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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SERVICES LEGISLATION AMENDMENT
(CONSISTENT TREATMENT OF PARENTAL LEAVE PAYMENTS) BILL 2016**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Social Services, the Hon Christian Porter MP)**

**SOCIAL SERVICES LEGISLATION AMENDMENT
(CONSISTENT TREATMENT OF PARENTAL LEAVE PAYMENTS) BILL 2016**

OUTLINE

This Bill introduces the 2015-16 Mid-Year Economic and Fiscal Outlook measure, *Commonwealth Parental Leave Payments – consistent treatment for income support assessment*.

This measure will amend the social security and veterans' entitlements legislation to ensure Commonwealth parental leave payments under the *Paid Parental Leave Act 2010* are included in the income test for Commonwealth income support payments.

The amendment is intended to be implemented from 1 July 2016, as announced in the 2015-16 Mid-Year Economic and Fiscal Outlook.

Financial impact statement

The financial impact of the measure over the forward estimates is a saving of \$105.1 million (fiscal balance), based on the intended implementation date of 1 July 2016.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **Paid Parental Leave Act** means the *Paid Parental Leave Act 2010*
- **Social Security Act** means the *Social Security Act 1991*
- **Veterans' Entitlements Act** means the *Veterans' Entitlements Act 1986*

Clause 1 sets out how the new Act is to be cited – that is, as the *Social Services Legislation Amendment (Consistent Treatment of Parental Leave Payments) Act 2016*.

Clause 2 provides a table setting out the commencement dates of the various provisions of the new Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Schedule 1 – Amendments

Summary

This Schedule introduces the 2015-16 Mid-Year Economic and Fiscal Outlook measure, *Commonwealth Parental Leave Payments – consistent treatment for income support assessment*.

This measure will amend the social security and veterans' entitlements legislation to ensure Commonwealth parental leave payments under the *Paid Parental Leave Act 2010* are included in the income test for Commonwealth income support payments.

Background

In the 2015-16 Mid-Year Economic and Fiscal Outlook, the Government announced savings of \$105.1 million over four years by including parental leave payments and dad and partner payments in the definition of **income** for Commonwealth income support payments from 1 July 2016.

This is consistent with the treatment of employer-provided parental leave payments as income for income support payments, and parental leave pay and dad and partner pay as income for family tax benefit and taxation purposes.

This Schedule implements this announced change. It also makes consequential amendments to the Paid Parental Leave Act to allow the Secretary to make deductions from a person's instalments of parental leave pay where the payment of one or more instalments of parental leave pay could result in an overpayment of an income support payment.

The amendments made by this Schedule commence on the first 1 January, 1 April, 1 July or 1 October that occurs after the day the Act receives Royal Assent.

Explanation of the changes

Part 1 – Parental leave pay and dad and partner pay count as income

Item 1 adds paragraphs 8(1A)(h) and (i) to the end of subsection 8(1A) of the Social Security Act. The effect of this is to clarify that instalments of parental leave pay and dad and partner pay are not be treated as **employment income** for the purposes of the Social Security Act.

Subsection 8(1A) currently excludes a range of income sources from the definition of employment income. As a result of the changes made by item 1 to subsection 8(8), which include instalments of parental leave pay and dad and partner pay in the definition of income, it is necessary to amend subsection 8(1A) to ensure that this change to subsection 8(8) won't result in these payments being treated as employment income.

This amendment will ensure greater alignment between the definitions of employment income in the Social Security Act and Veterans' Entitlements Act.

Item 2 repeals paragraphs 8(8)(d) and (da) of the Social Security Act.

Section 8 of the Social Security Act provides a broad definition of **income** for social security means testing purposes. Subsection 8(8) excludes specified amounts from the definition of income.

The effect of this repeal is that instalments of parental leave pay and dad and partner pay will be assessed as income for the purposes of section 8 of the Social Security Act and hence for the purposes of the income means testing arrangements under the Social Security Act.

It should be noted that Part 5 of the *Farm Household Support Act 2014* applies the means testing arrangements in section 8 of the Social Security Act to farm household allowance recipients and applicants.

Item 3 repeals paragraphs 5H(8)(d) and (da) of the Veterans' Entitlements Act. The effect of this repeal is to treat instalments of parental leave pay and dad and partner pay as **income** for the purposes of section 5H of the Veterans' Entitlements Act and hence for the purposes of income means testing arrangements under the Veterans' Entitlements Act.

Item 4 is an application provision for the amendments in Part 1 of this Schedule. Item 4 provides that the amendments made by Part 1 apply in relation to an instalment of parental leave pay, or to dad and partner pay, that is paid on or after the commencement of this item in respect of a claim for a child:

- a) who is born on or after that commencement; or
- b) who becomes entrusted to the care of a person (as mentioned in subsection 275(2) of the Paid Parental Leave Act) on or after that commencement;

whether the claim was made before, on or after that commencement.

Part 2 – Deductions from instalments of parental leave pay to avoid overpayments

Item 5 inserts a definition of **income support payment** into section 6 of the Paid Parental Leave Act.

Income support payment is given the same meaning as in the Social Security Act, where the term is defined in section 23.

Subsection 91(3) of the *Farm Household Support Act 2014* applies to modify the reference to income support payment in section 23 of the Social Security Act to include a reference to farm household allowance. The amendments made by this Schedule would therefore apply in circumstances where a person has received farm household allowance and an instalment of parental leave pay for the same period.

Item 6 makes a consequential amendment to subsection 66(2) of the Paid Parental Leave Act to include a reference to the deduction provision in new section 69A of the Paid Parental Leave Act, inserted by item 7.

Item 7 inserts new section 69A into the Paid Parental Leave Act. Section 69A authorises the Secretary to deduct an amount or amounts from a person's instalments of parental leave pay where the Secretary is satisfied that the payment of the person's instalments would otherwise result in an overpayment to the person of an income support payment.

Section 69A applies if:

- a) a payability determination that parental leave pay is payable to a person is made after the start of the person's PPL period; and
- b) one or more instalments are payable to the person on a particular day by the Secretary; and
- c) the person has been paid an income support payment in respect of the whole or a part of the period to which those instalments relate; and
- d) the Secretary is satisfied that, if the Secretary were to pay those instalments, there would be an overpayment to the person of the income support payment

If the Secretary is satisfied that these preconditions have all been met, the Secretary may make a deduction from one or more of a person's instalments of parental leave pay.

The Secretary may make deductions from instalments by an amount or amounts such that the sum of all the deductions under section 69A equals the amount of the income support payment that would be overpaid.

Item 8 makes a consequential amendment to subsection 70(1) of the Paid Parental Leave Act to include a reference to the deduction provision in new section 69A of the Paid Parental Leave Act, inserted by item 7.

Item 9 amends section 101 of the Paid Parental Leave Act to insert new subsection 101(3A). The effect of this new subsection is that the Secretary must not make an employer determination for a person and the person's employer if the person is receiving an income support payment.

New subsection 101(3A) has been inserted to ensure that the Secretary can, where appropriate, apply section 69A of the Paid Parental Leave Act to make a deduction from one or more of a person's instalments of parental leave pay. Section 69A only applies in relation to payments of parental leave pay made by the Secretary and does not apply to payments made under an employer determination.

Item 10 amends subsection 108(1) of the Paid Parental Leave Act to insert new item 2A into the table contained in this subsection. The effect of new item 2A is that the Secretary must revoke an employer determination for a person and the person's employer if the person is receiving an income support payment.

The amendments to subsection 108(1) are intended to ensure that the Secretary can, where appropriate, apply section 69A of the Paid Parental Leave Act to make a deduction from one or more of a person's instalments of parental leave pay. Section 69A only applies in relation to payments of parental leave pay made by the Secretary and does not apply to payments made under an employer determination.

Item 11 sets out application provisions for new section 69A, new subsection 101(3A), and the amendments to subsection 108(1) of the Paid Parental Leave Act.

The application provision for new section 69A provides that:

- 1) Paragraph 69A(a) of the Paid Parental Leave Act applies in relation to a payability determination that is made on or after the commencement of this item.
- 2) Paragraph 69A(b) of the Paid Parental Leave Act applies in relation to an instalment of parental leave pay that is payable on or after the commencement of this item in respect of a claim for a child:
 - a) who is born on or after that commencement; or
 - b) who becomes entrusted to the care of a person (as mentioned in subsection 275(2) of the Paid Parental Leave Act) on or after that commencement;

whether the claim was made before, on or after that commencement.

The application provision for new subsection 101(3A) of the Paid Parental Leave Act provides that the new subsection applies in relation to claims made on or after the commencement of this item.

The application provision for the amendment of subsection 108(1) provides that the amendment applies in relation to an employer determination made before, on or after the commencement of this item, where the claim was for a child:

- a) who was born on or after that commencement; or
- b) who became entrusted to the care of a person (as mentioned in subsection 275(2) of the Paid Parental Leave Act) on or after that commencement;

whether the claim was made before, on or after that commencement.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

SOCIAL SERVICES LEGISLATION AMENDMENT (CONSISTENT TREATMENT OF PARENTAL LEAVE PAYMENTS) BILL 2016

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

Overview of the Bill

The *Social Services Legislation Amendment (Consistent Treatment of Parental Leave Payments) Bill 2016* makes changes to income support legislation to include income from Parental Leave Pay (PLP) and Dad and Partner Pay (DAPP) in the assessments for income support payments.

Currently, PLP and DAPP recipients can receive the full rate of an income support payment at the same time as PLP or DAPP. Under this measure, changes will be made to the social security and veterans' entitlements legislation to ensure PLP and DAPP payments are included in the income test for income support payments, thereby treating income from PLP or DAPP consistently with the treatment of income from other sources.

The Bill also introduces a minor provision in the Paid Parental Leave (PPL) legislation to allow the Secretary to reduce a PLP instalment to offset a potential overpayment of an income support payment. This provision would be used where an income support overpayment could arise as a result of a recipient receiving the full arrears payment of PLP for a period when they received an income support payment.

Another minor amendment removes the employer role where a PLP recipient is receiving an income support payment at the time their PLP is granted. The Department of Human Services will be the paymaster for a PLP recipient who is receiving income support payments. This change will ensure that PLP payments to income support recipients are paid promptly and not delayed because of the timing of the employer's payroll.

Human rights implications

The Bill engages the following human rights:

Right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security. This right requires a social security system to be established and that States Parties must, within their maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

These changes to income support legislation will limit the right to social security for 11,000 income support recipients who receive PLP or DAPP. Of these customers, 5,000 will experience a partial loss of the income support payments, and 6,000 will experience a total loss of their income support payment, creating a saving to government of \$105.1 million over the forward estimates.

The changes will make it fairer for all working mothers to have access to a consistent level of government support. This measure levels the playing field amongst income support recipients by treating all types of income similarly, irrespective of the source of that income.

The income test for pensions and allowances includes free areas which allow people to receive an amount of income before their payments are reduced. Where a person's income exceeds the free area, payments are reduced proportionally. This means pension and allowance recipients are always better off when receiving additional income such as PLP and DAPP. Income support payment recipients will continue to be able to access parenting payments such as Family Assistance and Child Care assistance if they meet the eligibility criteria.

These changes will ensure that income support payments are fairer and better targeted, and will help ensure the income support system is sustainable into the future. Improving the long-term sustainability of the income support system is important to ensure the income support system will continue to provide an adequate level of support to those in need over the long term.

The minor amendment to remove the employer role for PLP recipients receiving income support payments is intended to help customers receive PLP promptly without any delays, avoiding an income support customer being left without an income for the usual processing period of employer payments.

Right to equality and non-discrimination

Article 3 of the ICESCR seeks to ensure the right of both men and women to the enjoyment of all economic, social, and cultural rights set forth within the convention.

As mentioned above, the changes to income support legislation will make it fairer for all working mothers to have access to a consistent level of government support. This measure levels the playing field amongst income support recipients by treating all types of income similarly, irrespective of the source of that income. The measure engages the right to equality and non-discrimination, but does not limit the right.

Right to work and maternity leave

Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work. This Article seeks to ensure fair and equal wages and remuneration, safe and healthy working conditions, equal opportunity for promotion in the workplace, and adequate access to rest, leisure, and periodic paid leave.

Article 10(2) of the ICESCR states that, ‘Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such a period working mothers should be accorded paid leave or leave with adequate social security benefit.’.

In addition, Article 11 (2)(b) of the Convention to Eliminate All Forms of Discrimination Against Women requires States Parties ‘to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances’.

The changes detailed in this Bill preserve the right to PLP for eligible primary carers, only changing how this payment is treated for assessing income support payments. The changes do not interfere with the existing rights under the *Fair Work Act 2009* to access 12 months of unpaid parental leave without loss of employment or seniority within the workplace, leaving the key protection against discrimination in place.

Conclusion

This Bill is compatible with human rights and, to the extent that it may limit certain human rights, those limitations are reasonable, necessary and proportionate.

**[Circulated by the authority of the Minister for Social Services,
the Hon Christian Porter MP]**