

## Analysis of Fairer PPL Amendment Bill 2015

On 25 June 2015, the Government released the *Fairer Paid Parental Leave Amendment Bill 2015* (the 'Bill'). The proposed legislation has two key objectives:

- 1) Reduce government-funded parental leave payments for employees that receive primary carers leave payments from their employer; and
- 2) Remove the employer paymaster role in administering the paid parental leave scheme.

### ***Reduction in Government-Funded PPL for Primary Carers***

The *Paid Parental Leave Act 2010* provides primary carers with access to up to 18 weeks' parental leave pay at the national minimum wage. Payments are made irrespective of whether an individual receives employer-provided primary carer leave payments and regardless of the amount of such payments.

Under the proposed amendments, primary carers will no longer receive both their employer-provided primary carers leave and the full 18 weeks of Government-funded parental leave pay. From 1 July 2016:

- Parents who are entitled to receive employer-funded primary carers leave payments that are equal to or greater in value than the total amount of parental leave pay will not receive any parental leave pay from the Government.
- Parents who are entitled to receive employer-funded primary carers leave payments valued at less than the total amount of parental leave pay will have their total parental leave pay reduced by the amount of primary carers leave payments they receive from their employer.
- Parents who are not entitled to receive employer-funded primary carers leave will continue to be eligible for the full 18 weeks of parental leave pay at the national minimum wage.

It is unclear whether the value of employer-funded primary carers leave includes superannuation payments made during the period of leave. Primary carers leave does not include personal or carers leave, annual leave, long service leave or bereavement leave.

### **No changes to Dad and Partner Pay**

The Bill does not alter existing arrangements in relation to Dad and Partner Pay. Eligible working dads and partners will continue to receive both Government-funded Dad and Partner Pay as well as any employer-provided paid paternity leave.

### **Process for adjusting paid parental leave payments**

The Bill requires claimants to inform the Department of Human Services of any primary carer pay they are entitled to from their employer. The PPL period of a claimant is proportionately reduced by the amount of primary carer pay they are entitled to. If there is a secondary claim for parental leave pay, the secondary claimant's maximum PPL period is reduced to reflect the amount of primary carer pay received by both the primary and secondary claimants.

Note that eligibility to parental leave pay is reduced if the employee is entitled to primary carers leave regardless of whether or not the employee has actually received any payments from their employer.

Where a determination is made that a person is provisionally entitled to parental leave pay, the Secretary is not prevented from later making a different payability determination, including that parental leave pay is not payable.

Provision is also made to adjust a payability determination due to a change in circumstance, such as a change to the amount of primary carer pay a claimant is entitled to receive from their employer. A payability determination may be varied on the initiative of the Secretary or at the request of the claimant made within one year of PPL period ending. Presumably, if an employee's entitlement to parental leave pay is reduced, the employee may be required to pay back the amount to which they are no longer entitled.

### **Removal of employer from paymaster role**

The Bill removes the obligation on employers to provide parental leave pay to employees if instalments are likely to be paid for at least 40 consecutive PPL days and the employee has been with the employer for at least 12 months.

From 1 April 2016, payments of parental leave pay will be made by the Department of Human Services, unless an employer opts in to manage the payment of parental leave pay to their employees and their employee agrees to the employer paying them.

Under this measure, all employers registered for the PPL scheme will be opted out and payments of parental leave pay from 1 April 2016 will be made by the department of human services. However if an employer chooses to opt in to provide parental leave payments and the employee consents, an employer determination will be made to enable the employer to make the payments.

Where an employee consents to being paid by their employer, the employer will be sent a notice with the option to accept or decline an employer determination. If the employer accepts the notice of the employer determination and their obligations to pay instalments to the person, funds will be transferred to the employer in line with current arrangements. If the employer declines or does not respond to the notice, the Department of Human Services will provide parental leave pay directly to the recipient.

If an employer determination is made for a particular employer and employee but the employer no longer wishes to pay parental leave pay for that particular employee, the employer can decline the payment role. If this happens, the Department of Human Services will pay the employee instead.

To reflect the non-mandatory nature of this role, employers who do not respond to a notice of an employer determination will no longer be potentially subject to a compliance notice. Likewise, review of an employer determination is no longer required because the employer can simply decline the paymaster role.

Where an employer is already providing parental leave pay to an employee on 1 April 2016, that arrangement will not be affected.

### **Backdating of claims**

Minor amendments have also been made to allow employees to backdate their PPL period start day by 28 days from the date of an effective claim or verification of the child's birth. These amendments provide greater flexibility for parents to make their claim after the birth of their child but without delaying their receipt of parental leave pay.

Currently a person can only backdate their claim if they fulfil all claim requirements within 28 days of birth. If a person lodged a claim after this time, they cannot backdate their claim and, if the person has already returned to work, they are ineligible for parental leave pay despite potentially having had a period of work after the birth.

### **The impact on the proposed amendments**

The proposed amendments outlined above will reduce the capacity of new parents to take paid parental leave and increase financial pressure on families with young children.

The Government estimates that:

- Around half (47%) of new mothers receive PPL and half of all PPL recipients earn less than \$47 174 per annum. 5% work in Commonwealth public sector, 15% in state/territory public sector and 80% private sector.
- 53% of women will continue to receive 18 weeks leave paid at the minimum wage (as these women do not have an employer provided primary carers leave scheme)
- 27% of women who will be entitled to PPL will receive a partial payment as they have access to employer-provided primary carers leave worth less than \$11539 (the total value of 18 weeks leave at the minimum wage)
- 20% of women will no longer be entitled to PPL as these women have paid parental leave schemes provided by their employer worth more than \$11 539.

The proposed amendments also create a significant disincentive for employers to top up the entitlement to 18 weeks parental leave provided by the Government.

Having the Government administer parental leave payments changes the nature of parental leave from a workforce entitlement to a welfare payment and undermines the benefits associated with paid parental leave including increased workforce attachment and overall participation.

In addition, the proposed changes to the paymaster function may have an impact on the after tax-income of employees with salary sacrifice arrangements in place. Where the employer is administering the payments, salary sacrificing arrangements are able to continue so the employee's tax liability would continue to be calculated on a lower salary. However as the department of human services does not offer salary sacrifice deduction functionality, an employee's tax liability could increase if the employer does not opt back in to be the paymaster. This may be a particular issue for employees in the not-for-profit sector who are more likely to have salary-sacrificing arrangements in place.

The changes to the paymaster function are intended to reduce administrative and compliance costs for employers by shifting these costs to the Government. However findings from PPL evaluation conducted in 2014 indicate that the vast majority of employers (81%) found their role in the PPL scheme to be relatively easy and inexpensive.

- The additional costs for employers were mainly due to the extra workload rather than purchasing a new payroll system or hiring additional staff to administer the PPL scheme
- The median number of hours varied from 4 hours for medium size businesses, to 5 hours for small businesses and 7 hours for large businesses.
- Nearly 30% of organisations reported that less than 2 hours were needed to implement the scheme.

### **ACTU Submission to Senate Committee**

The Bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and report. Submissions are due by **30 July 2015**. The reporting date is 15 September 2015.

The ACTU will be making a submission. Affiliates are also encouraged to make their own submissions.

The Bill and Explanatory Statement can be viewed at:

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5508](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5508)

Further information regarding the Senate Committee can be viewed at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Fairer\\_Parental\\_Leave](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Fairer_Parental_Leave)

Please contact ACTU Industrial Officer, Erin McCoy, if you require further information in relation to the ACTU submission.