

EXPLANATORY STATEMENT

PAID PARENTAL LEAVE AMENDMENT RULES 2011 (No. 1)

The *Paid Parental Leave Amendment Rules 2011* (No. 1) (the Amendment Rules) amend the *Paid Parental Leave Rules 2010* (the PPL Rules), which were made under section 298 of the *Paid Parental Leave Act 2010* (the Act).

Section 298 of the Act provides that the Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Background

Eligibility for parental leave pay generally requires that the person has not returned to work (section 31 of the Act). The PPL Rules maintain a defence force member's eligibility for parental leave pay where they have been compulsorily recalled to duty (see rules 2.5, 2.11 and 2.21 of the PPL Rules).

Part 3-5 of the Act provides for employer determinations to be made for an employer and an employee. If an employer determination is in force, the employer is required to pay instalments of parental leave pay to the employee. Section 299 of the Act allows for the PPL Rules to provide for employer determinations to be made for persons in a relationship similar to that of an employer and employee. It also allows the PPL Rules to modify any provision of the Act in relation to those persons.

Existing Part 6-3 of the PPL Rules provide for employer determinations to be made for the Chief Commissioner of Police (of Victoria) and Victorian law enforcement officers.

Purpose

The Amendment Rules extend the recall to duty provisions in the PPL Rules to law enforcement officers. That is, if a person is a law enforcement officer (defined in section 6 of the Act) and returns to work because they have been compulsorily recalled to duty, the Amendment Rules provide for them to remain eligible for parental leave pay.

The Amendment Rules also replace existing Part 6-3 of the PPL Rules with new Part 6-3, which provides for an employer determination to be made for:

- the Commissioner of Police in a specified State or Territory (New South Wales, Victoria, Western Australia, South Australia, Tasmania or Northern Territory) and a law enforcement officer in that specified State or Territory;
- the Crown (in the right of the State of Queensland) and a law enforcement officer in Queensland;
- the Australian Federal Police Commissioner and a federal law enforcement officer; and
- the Chief of the Defence Force and a defence force member.

The intended effect of new Part 6-3 is that the relevant Police Commissioner/Crown is deemed to be the employer of a law enforcement officer, and the Chief of the Defence Force is deemed to be the employer of a defence force member, for the purposes of the Act only. This acknowledges that the relevant Police Commissioner/Crown and the law enforcement officer, as well as the Chief of the Defence Force and the defence force member, does not necessarily have a relationship in the same terms as an employer and employee.

The Amendment Rules will have the effect of extending the function of the Fair Work Ombudsman to include investigation into matters where the Secretary has reason to believe that a Police Commissioner has not complied with an obligation under section 70 (which deals with unauthorised deductions from instalments) or Part 3-2 (which deals with payment of instalments by an employer) of the Act. Similarly, it is intended that the powers of the Fair Work Inspector would be extended to include the exercise of its compliance powers (within the meaning of the *Fair Work Act 2009*) for the purposes of determining whether a Police Commissioner has complied with obligations under section 70 and Part 3-2 of the Act.

In relation to defence force members, it is intended that the Defence Force Ombudsman would have the powers and functions in place of the Fair Work Ombudsman, to enable investigations into matters where the Secretary has reason to believe that the Chief of the Defence Force has not complied with an obligation under section 70 or Part 3-2 of the Act. The Defence Force Ombudsman would also have the compliance powers of the Fair Work Inspector for the purposes of determining whether the Chief of the Defence Force has complied with obligations under section 70 and Part 3-2 of the Act.

Explanation of Provisions

Rule 1 sets out the name of these Rules (the Amendment Rules).

Rule 2 provides that the Amendment Rules commences on 1 July 2011.

Rule 3 provides that **Schedule 1** amends the PPL Rules.

Clause 1 to 3 inserts the words 'or a law enforcement officer' after 'defence force member', contained in subrules 2.5(a), 2.11(a) and 2.21(a) of the PPL Rules. Rule 2.5 form part of the conditions of eligibility for primary claimants under the PPL Rules (see rule 2.2). Rule 2.11 form part of the conditions of eligibility for secondary claimants (see rule 2.8). Rule 2.21 form part of the conditions of eligibility for tertiary claimants (see rule 2.18).

Clause 4 substitutes existing Part 6-3 with new **Part 6-3** – Extension of Act to persons who are not employees and employers. New Part 6-3 is divided into 4 separate divisions.

Division 6.3.1 provides for the extension of the Act to law enforcement officers in specified States and Territories.

Rule 6.1 provides that Division 6.3.1 applies in relation to NSW, Vic, WA, SA, Tas and NT (specified States and Territories).

Rule 6.2 contains definitions and interpretive provisions that are relevant to Division 6.3.1. The definition of designated law enforcement officer mirrors the definition of law enforcement officer in the Act, but is restricted to law enforcement officers in the specified State and Territories. Commissioner of Police is defined to include a person who holds the office of the Commissioner of Police of a specified State or Territory, even if the person bears a different title (eg. the Chief Commissioner of Police of Victoria).

Rule 6.3 provides that the Secretary may make an employer determination for the Commissioner of Police for a specified State or Territory and a person who is a designated law enforcement officer for that specified State or Territory.

Rule 6.4 provides that for a designated law enforcement officer in relation to a specified State or Territory, the Act is modified as follows:

- (a) the Commissioner of Police of that State or Territory is taken to be the employer of the designated law enforcement officer;
- (b) the designated law enforcement officer is taken to be an employee of the Commissioner of Police of that State or Territory; and
- (c) a reference to the employment or engagement of the designated law enforcement officer is taken to be a reference to that officer's role, functions or duties, however described, as a designated law enforcement officer;
- (d) there is no requirement for the Commissioner of Police of that State or Territory to have an ABN.

Division 6.3.2 provides for the extension of the Act to the Crown (which is defined to mean the Crown in the right of the State of Queensland) and law enforcement officers of Queensland.

Division 6.3.3 provides for the extension of the Act to the Australian Federal Police Commissioner and federal law enforcement officers. Divisions 6.3.2 and 6.3.3 are intended to operate in a similar manner to Division 6.3.1.

Division 6.3.4 provides for the extension of the Act to the Chief of the Defence Force and defence force members.

Rule 6.11 contains the definitions and interpretive provisions that are relevant to Division 6.3.2. 'Defence force member' has the same meaning as the Act, which is defined to mean a member of the Australian Defence Force. A 'member' of the 'Australian Defence Force' has the meaning given by the *Defence Act 1903*. The term defence force member includes any officer, sailor, soldier and airman of the Australian Navy, the Australian Army and the

Australian Air Force. It includes both members of the permanent forces and reserves, but excludes cadets.

Rule 6.12 provides that the Secretary may make an employer determination for the Chief of the Defence Force and a person who is a defence force member.

Rule 6.13 provides that for a defence force member, the Act is modified as follows:

- (a) the Chief of the Defence Force is taken to be the employer of the defence force member;
- (b) a defence force member is taken to be an employee of the Chief of Defence Force;
- (c) a reference to the employment or engagement of a defence force member is taken to be a reference to the service of a member of the defence force;
- (d) a reference to the Fair Work Ombudsman is taken to be a reference to the Defence Force Ombudsman;
- (e) a reference to the Fair Work Inspector is taken to be a reference to the Defence Force Ombudsman; and
- (f) there is no requirement for the Chief of the Defence Force to have an ABN.

Consultation

The Department of Education, Employment and Workplace Relations has been consulted in the development of the Amendment Rules. Relevant State and Territory governments have been consulted in the development of the Amendment Rules relating to law enforcement officers and the extension of the recall to duty provision. The Australian Federal Police has been consulted on the development of the Amendment Rules relating to federal law enforcement officers and the extension of the recall to duty provision. The Department of Defence has been consulted in the development of the Amendment Rules relating to defence force members.

Regulatory Impact

The Amendment Rules extend what has been covered in the PPL Rules, and have an impact and effect to the extent that they prescribe matters for the purposes of the Act. A Regulatory Impact Statement was provided as part of the Explanatory Memorandum for the Paid Parental Leave Bill 2010, canvassing in detail the likely impact of the PPL scheme. All matters being dealt with by the Amendment Rules were covered by that Regulatory Impact Statement.