

2010-2011

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Paid Parental Leave and Other  
Legislation Amendment (Consolidation)  
Bill 2011**

**No.     , 2011**

*(Families, Housing, Community Services and Indigenous Affairs)*

**A Bill for an Act to amend the *Paid Parental Leave Act 2010* and the *Fair Work Act 2009*, and for related purposes**



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1     **A Bill for an Act to amend the *Paid Parental Leave***  
2     ***Act 2010 and the *Fair Work Act 2009*, and for***  
3     **related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Paid Parental Leave and Other*  
7                     *Legislation Amendment (Consolidation) Act 2011*.

8     **2 Commencement**

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

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</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.	
2. Schedule 1, Part 1	At the same time as the <i>Paid Parental Leave Act 2010</i> commences.	1 October 2010
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	
4. Schedule 2	The day after this Act receives the Royal Assent.	

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

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.  
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## **Schedule 1—Paid Parental Leave Act 2010**

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

#### *Paid Parental Leave Act 2010*

##### **1 Section 6 (definition of *work test*)**

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

##### **2 Section 30**

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

##### **3 Paragraph 31(2)(a)**

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

##### **4 Subparagraph 31(4)(a)(i)**

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

##### **5 Subsection 31(4A)**

Repeal the subsection.

##### **6 At the end of section 32**

Add:

Note: A person may also satisfy the work test despite not satisfying the test in step 5, if:

- (a) the child was born prematurely; or
- (b) while the person was pregnant with the child, the person had complications or illness related to the pregnancy which prevented the person from performing paid work.

See section 36A.

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

Add:

1       **36A Premature birth or pregnancy-related complications or illness**

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

3                     (a) the person is the birth mother of the child; and

4                     (b) the Secretary is satisfied that either or both of the following  
5                         circumstances existed:

6                         (i) the child was born prematurely;

7                         (ii) while the person was pregnant with the child, the person  
8                                 had complications or illness related to the pregnancy  
9                                 which prevented the person from performing paid work;  
10                                 and

11                     (c) the Secretary is satisfied that the person would have satisfied  
12                         the work test on the day in accordance with section 32 if that  
13                         circumstance, or those circumstances, had not existed.

14       **8 At the end of section 257**

15                     Add:

16                     (7) A failure to comply with subsection (6) in relation to a decision of  
17                         the SSAT does not affect the validity of the decision.  
18



1  
2 **Part 2—Amendments commencing the day after**  
3 **Royal Assent**

4 ***Paid Parental Leave Act 2010***

5 **9 Section 6**

6 Insert:

7 ***vocational placement*** means a placement that is:

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

14 **10 Paragraph 50(c)**

15 Repeal the paragraph, substitute:

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

21 **11 At the end of section 50**

22 Add:

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

1 **12 Paragraph 82(2)(c)**

2 Repeal the paragraph, substitute:

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

5 **13 After subsection 82(2)**

6 Insert:

7 (2A) The Secretary must approve a manner of notification that an  
8 employer must use when notifying the Secretary of an event under  
9 this section.

10 (2B) The Secretary must, by written notice, notify the employer of the  
11 approved manner of notification.

12 **14 Application and transitional provision**

13 *Application provision*

- 14 (1) The amendments made by items 12 and 13 of this Schedule apply in  
15 relation to notices that must be given to the Secretary under subsection  
16 82(1) of the *Paid Parental Leave Act 2010* on or after the  
17 commencement of this item.

18 *Transitional provision*

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

28 *Delegation*

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

1 **15 After subsection 105(2)**

2 Insert:

3 (2A) The notice given to the employer must also be dated. The date of  
4 the notice must be the date the preparation of the notice was  
5 completed.

6 **16 Subsection 105(3)**

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

8 **17 Paragraph 131(1)(a)**

9 Omit “protected”.

10 **18 Paragraph 131(1)(b)**

11 Omit “Subdivision”, substitute “Division”.

12 **19 At the end of Division 8 of Part 4-3**

13 Add:

14 **201A Debts arising from civil penalty orders**

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

17 **20 After subparagraph 215(2)(a)(v)**

18 Insert:

19 (va) subsection 82(2A);

20 **21 Section 278**

21 Before “This Act”, insert “(1)”.

22 **22 At the end of section 278**

23 Add:

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

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

4 **23 Paragraph 280(1)(b)**

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

7 **24 Before subsection 303(1)**

8 Insert:

9 *General powers*

10 **25 Subparagraph 303(1)(b)(iii)**

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

12 **26 Paragraph 303(1)(b)**

13 Omit all the words after subparagraph (iii).

14 **27 After subsection 303(1)**

15 Insert:

16 (1A) Paragraphs (1)(a) and (b) do not apply to the Chief Executive  
17 Centrelink, Chief Executive Medicare or an APS employee in the  
18 Human Services Department.

19 **28 Before subsection 303(3)**

20 Insert:

21 *Powers under Division 3 or 5 of Part 4-2*

22 **29 After subsection 303(3)**

23 Insert:

24 (3A) If the Secretary delegates any of his or her powers under Division 3  
25 or 5 of Part 4-2 to the Chief Executive Centrelink, the Chief  
26 Executive Centrelink cannot, despite any provision in the *Human*  
27 *Services (Centrelink) Act 1997*, delegate the power to a  
28 Departmental employee (within the meaning of that Act) who is  
29 neither:

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

3 (3B) If the Secretary delegates any of his or her powers under Division 3  
4 or 5 of Part 4-2 to the Chief Executive Medicare, the Chief  
5 Executive Medicare cannot, despite any provision in the *Human*  
6 *Services (Medicare) Act 1973*, delegate the power to a  
7 Departmental employee (within the meaning of that Act) who is  
8 neither:

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

11 *Power under paragraph 128(1)(b)*

12 **30 Subsection 303(5)**

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

15 **31 Subsection 303(5)**

16 Omit “other”.

17 **32 Subsection 303(5)**

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

20 **33 Subsection 303(6)**

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

23 **34 Subsection 303(6)**

24 Omit “other”.

25 **35 Subsection 303(6)**

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

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## Schedule 2—Fair Work Act 2009

4

### 1 Section 12

5

Insert:

6

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

7

### 2 Section 70 (note 1)

8

Repeal the note, substitute:

9

Note 1: Entitlement is also affected by:

10

(a) section 67 (which deals with length of the employee's service);  
and

11

12

(b) for pregnancy and birth—subsection 77A(3) (which applies if the  
pregnancy ends other than by the child being born alive, or if the  
child dies after birth); and

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(c) for adoption—section 68 (which deals with the age etc. of the  
adopted child).

17

### 3 Subsection 71(2) (note)

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Repeal the note, substitute:

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

20

21

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

22

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### 4 Subsection 71(3)

24

Repeal the subsection, substitute:

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(3) If the leave is birth-related leave for a female employee who is  
pregnant with, or gives birth to, the child, the period of leave may  
start:

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(a) up to 6 weeks before the expected date of birth of the child;

29

or

30

(b) earlier, if the employer and employee so agree;

31

but must not start later than the date of birth of the child.

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Note 1: If the employee is not fit for work, she may be entitled to:

(a) paid personal leave under Subdivision A of Division 7; or

(b) unpaid special maternity leave under section 80.

1 Note 2: If it is inadvisable for the employee to continue in her present position,  
2 she may be entitled under section 81:  
3 (a) to be transferred to an appropriate safe job; or  
4 (b) to paid no safe job leave.

5 Note 3: Section 344 prohibits the exertion of undue influence or undue  
6 pressure on the employee in relation to a decision by the employee  
7 whether to agree as mentioned in paragraph (3)(b) of this section.

## 8 **5 Subsection 72(2) (note)**

9 Repeal the note, substitute:

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

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

## 14 **6 Subparagraph 72(3)(a)(i)**

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

## 17 **7 At the end of subsection 76(1)**

18 Add:

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

## 21 **8 After section 77**

22 Insert:

### 23 **77A Pregnancy ends (other than by birth of a living child) or child** 24 **dies after being born**

25 *Application of this section*

26 (1) This section applies to unpaid parental leave, if:

27 (a) the leave is birth-related leave; and

28 (b) either:

29 (i) the pregnancy ends other than by the child being born  
30 alive; or

31 (ii) the child dies after being born.

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*Cancellation of leave*

- (2) Before the leave starts:
  - (a) the employee may give the employer written notice cancelling the leave; or
  - (b) the employer may give the employee written notice cancelling the leave.
  
- (3) If the employee or employer does so, the employee is not entitled to unpaid parental leave in relation to the child.

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

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

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

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

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

*Return to work*

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



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

3 *Interaction with section 77*

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

7 **9 After subsection 78(1)**

8 Insert:

- 9 (1A) However, this section does not apply if section 77A applies to the  
10 unpaid parental leave (because the unpaid parental leave is  
11 birth-related leave and either the pregnancy ends other than by the  
12 child being born alive or the child dies after being born).

13 **10 At the end of Subdivision B of Division 5 of Part 2-2**

14 Add:

15 **79A Keeping in touch days**

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

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

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

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

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

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

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

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

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

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

27 **79B Unpaid parental leave not extended by paid leave or keeping in**  
28 **touch days**

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

30 (a) takes paid leave; or

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

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

35 **11 After section 84**

36 Insert:

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**84A Replacement employees**

1  
2 Before an employer engages an employee to perform the work of  
3 another employee who is going to take, or is taking, unpaid  
4 parental leave, the employer must notify the replacement  
5 employee:

6 (a) that the engagement to perform that work is temporary; and

7 (b) of the rights:

8 (i) the employer; and

9 (ii) the employee taking unpaid personal leave;

10 have under subsections 77A(2) and (3) (which provide a right  
11 to cancel the leave if the pregnancy ends other than by the  
12 birth of a living child or if the child dies after birth); and

13 (c) of the rights the employee taking unpaid parental leave has  
14 under:

15 (i) subsections 77A(4) to (6) (which provide a right to end  
16 the leave early if the pregnancy ends other than by the  
17 birth of a living child or if the child dies after birth); and

18 (ii) section 84 (which deals with the return to work  
19 guarantee); and

20 (d) of the effect of section 78 (which provides the employer with  
21 a right to require the employee taking unpaid parental leave  
22 to return to work if the employee ceases to have any  
23 responsibility for the care of the child).

**12 Section 344 (note)**

24 Repeal the note, substitute:

25 Note 1: This section is a civil remedy provision (see Part 4-1).

26 Note 2: This section can apply to decisions whether to consent to performing  
27 work on keeping in touch days (see subsection 79A(3)).  
28

**13 Subsection 536(1) (note)**

29 Repeal the note, substitute:

30 Note 1: This subsection is a civil remedy provision (see Part 4-1).

31 Note 2: Section 80 of the *Paid Parental Leave Act 2010* requires an employer  
32 to give information to an employee to whom the employer pays an  
33 instalment under that Act.  
34