

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Paid Parental Leave Rules 2021

Paid Parental Leave Amendment (COVID-19 Work Test) Rules 2021

Purpose

The *Paid Parental Leave Amendment (COVID-19 Work Test) Rules 2021* (Amendment Rules) amend the existing *Paid Parental Leave Rules 2021* (PPL Rules) to allow calculation of the number of hours of qualifying work performed by people who have received a COVID-19 Australian Government payment to count towards the work test for Paid Parental Leave (PPL).

The Amendment Rules are made under the authority of the Minister for Families and Social Services (the Minister) in accordance with section 298 of the PPL Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

The Legislative Framework

The Paid Parental Leave scheme is enabled by the Paid Parental Leave Act, with the Paid Parental Leave Rules giving effect to specific provisions such as matters related to the work test.

To be eligible for parental leave pay or dad and partner pay, a person must, among other things, satisfy the work, income and residency tests.

The work test requires that the person:

- perform qualifying work for at least 10 months out of a 13 months work test period;
- work at least 330 hours during those 10 months; and
- not have a break between work days of more than 12 weeks.

The Amendment Rules

A period in receipt of a COVID-19 Australian Government Payment as qualifying work

The addition of item 492 of the table in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997* enabled the receipt of COVID-19 Disaster Payment in order to provide time-limited financial assistance to eligible workers who are unable to earn their usual income as a result of public health restrictions, such as public health orders imposed by State or Territory governments, and where the Commonwealth Chief Medical Officer has determined the location to be a COVID-19 hotspot for the purposes of Commonwealth support.

In response to the payment of COVID-19 Disaster Payment amendments were made to the PPL Act, inserting a new section 35C to allow a period in receipt of a COVID-19 Australian Government Payment to count as qualifying work for the purposes of the PPL work test.

These amendments to the Rules provide a method for calculating how a period in receipt of COVID-19 Australian Government Payment will count towards the PPL work test.

Commencement

The Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Consultation

External consultation was undertaken with the Department of Prime Minister and Cabinet and Services Australia.

Regulation Impact Statement (RIS)

A Regulation Impact Statement is not required for the Rules as it has a minor regulatory impact. This is the same number as used for the *Paid Parental Leave Amendment (COVID-19 Work Test) Act 2021* as these two items are linked (OBPR ID 44348).

Explanation of the provisions

Section 1 provides that the name of the Amendment Rules is the *Paid Parental Leave Amendment (COVID-19 Work Test) Rules 2021*.

Section 2 provides that the Amendment Rules commence on the day after this instrument is registered on the Federal Register of Legislation.

Section 3 provides that the Amendment Rules are made under the PPL Act.

Section 4 provides that the instrument specified in a Schedule to the Amendment Rules is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1

Schedule 1 amends the Paid Parental Leave Rules 2021.

Item 1 amends the simplified outline to Part 2 in section 8, dealing with eligibility for parental leave pay. The amendment includes the words “or COVID-19 Australian Government payment period” after the existing words “JobKeeper payment period”. This amendment is made to the paragraph of the guide beginning with ‘Division 3’ that explains that a method is prescribed to calculate the number of hours of qualifying work on a day that is in a jobkeeper payment period.

Item 2 inserts new section 24A after section 24, that prescribes a method for determining the number of hours of work a person is taken to have performed on a day in a COVID-19 Australian Government Payment period for the purposes of subsection 35C(1) of the Act. A COVID-19 Australian Government Payment period for a person is a period for which the person is entitled to a COVID-19 Australian Government Payment (as defined in subsection 34(5) of the Act).

The approach taken is consistent with the approach used in the PPL Rules to determine the hours of qualifying work a person is taken to have performed where they have received jobkeeper payment.

Subsection 24A(2) provides the basic rule that for a day in a COVID-19 Australian Government Payment period for the person, where no other qualifying work is performed, the person is taken to have performed 7.6 hours of work if the day is a weekday, and no hours of work if the day is a Saturday or a Sunday.

Subsection 24A(3) provides that if a person performs qualifying work of at least one hour of paid work on a day, and the day is also in a COVID-19 Australian Government Payment period for the person, the person is taken to have performed the greater of:

- 7.6 hours of work if the day is a weekday, or no hours of work if the day is a Saturday or Sunday, or
- the number of hours of paid work performed by the person on that day.

Subsection 24A(4) provides that if a person performs qualifying work because they take a period of paid leave of at least one hour on a day, and the day is in a COVID-19 Australian Government Payment period, the person is taken to have performed the greater of:

- 7.6 hours of work if the day is a weekday, or no hours of work if the day is a Saturday or Sunday, or

- the number of hours of paid leave taken by the person on that day.

Statement of Compatibility with Human Rights

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

Paid Parental Leave Amendment (COVID-19 Work Test) Rules 2021

The Regulations are 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 legislative instrument

The Paid Parental Leave Amendment (COVID-19 Work Test) Rules 2021 (Amendment Rules) amend the Paid Parental Leave Rules 2021 (PPL Rules). The Amendment Rules are made by the Minister for Families and Social Services under section 298 of the Paid Parental Leave Act 2010 (PPL Act).

The Paid Parental Leave (PPL) scheme is a Government-funded scheme consisting of Parental Leave Pay (PLP), an 18-week payment at the rate of the national minimum wage for eligible primary carers of newborn and recently adopted children; and Dad and Partner Pay (DaPP), a two-week payment at the rate of the national minimum wage for eligible fathers and partners caring for newborn or recently adopted children.

The amendments made by this instrument are intended to assist people who have been affected by the economic impacts of the Coronavirus (COVID-19) pandemic to be eligible for PLP and DaPP.

The work test for PLP and DaPP requires a person to have worked for at least 10 months out of a 13-month work test period and to have performed qualifying work for at least 330 hours in that 10-month period with no more than a 12 week gap between two working days.

The *Paid Parental Leave Amendment (Work Test) Act 2021* amended the PPL Act to provide that a person in receipt of an Australian Government COVID-19 payment, including the COVID-19 Disaster Payment, will be considered to be performing qualifying work for the work test for PLP and DaPP.

This is intended to support employees who have had their work hours reduced or who are stood down from their jobs due to state health imposed lockdowns in response to the COVID-19 pandemic to continue to meet the work test for PLP and DaPP.

These amendments are necessary to give effect to the changes to the PPL Act. The Amendment Rules provide a method for calculating how receipt of the COVID-19 Disaster Payment will count towards the work test. The Amendment Rules provide that a person will be taken to have performed 7.6 hours of qualifying work for the purposes of the work test for PLP and DaPP for each week day during a period or periods of Australian Government COVID-19 payments. If they work more than 7.6

hours or take paid leave of more than 7.6 hours on a week day the hours actually worked or hours of paid leave taken will be counted when calculating their hours for the purposes of the work test. For weekends, a person in a Australian Government COVID-19 payment period will be taken to work no hours, unless they work or take paid leave for one or more hours on a Saturday or Sunday in which case the actual hours of paid work or paid leave will be counted.

Human rights implications

This legislative instrument engages the following rights:

- the right to social security,
- the right to protection and assistance for families,
- the right to maternity leave.

The 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, and Article 26 of the Convention on the Rights of Children recognises the right of every child to benefit from social security. This instrument engages these rights by broadening the eligibility criteria for PPL and increasing the number of claimants who can receive the payments during the Coronavirus pandemic.

The right to protection and assistance for families

The right to protection and assistance to families, particularly mothers during a reasonable period before and after childbirth in Article 10(2) of the ICESCR recognises protection should be accorded to mothers. During such a period, working mothers should be accorded paid leave or leave with adequate social security benefits.

Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work. The UN Committee on Economic, Social and Cultural Rights has commented that Article 7 of the ICESCR requires States Parties to take steps to 'reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.'

The Amendment Rules engage these rights by broadening the eligibility criteria for PLP and DaPP to allow more families to access the PPL scheme, which provides assistance to families following the birth of a child, and supports families to balance work and family obligations.

The right to maternity leave

The right to maternity leave is contained within Article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Article 10(2) of the ICESCR. Article 11(2)(b) of the CEDAW requires States Parties 'to introduce maternity leave with pay or with comparable social benefits without loss of

former employment, seniority or social allowances'. Note that Australia has a reservation in relation to Article 11(2)(b) of the CEDAW.

These amendments are beneficial, broadening the eligibility criteria for PLP to support women affected by the economic impacts of the COVID-19 pandemic to continue to be eligible for Government-funded paid parental leave following the birth of a child.

Conclusion

The Regulations are compatible with human rights because they do not raise any human rights issues.

Senator the Hon Anne Ruston, Minister for Families and Social Services