parental leave pay on the day under section 31AB.
  
- (2) A person is eligible for parental leave pay on a flexible PPL day for a child if:
  - (a) the person satisfies the Australian residency test on that day; and
  - (b) the person is the primary carer of the child on that day; and
  - (c) on that day:
    - (i) the person is performing no more than one hour of paid work; or
    - (ii) the person is performing more than one hour of paid work but the person is performing that work for a permissible purpose; and
  - (d) if the person has not previously satisfied the work and income tests in relation to the child—the person satisfies the work test and the income test on that day; and
  - (e) if the person is the primary claimant—the person:
    - (i) satisfies the Australian residency test on the day the child was born; and
    - (ii) is, if the day the child was born is in a newly arrived resident’s waiting period that the person is subject to

under section 31A, a person to whom subsection 31A(7) or (7A) applies on the day the child was born.

- (3) A person is eligible for parental leave pay on a flexible PPL day for a child if:
- (a) the child is stillborn or has died before that day; and
  - (b) on that day, the person would be eligible under subsection (2) for parental leave pay on that day, if paragraphs (2)(b) and (c) were disregarded; and
  - (c) the person would have been the child's primary carer on that day had the child not been stillborn or died.
- (4) A person is eligible for parental leave pay on a flexible PPL day for a child if:
- (a) the person is the primary claimant; and
  - (b) the person satisfies the Australian residency test on both of the following days:
    - (i) the day the child was born;
    - (ii) that flexible PPL day; and
  - (c) if the person has not previously satisfied the work and income tests in relation to the child—the person satisfies the work test and the income test on that flexible PPL day; and
  - (d) the person is, if the day the child was born is in a newly arrived resident's waiting period that the person is subject to under section 31A, a person to whom subsection 31A(7) or (7A) applies on the day the child was born; and
  - (e) on that flexible PPL day, the person satisfies the conditions prescribed by the PPL rules.
- (5) A person is eligible for parental leave pay on a flexible PPL day for a child if:
- (a) the person is a secondary claimant or tertiary claimant; and
  - (b) on that day, the person satisfies the conditions prescribed by the PPL rules.

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**31AB When a person is not eligible for parental leave pay on a flexible PPL day for a child**

- (1) This section sets out when a person (the *relevant claimant*) is not eligible for parental leave pay on a day that is a flexible PPL day for a child.

*When flexible PPL days exceed 30*

- (2) The relevant claimant is not eligible for parental leave pay on a flexible PPL day for the child if, on that day, one or more determinations under section 17A, 17B or 17C that parental leave pay is payable to a person are in force in relation to 30 flexible PPL days for the child.

*When payability determination already made in relation to a day*

- (3) The relevant claimant is not eligible for parental leave pay on a flexible PPL day for the child if there is in force a payability determination under section 17A, 17B or 17C that parental leave pay is payable to a person for that child for that day.

*Overlap with DAPP period*

- (4) The relevant claimant is not eligible for parental leave pay on a flexible PPL day for the child if:
- (a) there is in force a payability determination that dad and partner pay is payable to the relevant claimant for the relevant claimant's DAPP period for the child; and
  - (b) the day is a day that is in that period.

*Excess days*

- (5) The relevant claimant is not eligible for parental leave pay on a flexible PPL day for the child if:
- (a) there is in force a payability determination that dad and partner pay is payable to the relevant claimant for the relevant claimant's DAPP period for the child; and
  - (b) there is in force a payability determination that parental leave pay is payable to the relevant claimant for the relevant claimant's PPL period for the child; and

- (c) there is in force one or more payability determinations that parental leave pay is payable to the relevant claimant for one or more flexible PPL days for the child (the *relevant flexible PPL days*); and
- (d) the sum of the following number of days is at least 90:
  - (i) the number of week days in the period mentioned in paragraph (a);
  - (ii) the number of week days in the period mentioned in paragraph (b);
  - (iii) the number of relevant flexible PPL days.

*Claimant deceased*

- (6) The relevant claimant is not eligible for parental leave pay on a flexible PPL day for the child if, on that day, the relevant claimant is deceased.

*Newly arrived resident's waiting period*

- (7) The relevant claimant is not eligible for parental leave pay on a flexible PPL day for the child if the day is in a newly arrived resident's waiting period for the relevant claimant (see section 31A).

**97 Paragraphs 31A(1)(a), (2)(b) and (3)(b)**

Omit "*Social Security Act 1991*", substitute "*Social Security Act*".

**98 Paragraph 31A(5)(a)**

After "period", insert "for a child".

**99 Paragraph 31A(5)(c)**

Omit "(within the meaning of the *Social Security Act 1991*)".

**100 Paragraph 31A(5)(c)**

Omit "(within the meaning of that Act)".

**101 Paragraph 31A(5)(d)**

Omit "under the *Farm Household Support Act 2014*".

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**102 After subsection 31A(6)**

Insert:

(6A) If:

- (a) a person has made an effective claim for parental leave pay for a flexible PPL day for a child; and
- (b) the person was receiving any of the following on the day before that flexible PPL day:
  - (i) a social security pension;
  - (ii) a social security benefit;
  - (iii) farm household allowance;
  - (iv) parental leave pay for the child;
  - (v) dad and partner pay for the child; and
- (c) if the person is the primary claimant—the person was also receiving any of the things mentioned in subparagraphs (b)(i) to (v) on the day the child was born;

then subsection (1) does not apply to the person for the purposes of that claim to the extent it relates to that flexible PPL day.

(6B) If:

- (a) a payability determination that parental leave pay is payable to a person in relation to a child is in force under section 13, 14, 15, 16 or 17; and
- (b) the person has made an effective claim for parental leave pay for a period of one or more flexible PPL days for the child; and
- (c) that period:
  - (i) begins on the first week day that occurs after the person's PPL period for the child ends; and
  - (ii) only consists of consecutive flexible PPL days for the child that are week days; and
- (d) the person was receiving any of the following on the day before the start of the person's PPL period for the child:
  - (i) a social security pension;
  - (ii) a social security benefit;
  - (iii) farm household allowance; and
- (e) if the person is the primary claimant—the person was also receiving any of the things mentioned in subparagraphs (d)(i) to (iii) on the day the child was born;

then subsection (1) does not apply to the person for the purposes of that claim to the extent that it relates to the period referred to in paragraph (b) of this subsection.

**103 Subsection 31A(7)**

Omit “Subsection 31(6) does”, substitute “Subsections 31(6) and 31AB(7) do”.

**104 Subsection 31A(7)**

Omit “*Social Security Act 1991*”, substitute “Social Security Act”.

**105 Subsection 31A(7A)**

Omit “Subsection 31(6) does”, substitute “Subsections 31(6) and 31AB(7) do”.

**106 Paragraphs 31A(8)(a), (b) and (c)**

Omit “*Social Security Act 1991*”, substitute “Social Security Act”.

**107 Subsection 33(3)**

After “person”, insert “first”.

**108 After paragraph 34(1)(c)**

Insert:

(ca) the day is a flexible PPL day for a previous child of the person and parental leave pay was payable to the person on that day;

**109 Subparagraph 39(b)(ii)**

After “person”, insert “first”.

**110 Subsection 47(2)**

After “the period”, insert “of one or more days”.

**111 Section 51 (paragraph beginning “Division 2”)**

Omit “—a secondary or tertiary claim cannot be made without it”.

**112 Paragraph 55(1)(b)**

Repeal the paragraph, substitute:

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- (b) section 57 (which deals with the nominated start date for certain claims);
- (ba) section 57A (which deals with the specification in a claim of flexible PPL days for a child etc.);

**113 Subsection 57(1)**

After “primary claim”, insert “for parental leave pay in relation to the maximum PPL period for a child”.

**114 Subsection 57(1)**

After “pay”, insert “in relation to that period”.

**115 Subsection 57(3)**

After “to the primary claimant”, insert “for the primary claimant’s PPL period for a child”.

**116 After section 57**

Insert:

**57A Specification in claim of flexible PPL days for a child etc.**

- (1) A claim for parental leave pay for one or more flexible PPL days for a child must specify each of those days.

Note: A claim that also specifies one or more days that are not flexible PPL days for the child can still be an effective claim.

- (2) A flexible PPL day for the child specified in the claim must not be a day that is more than 42 days before the day the claim is made.
- (3) Before a payability determination is made on the claim, the claimant may change a flexible PPL day for the child specified in the claim by notifying the Secretary of the new flexible PPL day for the child.
- (4) If:
  - (a) one or more days were specified in the claim for parental leave pay as flexible PPL days for the child at the time the claim was made; and
  - (b) the Secretary is satisfied that the circumstances prescribed by the PPL rules apply in relation to the claim;

then, before a payability determination is made on the claim, the Secretary may determine, in accordance with any requirements prescribed by the PPL rules, that the claim is to be taken, for the purposes of making the determination, to have specified one or more other flexible PPL days for the child.

**117 Subsection 59(1)**

Omit “(3) or (4)”, substitute “(3), (4) or (5)”.

**118 At the end of section 59**

Add:

*Statement that a tax file number has previously been provided*

- (5) The fourth kind is a statement that the person’s tax file number has previously been provided with an earlier claim for parental leave pay.

**119 Section 60**

Before “A claim”, insert “(1)”.

**120 Section 60**

After “pay”, insert “in relation to the maximum PPL period for a child”.

**121 At the end of section 60**

Add:

- (2) A claim for parental leave pay for a flexible PPL day 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:
    - (i) if, before the child’s first birthday, an effective claim for parental leave pay for the child has been made by a primary claimant for the child—the child’s second birthday; or
    - (ii) otherwise—the child’s first birthday.

**122 Section 62 (paragraph beginning “Parental leave pay”)**

Omit:

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Instalments are payable to a person if those instalment periods overlap with the person's PPL period.

substitute:

An instalment is payable to a person if:

- (a) one or more days of an instalment period for the person fall within the person's PPL period for a child; or
- (b) one or more flexible PPL days for a child of the person fall within an instalment period for the person and parental leave pay is payable to the person for those days.

### **123 Subsection 63(3)**

Repeal the subsection (not including the heading), substitute:

- (3) An instalment is payable to a person if either or both of the following apply:
  - (a) one or more days (the *PPL days*) of an instalment period for the person fall within the person's PPL period for a child;
  - (b) one or more flexible PPL days for a child of the person:
    - (i) fall within an instalment period for the person; and
    - (ii) are days for which parental leave pay is payable to the person.

### **124 Subsection 65(1)**

Repeal the subsection, substitute:

- (1) The amount of an instalment payable to a person is the sum of the following amounts (if any):
  - (a) the sum of the daily national minimum wage amounts for each week day, during the instalment period to which the instalment relates, that is also a PPL day for the person;
  - (b) the sum of the daily national minimum wage amounts for each day, during the instalment period to which the instalment relates, that is:
    - (i) a flexible PPL day for a child of the person; and
    - (ii) a day for which parental leave pay is payable to the person.

**125 Subsection 66(2)**

Omit “and 69A”, substitute “, 69A and 69B”.

**126 After section 69A**

Insert:

**69B Deductions relating to debt owed to the Commonwealth**

The Secretary may deduct an amount from an instalment that is payable to a person if:

- (a) a determination under section 190A has been made in relation to the person; and
- (b) the deduction is made in accordance with the determination, as made or varied under that section.

**127 Subsection 70(1)**

Omit “or 69A”, substitute “, 69A or 69B”.

**128 Section 71**

Omit:

Under Division 2, an employer is only required to pay an instalment to a person if an employer determination has come into force for the employer and the person (see Part 3-5) and the employer has been paid enough by the Secretary to fund the instalment.

substitute:

Under Division 2, an employer is required to pay an instalment to a person if:

- (a) an employer determination has come into force for the employer and the person (see Part 3-5); and
- (b) the instalment is payable in relation to either a day that falls within the person’s PPL period for the child or a flexible PPL day for the child that falls within the person’s continuous flexible period for the child; and
- (c) the employer has been paid enough by the Secretary to fund the instalment.

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**129 After subsection 72(1) (after the notes)**

Insert:

- (1A) If an employer is required under subsection (1) to pay an instalment to a person in relation to a child of the person, the requirement only applies to the extent that the instalment is payable in relation to:
- (a) a day that falls within the person's PPL period for the child mentioned in the employer notice relating to the employer determination; and
  - (b) if the person has a continuous PPL period for the child—a flexible PPL day for the child that falls within the continuous flexible period mentioned in the employer notice relating to the employer determination.

Note 1: The Secretary must pay an instalment to the person to the extent that the instalment is payable in relation to a day that is a flexible PPL day for the child and that does not fall within the person's continuous flexible period for the child (see subsection 84(2A)).

Note 2: The Secretary will also be required to pay an instalment to the person if the person's PPL period, or continuous flexible period, for the child is extended on review after that period has ended (see sections 87, 92 and 92A).

**130 Paragraph 72(2)(a)**

Omit "after the start of the person's PPL period", substitute "in relation to a child of the person after the start of the person's PPL period for the child".

**131 Paragraph 72(2)(b)**

After "period", insert "for a child".

**132 At the end of subsection 75(1)**

Add:

Note: Subsections 72(1) and (1A) deal with when an employer is required to pay an instalment to a person.

**133 At the end of subparagraph 76(1)(b)(ii)**

Add "of the person".

**134 Paragraph 76(2)(a)**

After “to the person”, insert “by the person’s employer”.

**135 Paragraph 76(2)(b)**

Omit “in the person’s PPL period”.

**136 Subsection 76(3)**

Omit “for the person’s PPL period”, substitute “by the person’s employer”.

**137 Paragraph 77(2)(c)**

Omit “the PPL” (first occurring), substitute “any PPL”.

**138 After paragraph 77(2)(d)**

Insert:

- (da) any flexible PPL days for a child of the person for which the PPL funding amount has been paid;
- (db) the daily national minimum wage amount for each of those flexible PPL days;

**139 Subsection 82(1)**

After “person’s employer”, insert “in relation to a child of the person”.

**140 Paragraphs 82(1)(f) and (g)**

Repeal the paragraphs, substitute:

- (f) the person returns to work for the employer at any time from the child’s birth until the end of:
  - (i) if the person has a continuous PPL period for the child—the person’s continuous flexible period for the child; or
  - (ii) otherwise—the person’s PPL period for the child;
- (g) the person ceases to be employed by the employer before the end of:
  - (i) if the person has a continuous PPL period for the child—the person’s continuous flexible period for the child; or
  - (ii) otherwise—the person’s PPL period for the child;

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**141 Paragraph 82(1)(k)**

Omit “for the PPL days”, substitute “to the person for the days”.

**142 Paragraph 82(1)(l)**

Omit “for the person’s PPL period”, substitute “under this Part”.

**143 Paragraph 82(3)(a)**

Repeal the paragraph.

**144 Subparagraph 82(3)(b)(i)**

Repeal the subparagraph, substitute:

- (i) if the employer determination is not revoked—the day after the person’s PPL period for the child ends or, if the person has a continuous PPL period for the child, the day after the person’s continuous flexible period for the child ends; and

**145 Subparagraph 82(3)(b)(ii)**

Omit “of the revocation”, substitute “the revocation comes into force”.

**146 Section 83**

Omit:

The Secretary is required to pay instalments directly to a person if an employer determination is never made for the person.

substitute:

The Secretary is required to pay instalments directly to a person if:

- (a) an employer determination is never made for the person; or
- (b) the instalment is payable in relation to a day that is a flexible PPL day for a child of the person and that does not fall within the person’s continuous flexible period for the child (if any).

**147 After subsection 84(2)**

Insert:

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*Instalments relating to certain flexible PPL days*

- (2A) The Secretary must pay an instalment that is payable to a person to the extent that the instalment is payable in relation to a day that:
- (a) is a flexible PPL day for a child of the person; and
  - (b) if the person has a continuous PPL period for the child—does not fall within the person’s continuous flexible period for the child that is mentioned in an employer notice relating to an employer determination made for the person and the person’s employer.

Note: The person’s employer must pay an instalment to the person to the extent that the instalment is payable in relation to a flexible PPL day for the child that falls within the person’s continuous flexible period for the child (see subsections 72(1) and (1A)).

**148 Subsection 84(3)**

After “payable to a person”, insert “in relation to a child of the person”.

**149 Paragraph 84(3)(b)**

After “period”, insert “for the child”.

**150 Subsection 84(5)**

After “payable to a person”, insert “in relation to a child of the person”.

**151 Paragraph 84(5)(b)**

Repeal the paragraph, substitute:

- (b) the instalment relates to an instalment period that starts on or after the day (the *transfer day*) after:
  - (i) if the person has a continuous PPL period for the child—the last flexible PPL day for the child that falls within the person’s continuous flexible period for the child and for which the Secretary has paid the employer a PPL funding amount for the person; or
  - (ii) otherwise—the last PPL day for which the Secretary has paid the employer a PPL funding amount for the person in relation to the child; and

**152 Subsection 85(2)**

After “period”, insert “for a child”.

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**153 Section 87 (heading)**

After “period”, insert “or continuous flexible period”.

**154 Subsection 87(1)**

Omit “(which deals with the effect of extending a person’s PPL period after a review)”, substitute “or 92A”.

**155 Section 90 (paragraph beginning “Some of those”)**

After “period”, insert “for a child”.

**156 Paragraph 91(a)**

Omit “after the start of the person’s PPL period”, substitute “in relation to a child of the person after the start of the person’s PPL period for the child”.

**157 Paragraph 91(c)**

After “period”, insert “for the child”.

**158 Paragraph 92(a)**

After “period”, insert “for a child”.

**159 Paragraph 92(b)**

After “PPL period”, insert “for the child”.

**160 After section 92**

Insert:

**92A Effect of extending a person’s continuous flexible period after review**

(1) If:

- (a) a person’s continuous flexible period for a child ends; and
- (b) later, a decision in relation to a payability determination for the person is made that has the effect that the person’s continuous flexible period for the child is extended by an additional period of one or more flexible PPL days for the child; and

- (c) one or more instalments that relate to instalment periods that overlap with the additional period would have been payable to the person on the paydays for the instalments if:
  - (i) the person's continuous flexible period for the child had always been the extended continuous flexible period; and
  - (ii) the Secretary had been required to pay the instalments; and
- (d) the Secretary is not otherwise required to pay the instalments; then the instalments referred to in paragraph (c) are taken to have become payable on the respective paydays for the instalments.

**161 Section 99 (heading)**

Repeal the heading, substitute:

**99 Period receiving parental leave pay is not a period of paid leave**

**162 Section 100 (paragraph beginning "This Part")**

Omit:

If an employer determination is in force for an employer and a person, the employer must pay instalments to the person.
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**163 Paragraph 101(1)(a)**

Repeal the paragraph, substitute:

- (a) either:
  - (i) a payability determination under section 13, 14, 15, 16 or 17 that parental leave pay is payable to the person for a child is in force; or
  - (ii) an initial eligibility determination under section 26 for the person in relation to a child is in force; and

**164 Paragraph 101(1)(b)**

Omit “, to be payable by the employer to the person for at least 40 consecutive PPL”, substitute “under this section, to be payable by the employer to the person for at least 40 consecutive”.

**165 Paragraph 101(1)(d)**

Repeal the paragraph, substitute:

- (d) if subparagraph (a)(i) applies in relation to the person—the person is likely to be an Australian-based employee of the employer during:
  - (i) if the person has a continuous PPL period for the child under subsection 6A(1)—the person’s PPL period for the child and the person’s continuous flexible period for the child; or
  - (ii) otherwise—the person’s PPL period for the child; and
- (da) if subparagraph (a)(ii) applies in relation to the person—the person is likely to be an Australian-based employee of the employer during:
  - (i) if the person has a continuous PPL period for the child under subsection 6A(3)—the person’s expected PPL period for the child and the person’s continuous flexible period for the child; or
  - (ii) otherwise—the person’s expected PPL period for the child; and

**166 At the end of subsection 101(1)**

Add:

- Note: The 40 consecutive week days mentioned in paragraph (b) may consist of PPL days for the person and flexible PPL days for the child.

**167 Subsection 101(4)**

After “person’s employer”, insert “in relation to a child of the person”.

**168 Paragraph 101(4)(a)**

Repeal the paragraph, substitute:

- (a) the following period or periods have ended:
  - (i) if the person has a continuous PPL period for the child—the person’s PPL period for the child and the person’s continuous flexible period for the child;
  - (ii) otherwise—the person’s PPL period for the child;

**169 Subsection 102(1)**

After “person’s employer”, insert “in relation to a child of the person”.

**170 Paragraph 102(3)(b)**

Omit “that parental leave pay is payable to the person”, substitute “under section 13, 14, 15, 16 or 17 that parental leave pay is payable to the person for the child”.

**171 Paragraph 102(3)(c)**

After “period”, insert “for the child”.

**172 Paragraph 102(3)(d)**

Repeal the paragraph, substitute:

- (d) if the Secretary has not made such a payability determination for the person—the person’s expected PPL period for the child;
- (da) if the person has a continuous PPL period for the child—the person’s continuous flexible period for the child;

**173 Subparagraph 104(3)(b)(i)**

Omit “—the person’s PPL period”, substitute “for a child—the person’s PPL period for the child”.

**174 Subparagraph 104(3)(b)(ii)**

Omit “—the person’s expected PPL period referred to in paragraph 102(3)(d)”, substitute “for a child—the person’s expected PPL period for the child”.

**175 Paragraph 105(1)(c)**

Repeal the paragraph, substitute:

- (c) the following period or periods have not ended:
  - (i) if the person has a continuous PPL period for the child to which the employer determination relates—the person’s PPL period for the child and the person’s continuous flexible period for the child;
  - (ii) otherwise—the person’s PPL period for the child.

**176 Paragraph 107(3)(b)**

Repeal the paragraph, substitute:

- (b) the following period or periods have not ended by the day the Secretary receives the notice:

- 
- (i) if the person has a continuous PPL period for the child to which the employer determination relates—the person’s PPL period for the child and the person’s continuous flexible period for the child;
  - (ii) otherwise—the person’s PPL period for the child;

**177 Subsection 108(1) (table item 3)**

Repeal the item.

**178 After subsection 108(1)**

Insert:

- (1A) The Secretary must revoke an employer determination made for a person and the person’s employer in relation to a child of the person if the Secretary is satisfied that a decision (whether or not the decision is a payability determination) has been made that has the effect that parental leave pay is not payable to the person in relation to the maximum PPL period for the child.
- (1B) The Secretary must revoke an employer determination made for a person and the person’s employer in relation to a child of the person if the Secretary is satisfied that:
  - (a) the person has a continuous PPL period for the child; and
  - (b) a decision (whether or not the decision is a payability determination) has been made that has the effect that parental leave pay is not payable to the person for one or more flexible PPL days for the child that fall within the person’s continuous flexible period for the child that is mentioned in the employer notice relating to the employer determination.
- (1C) The Secretary must revoke an employer determination made for a person and the person’s employer in relation to a child of the person if the Secretary is satisfied that:
  - (a) the person has a continuous PPL period for the child; and
  - (b) a payability determination under section 17A, 17B or 17C that paid parental leave is payable to the person for one or more flexible PPL days for the child comes into force; and
  - (c) those flexible PPL days fall within the person’s continuous flexible period for the child that is mentioned in the employer notice relating to the employer determination; and
  - (d) those flexible PPL days are not week days.

- (1D) If the Secretary revokes an employer determination under subsection (1A), (1B) or (1C), the revocation comes into force on the day specified by the Secretary.

**179 Paragraph 112(a)**

Repeal the paragraph, substitute:

- (a) if paragraph 109(3)(a) applies—the following period or periods for each specified employee ends:
- (i) if the specified employee has a continuous PPL period for the child of the specified employee to which the election relates—the specified employee’s PPL period for the child and the specified employee’s continuous flexible period for the child;
  - (ii) otherwise—the specified employee’s PPL period for the child to which the election relates;

**180 Paragraph 113(1)(a)**

After “person’s employer”, insert “in relation to a child of the person”.

**181 At the end of paragraph 113(1)(b)**

Add “under section 13, 14, 15, 16 or 17 for the person in relation to the child”.

**182 Paragraph 113(2)(b)**

Repeal the paragraph, substitute:

- (b) if parental leave pay is payable:
- (i) the person’s PPL period for the child; and
  - (ii) if the person has a continuous PPL period for the child under subsection 6A(1)—the person’s continuous flexible period for the child; and

**183 Subsection 113(2) (note)**

Omit “subsection 108(1)”, substitute “subsections 108(1A) and (1B)”.

**184 Paragraph 114(1)(a)**

After “person’s employer”, insert “in relation to a child of the person”.

**185 At the end of paragraph 114(1)(b)**

Add “for the child”.

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**186 Paragraph 114(2)(b)**

Before “to that specified”, insert “for the child”.

**187 After paragraph 114(2)(b)**

Insert:

- (ba) if the effect of the decision is that the person has a different continuous flexible period for the child to that mentioned in an earlier employer notice relating to the employer determination—that different continuous flexible period; and

**188 Section 115CA (paragraph beginning “The work test”)**

Omit “A previous PPL period and previous DAPP period of the person”, substitute “The person’s PPL period for a previous child, a flexible PPL day for a previous child for which parental leave pay was payable to the person and the person’s DAPP period for a previous child”.

**189 Subsection 115CB(5)**

After “period” (first occurring), insert “for the child”.

**190 Subsection 115CB(5)**

Omit “the PPL”, substitute “that PPL”.

**191 After subsection 115CB(5)**

Insert:

*Not eligible—overlap with flexible PPL day*

- (5A) If there is in force a payability determination that parental leave pay is payable to a person for a flexible PPL day for a child, then, despite subsections (2), (3) and (4), the person is not *eligible* for dad and partner pay for the child on that same day.

**192 Subsection 115CB(7)**

Repeal the subsection (not including the heading), substitute:

- (7) Despite subsections (2), (3) and (4), a DAPP claimant is not eligible for dad and partner pay for a child on a day if:

- (a) there is in force a payability determination that parental leave pay is payable to the DAPP claimant for the child for the DAPP claimant's PPL period for the child; and
- (b) there is in force one or more payability determinations that parental leave pay is payable to the DAPP claimant for one or more flexible PPL days for the child; and
- (c) the sum of the following number of days is at least 90:
  - (i) the number of week days in the period mentioned in paragraph (a);
  - (ii) the number of those flexible PPL days;
  - (iii) the number of week days in the reference period for the DAPP claimant's claim for dad and partner pay for the child.

**193 Paragraphs 115CBA(1)(a), (2)(b) and (3)(b)**

Omit "*Social Security Act 1991*", substitute "Social Security Act".

**194 Paragraph 115CBA(5)(a)**

Omit "(within the meaning of the *Social Security Act 1991*)".

**195 Paragraph 115CBA(5)(a)**

Omit "(within the meaning of that Act)".

**196 Paragraph 115CBA(5)(b)**

Omit "under the *Farm Household Support Act 2014*".

**197 Subsection 115CBA(6)**

Omit "*Social Security Act 1991*", substitute "Social Security Act".

**198 Paragraphs 115CBA(8)(a), (b) and (c)**

Omit "*Social Security Act 1991*", substitute "Social Security Act".

**199 Paragraph 166(3)(a)**

Repeal the paragraph, substitute:

- (a) if the other person has a PPL period for the child but does not have a continuous PPL period for the child—immediately after the end of that PPL period; or

- (aa) if the other person has a continuous PPL period for the child under subsection 6A(1)—immediately after the end of that continuous PPL period; or

**200 Subsection 166(3) (note 1)**

After “person for the child”, insert “for that period”.

**201 Section 167**

Repeal the section, substitute:

**167 Parental leave pay instalment debts—instalments paid by the Secretary**

- (1) This section applies if:
- (a) the Secretary pays an amount to, or in relation to, a person for a child by way of an instalment; and
  - (b) the amount exceeds the amount that should have been paid to, or in relation to, the person under Part 3-3.

Note: Instalments may stop being payable with retrospective effect if the payability determination is set aside or varied after the instalments are paid.

- (2) An amount equal to the amount of the excess is a debt due to the Commonwealth by the person.
- (3) The debt under subsection (2) arises when the Secretary pays the amount mentioned in paragraph (1)(a).

**202 Subparagraph 168(3)(a)(ii)**

Omit “the other person’s”, substitute “that”.

**203 Paragraph 178(b)**

Omit “*Social Security Act 1991*”, substitute “Social Security Act”.

**204 After paragraph 182(c)**

Insert:

- (ca) deductions from instalments payable to the person as determined by the Secretary (see section 190A);

## **205 After section 190**

Insert:

### **190A Secretary may determine amounts to be deducted from instalments payable to debtor**

- (1) If a person owes a debt to the Commonwealth, the Secretary may determine that:
  - (a) the amount of the debt is to be deducted from an instalment that is payable to the person; or
  - (b) 2 or more specified amounts that in total equal the amount of the debt are to be deducted from 2 or more instalments that are payable to the person.

Note: The Secretary may deduct an amount from an instalment payable to the person in accordance with a determination made under this section (see section 69B).

- (2) If the Secretary makes a determination under subsection (1), the Secretary may vary the determination to determine a different amount or amounts that are to be deducted from one or more instalments payable to the person.
- (3) If an amount is deducted under section 69B from an instalment payable to a person in accordance with a determination as made or varied under this section, the debt due to the Commonwealth by the person is reduced by an amount equal to the amount of the deduction.

## **206 Paragraph 207(3)(b)**

Omit “101(1)(d) or (e)”, substitute “101(1)(d), (da) or (e)”.

## **207 Paragraph 224(2)(b)**

Omit “101(1)(d) or (e)”, substitute “101(1)(d), (da) or (e)”.

## **208 After paragraph 275(1)(d)**

Insert:

- (da) a reference to a child’s second birthday were a reference to the second anniversary of the day the child became entrusted to the care of a person as mentioned in subsection (2); and

**209 After paragraph 276(d)**

Insert:

(da) a reference to a child's second birthday were a reference to the second anniversary of the day the claimant became the child's primary carer; and

**210 Subsection 277(1)**

After "sections 31", insert ", 31AA".

**211 Subsection 277(1) (note)**

Omit "Section 31 deals", substitute "Sections 31 and 31AA deal".

## Schedule 2—Transitional, application and saving provisions

### 1 Definitions

In this Schedule:

*commencement day* means 1 July 2020.

*PPL Act* means the *Paid Parental Leave Act 2010*.

*rules* means rules made under item 7 of this Schedule.

### 2 Pre-commencement day claims for parental leave pay

- (1) The amendments of the PPL Act made by Schedule 1 to this Act do not apply in relation to a claim for parental leave pay for a child made before the commencement day.
- (2) However, if the claim (the *pre-commencement claim*) is an effective claim and relates to a child born on or after the commencement day, the Secretary may determine that the pre-commencement claim is to be taken, on and after the day on which the child is born, to be any one or more of the following as appropriate in all the circumstances:
  - (a) an effective claim for parental leave pay in relation to the maximum PPL period for the child that was made under the PPL Act, as amended by Schedule 1 to this Act;
  - (b) an effective claim for parental leave pay for one or more flexible PPL days for the child:
    - (i) that was made under the PPL Act, as amended by Schedule 1 to this Act; and
    - (ii) that specified the flexible PPL days for the child determined by the Secretary.
- (3) If:
  - (a) the Secretary determines under subitem (2) that a pre-commencement claim is to be taken to be an effective claim (the *flexible PPL claim*) of a kind mentioned in paragraph (2)(b); and
  - (b) the claimant is the secondary claimant for the child;paragraphs 17B(2)(a) to (c) of the PPL Act, as amended by Schedule 1 to this Act, are to be disregarded for the purposes of the

Secretary making a payability determination under section 17B on the flexible PPL claim.

- (4) The rules may make other provision for, or in relation to, a pre-commencement claim in relation to which a determination under subitem (2) has been made.
- (5) The following provisions of the PPL Act, as in force on the commencement day, 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).

### **3 Post-commencement day claims for parental leave pay**

- (1) The PPL Act, as amended by Schedule 1 to this Act, applies in relation to a claim for parental leave pay for a child made on or after the commencement day.
- (2) However, if the claim is an effective claim for parental leave pay in relation to the maximum PPL period for the child and the child is born before the commencement day, the amendments of the PPL Act made by the following items of Schedule 1 to this Act are taken not to apply in relation to the claim for the purposes of the Secretary making a payability determination under section 13, 14, 15, 16 or 17 on the claim:
  - (a) item 40;
  - (b) item 41;
  - (c) item 51;
  - (d) item 56;
  - (e) item 58;
  - (f) item 62;
  - (g) item 68;
  - (h) item 72;
  - (i) item 95;
  - (j) item 107;
  - (k) item 109;
  - (l) any other item specified in the rules.

Note: The Secretary cannot make a payability determination in relation to a claim for parental leave pay for a flexible PPL day for the child if the child was born before 1 July 2020 (see section 19A of the PPL Act, as inserted by Schedule 1 to this Act).

- (3) The following provisions of the PPL Act, as in force on the commencement day, 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).

#### **4 Saving of request for revocation**

- (1) This item applies in relation to a request to revoke a payability determination made by a person if:
- (a) the request was made before the commencement day; and
  - (b) immediately before that day, the Secretary has not decided whether to revoke the determination under section 25 of the PPL Act.
- (2) Despite the repeal of subsection 25(1) of the PPL Act by Schedule 1 to this Act, the request continues to have effect, on and after the commencement day, as if the repeal had not happened.

#### **5 Revocation of employer determination**

Subsection 108(1A) of the PPL Act, as inserted by Schedule 1 to this Act, applies in relation to an employer determination made before, on or after the commencement day.

#### **6 Recovery of debts due to the Commonwealth**

- (1) Section 167 of the PPL Act, as inserted by Schedule 1 to this Act, applies in relation to an amount paid by way of an instalment before, on or after the commencement day.
- (2) Section 190A of the PPL Act, as inserted by Schedule 1 to this Act, applies in relation to a debt owed to the Commonwealth that arises on or after the commencement day.

## **7 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Schedule to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitems (1) and (2).

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*[Minister's second reading speech made in—  
House of Representatives on 6 February 2020  
Senate on 25 February 2020]*

(2/20)

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