

EXPLANATORY STATEMENT

Issued by authority of the Minister for Social Services

Paid Parental Leave Act 2010

Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Rules 2025

- 1 The instrument, *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Rules 2025*, is made under section 298 of the *Paid Parental Leave Act 2010* (**the Act**). That provision allows the Minister to make rules providing for matters required or permitted by the Act, or necessary or convenient to be provided in order to carry out or give effect to the Act.
- 2 Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the day after registration on the Federal Register of Legislation and is a legislative instrument for the *Legislation Act 2003* (**the Legislation Act**).

Purpose

- 4 The instrument amends the *Paid Parental Leave Rules 2021* (**the Rules**) to support the changes made by the *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Act 2024* (**Amendment Act**).
- 5 The Amendment Act introduced a superannuation contribution to the Commonwealth-funded Paid Parental Leave Scheme (**PPL Scheme**) in respect of children born on or after 1 July 2025 (or regarded as having been born on or after this date for the purposes of the Act). These matters are contained in Chapter 3A of the Act and provide for:
 - (a) the entitlement to the PPL superannuation contribution (**PPLSC**);
 - (b) calculation of the amount of a person's PPLSC for an income year ('income year' adopting the definition from the *Income Tax Assessment Act 1997*, which for individuals is the same meaning as a financial year – the 12 months beginning on 1 July of each year);
 - (c) where the payment should be directed to;
 - (d) when the Commissioner of Taxation (**Commissioner**) must make determinations as to the amount of and where to direct a person's PPLSC;
 - (e) how the Commissioner is to correct underpayments and overpayments of the PPLSC, including by way of recovery from a person's superannuation account;
 - (f) calculation of interest amounts that may be applied to underpayments;
 - (g) information the Commissioner must provide PPLSC recipients and superannuation providers in discharging functions under the Act;

- (h) obligations on superannuation providers, and associated enforcement actions available to the Commissioner, in respect of dealing with a person's PPLSC; and
 - (i) a right of review for persons affected by a decision made by the Commissioner under Chapter 3A.
- 6 The Commissioner must make certain determinations and actions under Chapter 3A in accordance with any requirements specified in the Rules. The purpose of the instrument is to include Rules prescribing:
- (a) a method to calculate the multiplier amount used to calculate ***nominal interest rate amount*** under subsection 115C(5);
 - (b) where the PPLSC payment should be directed and when it is to be paid under subsections 115F(3) and 115H(2);
 - (c) when the Commissioner must make determinations as to how much, and where to direct, the PPLSC and ultimately by when it must be paid under subsections 115D(2), 115F(5) and 115K(8);
 - (d) when the Commissioner must make determinations as to where to direct payments to correct underpayments under subsection 115K(6) and the payment date for the underpaid amount under subsection 115M(2); and
 - (e) information to be provided to superannuation providers and other entities under subsection 115J(3) in respect of payments of PPLSC, and in relation to recovery of overpayments of PPLSC for a person under subsections 115P(3) and (7).
- 7 This instrument establishes Rules to prescribe the above matters, which are necessary to allow the Commissioner to effect payments of the PPLSC.

Details of the instrument

- 8 Details of the instrument are included at **Attachment A**.

Consultation

- 9 The instrument has been prepared in consultation with Department of the Treasury and the Australian Taxation Office. The Commissioner for Taxation has responsibility for the general administration of Chapter 3A of the Act (see s 115ZB of the Act).
- 10 The Office of Impact Analysis (**OIA**) was consulted and considered that a detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework and no regulatory impact statement was required. The OIA reference number is OIA24-06545.

Parliamentary scrutiny etc.

- 11 The instrument is subject to disallowance under section 42 of the Legislation Act.
- 12 A Statement of Compatibility with Human Rights has been prepared in relation to the instrument and provides that the instrument is compatible with human rights as it promotes the right to social security. The Statement is included at **Attachment B**.

Details of the *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Rules 2025*

Section 1 Name

This section provides that the name of the instrument is the *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Rules 2025*.

Section 2 Commencement

This section provides that the instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 Authority

This section provides that the instrument is made under the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

Section 4 Schedules

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

Schedule 1—Amendments

Item [1] Section 5 (after the paragraph beginning “Part 4”)

This item amends the Section 5 outline of the Rules to include a description of the new Part 5 of the Rules, which provide for matters relating to the PPLSC.

Item [2] Section 6 (at the end of the note)

This item inserts a new paragraph (g) to the note to Section 6, which provides that a number of expressions used in the Rules are defined in the Act, including ‘PPL superannuation contribution’.

Item [3] Section 6

This item inserts definitions of ‘concessional contributions’, ‘eligible account’ and ‘eligible personal superannuation contribution’, these terms being used in new Part 5 of the Rules which govern the PPLSC.

Item [4] After section 6

This item inserts new section 6A of the Rules, which provides the definition of ‘eligible account’ for the purposes of the PPLSC.

Item [5] After Part 4

This item inserts Part 5 of the Rules, which provides for matters relating to payment of the PPLSC.

Part 5 - Division 1

Division 1 contains section 35, which is the simplified outline of Part 5 of the Rules. Part 5 sets out the rules governing the PPLSC and is divided into five divisions.

Part 5 - Division 2

As described in the simplified outline, Division 2 prescribes the method for working out the multiplier amount used to calculate the nominal interest rate amount that forms part of a person's PPLSC.

Section 36 prescribes the method for calculating the multiplier amount that is used to calculate the ***nominal interest rate amount*** for the purposes of paragraph 115C(1)(b) and subsection 115C(5) of the Act.

Section 115C of the Act sets out the basis for calculating the amount of PPLSC payable to a person. This amount is the sum of:

- the ***base contribution*** for the person for the income year multiplied by the ***SG charge percentage*** for that year; and
- the ***nominal interest rate amount*** for the person for the year.

Section 115C, as well as Chapter 3A generally and the Rules, use a number of terms defined and used in the Act which it is helpful to summarise:

- ***Parental Leave Pay***, or PLP, means payments to claimants under the Act. PLP is payable to a person if they have made an effective claim for PLP and are eligible for PLP under Division 2 of Part 2-3 of Chapter 2 of the Act.
- ***PPL*** is short for Paid Parental Leave. A person is entitled to be paid PLP in respect of time taken caring for a child if they make an effective claim under the Act in respect of a ***flexible PPL day*** (which is any day in the period from when the child is born and ending on the day before their second birthday) and they are eligible on that day.
- An ***instalment of Parental Leave Pay*** (or, PLP instalment) is a payment of PLP to a person made on their usual payday. Most often this is made through a person's employer in alignment with their regular pay-cycle pursuant to sections 63 and 72 of the Act. The Secretary of the Department of Social Services (***Secretary***) must otherwise pay a PLP instalment directly to the person under section 84 if any of the circumstances described in subsections 84(2) to (6) apply - most commonly if an employer determination (see further below) is not in force.
- A ***PPL funding amount*** is a payment made by the Secretary to a person's employer under section 75 of the Act to be then on-paid to the person as a PLP instalment for the days they have claimed as flexible PPL days under the Act. Payments of PLP to a person can only be effected in this way if the Secretary has made an employer determination under section 101 of the Act, and that determination continues to be in force.

For the PPLSC, the ‘base contribution’ is the sum of all PPL funding amounts and PLP instalments paid by the Secretary in relation to a person during that income year. This definition captures all amounts either paid on behalf of a person (to their employer under section 75) or directly to them (by the Secretary under section 84) within an income year. Paragraph 115C(2)(b) further provides that, for a PLP instalment paid under section 84 to be counted for these purposes, it must have been in fact paid to the person and the amount must also have been payable under section 63. This is to ensure that the base contribution reflects the total amount of PLP that the person was paid to which they were actually entitled.

Subsection 115C(4) provides that the **SG charge percentage** for an income year means the charge percentage for the year, worked out using the table in subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992*. This means the percentages used to calculate the PPLSC are the same as those used to calculate the superannuation guarantee. For the income year starting on 1 July 2025, this amount is 12 per cent.

Subsection 115C(5) provides that the **nominal interest rate amount** is the amount worked out under paragraph 115C(1)(a) (being the ‘base contribution’ for the year multiplied by the SG charge percentage) of the Act, multiplied by the amount worked out under the method prescribed by the PPL Rules.

A significant feature of the PPLSC is that it is generally paid once annually, as opposed to each instalment period (as PLP itself is paid pursuant to section 64 of the Act) or quarterly as is required for payments made under the *Superannuation Guarantee (Administration) Act 1992*. Accordingly, to compensate for forgone superannuation fund returns resulting from this single annual payment (because contributions will not accrue earnings over the course of the relevant income year) the Act provides for an amount additional to the base contribution to be paid –the **nominal interest rate amount** - which is the amount calculated under subsection 115C(1)(a) multiplied by an amount calculated under the method prescribed by the Rules.

New section 36 of the Rules prescribes how this multiplier is to be calculated, taking the amount of days elapsed since PLP was first paid to the person, or on their behalf, in the relevant income year and concluding on the day that the Commissioner makes a determination of the amount payable under section 115D, dividing that figure by 365 and then multiplying that figure by 10 per cent . The resulting figure is then multiplied by the amount for the person under paragraph 115C(1)(a) to calculate the nominal interest amount.

A simple example is provided at the end of new section 36. Another more detailed example is as follows.

Example: Calculation of PPLSC Payable to a Person

The anticipated date of birth of Francesca’s child is 20 July 2025.

Francesca makes a pre-birth claim for PLP, commencing 21 August 2025 after one month of employer-funded leave. She intends to take the entirety of her 105 flexible PPL day entitlement under subsection 31ABA(2) of the Act from that time onwards.

Francesca’s child is born on 19 July 2025 and she provides the Secretary with a completed birth verification form. The Secretary determines that Francesca’s claim is effective and that PLP is payable to her for the claimed days.

The Secretary pays a PPL funding amount to Francesca’s employer pursuant to section 75 of the Act on 20 August 2025 to be paid to her in alignment with her normal salary pay-cycle.

Francesca is paid a total of \$19,910.10 PLP in the 2025-26 income year.

After the conclusion of the 2025-26 income year, Services Australia sends information to the Commissioner, including the total amount of PLP paid to her in that income year, as well as the date that the PPL funding amount pursuant to section 75 of the Act was paid to her employer on her behalf.

On 31 August 2026 the Commissioner, having received this information, applies the method statement under new section 36 of the Rules to calculate her PPLSC and make determinations under sections 115D and 115F of the PPL Act as follows:

Step 1: The first day in the income year that a PPL funding amount was paid to Francesca's employer was 20 August 2025. The Commissioner makes the section 115D determination on 31 August 2026.

The amount of days between 20 August 2025 and 31 August 2026 is 377 days

Step 2: 377 divided by 365 is 1.03287671232877

Step 3: 1.03287671232877 is multiplied by 10 per cent, rounded to the first 4 decimal places – 0.1033.

This creates the multiplier for the **nominal interest rate amount** pursuant to subsection 115C(5).

This multiplier is applied to the amount calculated under subsection 115C(1)(a), which is the **base contribution** (which as per subsection 115C(2) as the total of PLP paid in the income year - \$19,910.10 - multiplied by the **SG charge percentage** which for the 2025-26 financial year is 12 per cent as specified in subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992*).

Thus, the amount determined by the Commissioner under s 115D will be:

Base Contribution (\$19,910.10) multiplied by SG charge percentage (12 per cent):	\$2,389.212
Nominal Interest Rate Amount (\$2,389.212 multiplied by 0.1033):	\$246.8055996
Total PPLSC for 2025-26 Income Year (rounded up to nearest cent):	\$2,636.02

Accordingly, the Commissioner determines on 31 August 2026 that:

- the amount of the PPLSC is \$2,636.02, pursuant to subsection 115D(1); and
- that the PPLSC is to be paid to the trustee of a complying superannuation fund for crediting to an account that Francesca has nominated, pursuant to paragraph 115F(1)(a).

The Commissioner is then required to pay the amount on or before the payment date, in accordance with subsection 115H(1) of the Act.

Part 5 - Division 3

As described in the simplified outline, Division 3 prescribes the following:

- The timeframe within which the Commissioner must determine the amount of a PPLSC payable. It also prescribes how the Commissioner must determine where a PPLSC is to be directed, and the timeframes for making that determination and the associated payment date for the PPLSC.
- The information that the Commissioner must provide to the trustee or provider if a PPLSC is paid to a complying superannuation fund or RSA.

Section 37

Section 37 prescribes for subsection 115D(2) of the Act the time within which determinations under section 115D (as to the amount of PPLSC to be paid to a person for an income year) are to be made.

This rule provides that the Commissioner must make a determination as soon as reasonably possible once they have sufficient information to determine the amount of PPLSC payable under section 115D and are able

to make a determination under section 115F about where to direct the payment in accordance with the requirements of section 39 of the Rules.

The intended interaction of sections 115D and 115F of the Act, and new sections 37 and 39 of the Rules, are such that the Commissioner must make determinations as to how much, and where the PPLSC is to be paid as soon as reasonably possible after the Commissioner has sufficient information to make *both* those determinations. No specific timeframe is prescribed for either of these determinations so as to flexibly allow for:

- the Secretary to properly determine the total amount and date of first payment of a recipient's PLP for the income year within a reasonable period; and
- the Commissioner to have time to ascertain the most appropriate destination account into which the PPLSC will be paid. This is intended to avoid a circumstance where a determination under section 115D of the Act as to the amount of the PPLSC for an income year is made without knowledge of where it is to be paid, which may disadvantage recipients as explained below (noting that, in circumstances where a person does not have a complying superannuation fund, the amount will be held until it is paid into a Superannuation Holding Account Special Account (**SHASA**) in the name of the person in accordance with paragraph 115F(1)(d) of the Act and new subsection 39(2) of the Rules – this is addressed below).

If, for example, the Commissioner was able to make determination under section 115D of the amount of a person's PPLSC for an income year without knowledge of where it is to be paid (i.e. without making a determination under section 115F as to where the payment is to be directed), when the PPLSC is eventually paid into a SHASA (i.e. if the Commissioner cannot be satisfied that the payment should be directed otherwise and makes a determination under paragraph 115F(1)(d)) then at least two years will have elapsed from the day when the person was first paid PLP for the income year to when the Commissioner makes a determination under s 115F. The calculation of the nominal interest rate amount pursuant to section 36 of the Rules would only take into account the days up to when the section 115D determination was made, not up to the date of the section 115F determination, thus leading to a lower nominal interest rate amount.

Notwithstanding that a specific timeframe is not specified for these determinations, the Commissioner is obliged to make these without unreasonable delay (see subsection 7(1) of the *Administrative Decisions (Judicial Review) Act 1977*).

In circumstances where the Commissioner does not have sufficient information to make a determination as to where to direct the PPLSC payment under section 115F, no determination under section 115D can be made until such time as:

- The Commissioner later becomes aware, either from the recipient or otherwise, that the recipient has, or has newly-opened, an eligible account;
- The Commissioner is satisfied that the recipient has died and that the PPLSC can be paid to their legal personal representative (the executor or administrator of their estate as per section 6) in accordance with paragraph 115F(1)(c); or

- After a 2-year period after the first payment of PLP for the income year there is still no eligible account known to the Commissioner, the amount can be paid into a SHASA in accordance with paragraph 115F(1)(d).

Section 38

Section 38 prescribes for subsection 115F(3) of the Act where the Commissioner must pay the PPLSC. The Table to new subsection 38(1) prescribes a hierarchy of where the PPLSC is to be paid, depending on the recipient's circumstances.

Item 1 of the Table to subsection 38(1) prescribes that if the Commissioner is satisfied that the recipient has died, then the PPLSC must be paid to the person's legal personal representative, which is the executor or administrator of their estate.

Item 2 of the Table prescribes that if the recipient has nominated an eligible account to the Commissioner for the purpose of receiving the PPLSC, then the PPLSC must be paid into that account. New subsection 38(2) provides that such nomination will have effect until the person nominates another eligible account, the nominated account stops accepting PPLSC payment or the nominated account ceases to be an eligible account.

Item 3 of the Table prescribes into which eligible account the Commissioner must pay the PPLSC in circumstances where the recipient has not nominated an eligible account and they hold one or more eligible accounts.

Column 2 of item 3 of the Table prescribes a hierarchy of where the PPLSC is to be directed as follows, depending on the recipient's circumstances:

- If only one of the eligible accounts held by the person has received a PPLSC payment in the current or previous income year, then that account is the one into which the amount must be paid (column 2, paragraph (a)).
- If there is no such account, then the PPLSC is to be paid into the eligible account with the most personal superannuation contributions or concessional contributions in the most recent financial year for which the Commissioner has received a statement in respect of a person under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953* (column 2, paragraph (b)).
- If there is no such account, then the PPLSC is to be paid into the eligible account with the most recently opened account date (column 2, paragraph (c)).
- If there are multiple accounts with the same recently opened date, and they do not otherwise comply with the paragraphs above, then the PPLSC will be paid into the account with the highest account balance in the most recent financial year for which the Commissioner has received a statement in respect of the person under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953* (column 2, paragraph (d)).
- If the eligible account does not meet any of the requirements above, then the Commissioner may determine into which account the PPLSC is to be paid (column 2, paragraph (e)).

New subsection 38(3) further provides that if the Commissioner is reasonably satisfied that the eligible account will not or cannot accept the PPLSC payment, then the relevant paragraph of column 2 of item 3 does not apply to the payment.

Subsection 38(4) further provides that for the purposes of paragraphs (b), (c) and (d) of column 2 of item 3, the Commissioner may disregard an eligible account if the Commissioner has never received a statement under section 390-5 in Schedule 1 of the *Taxation Administration Act 1953* in respect of the person and the account, or has received a statement relating to another eligible account of the person that relates to a later period than the most recent statement for the person and the first account.

Item 4 of the Table to new subsection 38(1) prescribes that if a person does not have an eligible account, the PPLSC will be paid into an account of the person in the SHASA. Payments into an account of the person in the SHASA must also be made in accordance with new subsection 39(2) of the Rules – this is described further below.

Section 39

Section 39 prescribes for subsection 115F(5) of the Act the time within which determinations under section 115F must be made.

Subsection 39(1) provides that the Commissioner is to make this determination as soon as reasonably possible after they have sufficient information to determine under section 115F of the Act where the PPLSC is to be paid. As described above, the Commissioner's decision under new subsection 39(1) does not set a specific timeframe for this determination.

Subsection 39(2) provides that if the Commissioner is to make a determination under paragraph 115F(1)(d) of the Act that the PPLSC is to be paid into a SHASA in the name of a person, that this determination must not be made until 2 years after a PPL funding amount or instalment was first paid to the person or their employer in respect the relevant income year.

The SHASA, administered by the Australian Taxation Office, is a holding account designed to protect small superannuation amounts until they can be transferred into a superannuation fund or retirement savings account. Due to the interrelated operation of sections 115D and 115F of the Act described above, and new section 39(2) of the Rules, the Commissioner will not make a determination for an income year that an amount is to be paid into a SHASA (and the actual amount of that payment) until 2 years beginning on the first day either a PLP instalment was paid to the person or a PPL funding amount was paid to their employer for the first time in that income year. This is because:

- it allows the Commissioner further time to conduct enquiries as to whether the person has an eligible account and/or to allow the person to open an account for the PPLSC amounts to be paid to; and
- interest credited to amounts held in the SHASA is only paid on the first \$1,200 in the account, which in most circumstances will be less beneficial to the recipient than if the PPLSC nominal interest component is applied at a later time (see further below).

Because a section 115D determination for an income year cannot be made until a determination can be made under section 115F (even though the payment may be made more than 2 years after they first received PLP for that year) the operation of the method prescribed by new section 36 of the Rules ensures that, in circumstances where the amount is paid into the SHASA, the nominal interest component is calculated up to the eventual determination date. This is to ensure the recipient is not prejudiced by the PPLSC being paid at that later time.

The same applies if, for example, the recipient nominates an eligible account within that 2-year period, or the Commissioner is satisfied that the recipient has died and the amount is paid to a legal personal representative.

Example: Payment of PPLSC into a SHASA

Gloria is paid a total of \$19,910.10 PLP in the 2025-26 income year. She is self-employed and does not have an eligible account into which any PPLSC payment can be made. She was first paid a PLP instalment directly by the Secretary pursuant to sections 63 and 84 of the Act on 20 August 2025.

After the conclusion of the 2025-26 income year, Services Australia sends information to the Commissioner, including the total amount of PLP paid to Gloria in that income year, as well as the date that the first PLP instalment was paid to her in that income year. However, as the Commissioner has no information as to an eligible account into which the PPLSC can be paid, no determination can be made under sections 115D and 115F.

On 20 August 2027, it is 2 years since the first day a PLP instalment was paid to Gloria in respect of the 2025-26 income year. Gloria has not provided details of any superannuation account held by her to the Commissioner in the interim, nor has the Commissioner otherwise become aware of any eligible account held by her.

By operation of new subsection 39(2) of the Rules, the Commissioner is now able to make a determination under paragraph 115F(1)(d) that Gloria's PPLSC entitlement for the 2025-26 financial year be paid into a SHASA. Because the Commissioner now can make a determination as to where the PPLSC payment should be directed, this means that a determination under subsection 115D(1) as to the amount of the PPLSC payment can be made, and ultimately that the amount can be paid pursuant to subsection 115H(1).

The method statement under new section 36 of the Rules is used to calculate her PPLSC as follows:

Step 1: The first day in the income year that an instalment of PLP was paid to Gloria was 20 August 2025.
 The Commissioner makes the section 115D determination on 20 August 2027.

 The amount of days between 20 August 2025 and 20 August 2027 is 731 days

Step 2: 731 divided by 365 is 2.0027397260274

Step 3: 2.0027397260274 is multiplied by 10 per cent, rounded to the first 4 decimal places – 0.2003.

This multiplier is applied to the amount calculated under paragraph 115C(1)(a), which is \$2,389.212

Thus, the amount determined by the Commissioner under section 115D will be:

Base Contribution: (\$19,910.10) multiplied by SG charge percentage (12 per cent):	\$2,389.212
Nominal Interest Rate Amount (\$2,389.212 multiplied by 0.2003)	\$478.5591636
Total PPLSC for 2025-26 Income Year (rounded up to nearest cent):	\$2,867.78

Accordingly, the Commissioner determines on 20 August 2027 that:

- the amount of the PPLSC is \$2,867.78, pursuant to subsection 115D(1); and
- that the PPLSC should be paid into a SHASA in Gloria's name, pursuant to paragraph 115F(1)(d).

The Commissioner is then required to pay the amount on or before the payment date, in accordance with subsection 115H(1) of the Act.

Section 40

Subsection 115H(1) of the Act requires the Commissioner to pay a PPLSC on or before the payment date.

Section 40 provides for the purposes of subsection 115H(2) of the Act that the ‘payment date’ for a PPLSC payment is 60 days after the Commissioner makes a determination under section 115F in relation to where the PPLSC is to be paid.

Section 41

Section 41 prescribes for subsection 115J(3) of the Act the information that must be given to a superannuation trustee or provider if the recipient’s PPLSC payment is paid to the trustee of a complying superannuation fund, or the provider of a retirement savings account that holds an account for the recipient.

Part 5 – Division 4

As described in the simplified outline, Division 4 deals with underpayments and overpayments of PPLSC, including how the Commissioner must determine where an underpaid amount is to be directed, and the timeframes for making that determination and the associated payment date for the underpaid amount. Division 4 also prescribes the content of written notices that the Commissioner must provide when taking certain actions to recover overpaid amounts of PPLSC.

Section 42

Section 42 prescribes for subsection 115K(6) of the Act where the Commissioner must pay any underpaid amount of the PPLSC as determined by subsection 115K(3).

The Table at new subsection 42(1) operates in an identical manner as that described above in respect of section 39 as to how the Commissioner must decide where to direct the PPLSC payment.

Section 43

Section 43 prescribes for subsection 115K(8) of the Act the timeframes for the Commissioner’s underpayment determinations under section 115K.

Similar to sections 37 and 39 described above, the Commissioner must make any determinations under section 115K as soon as reasonably possible after the Commissioner has sufficient information to determine that the underpaid amount is to be paid for the person for the income year and to where it must be paid.

Unlike payment of the PPLSC itself pursuant to paragraph 115F(1)(d) and new subsection 39(2) of the Rules, payment of an underpaid amount into a recipient’s SHASA under paragraph 115K(4)(d) of the Act is not subject to a 2-year deferral. This is because an underpaid amount can only be determined after an initial PPLSC determination under section 115D has been made – and if this amount was paid into a SHASA then a 2-year period will have already passed since the person was first paid PLP for an income year. If, for example, a person’s PPLSC is paid into a SHASA in accordance with paragraph 115F(1)(d) and they later open an eligible account, then the operation of the Table to new subsection 42(1) of the Rules will function such that any underpaid amount will be paid into that account instead of the SHASA.

Section 44

Section 44 provides for subsection 115M(2) of the Act that the ‘payment date’ for an underpaid amount is 60 days after the Commissioner makes a determination under subsections 115K(4) and (5) in relation to where the underpaid amount is to be paid.

Section 45

Section 45 is made for the purposes of subsections 115P(3) and (7) of the Act.

Section 115P of the Act allows the Commissioner to take action to recover overpayments of PPLSC from a recipient’s superannuation provider, legal representative or SHASA, or from any PPLSC amount that is payable to the person.

Items 3 and 4 of the Table to subsection 115P(3) of the Act provide that such recoveries from a recipient’s superannuation provider or legal representative must be preceded by a notice sent by the Commissioner containing information prescribed the Rules.

Subsection 45(1) prescribes for item 3 of the Table in subsection 115P(3) of the Act the information that must be included in such a notice if it is issued to a recipient’s legal personal representative, which are:

- the person’s name;
- the person’s tax file number;
- the amount of the PPL superannuation contribution;
- the amount to be recovered;
- the date by which the amount to be recovered must be paid;
- the right to apply for a review under section 115ZF of the Act;
- the reason that the PPL superannuation contribution was overpaid.

Subsection 45(2) prescribes for item 4 of the Table in subsection 115P(3) of the Act the information that must be included in such a notice if it is issued to a superannuation provider, which are:

- the person’s name;
- the person’s account number;
- the person’s date of birth;
- the person’s tax file number (if quoted to the superannuation provider);
- the amount to be recovered;
- the date by which the amount to be recovered must be paid.

Subsection 115P(7) of the Act, relating to deductions from a PPLSC amount that is payable to a person but not yet paid, debits from a SHASA, and recoveries from a superannuation provider, mandates that the Commissioner must follow any such deductions, debits or recoveries with a notice to person or provider with information prescribed by the Rules. Subsection 43(3) prescribes the information that must be included in this notice, being:

- the person’s name;
- the person’s tax file number;
- the amount of the PPL superannuation contribution that included the overpayment;
- the income year for which that PPL superannuation contribution was paid;
- the amount of the overpayment;
- the amount of the deduction or debit;

- in the case of a deduction from a PPL superannuation contribution—the income year for which that PPL superannuation contribution is or was payable;
- the right to apply for a review under section 115ZF of the Act.

Item [6] In the appropriate position in Part 12

This item inserts a new Division 5 of Part 12 of the Rules and new section 90.

Section 90 provides that the amendments made by Schedule 1 of this instrument apply in relation to PPL funding amounts and instalments paid on or after 1 July 2025 for a child who is born on or after that day.

For the purposes of this application provision, sections 275 and 276 of the Act apply as it they were part of this item. This means, for example, that a child adopted after 1 July 2025 will be taken to have been ‘born’ after 1 July 2025 for the purposes of this application provision (thus ensuring the person who has a child entrusted to their care after that date can access the PPLSC in addition to their PLP entitlement if eligible). This also ensures that people who have claimed in exceptional circumstances will be able to access PPLSC if they became the child's primary carer on or after 1 July 2025.

Statement of Compatibility with Human Rights

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

Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Rules 2025

This Disallowable Legislative Instrument (the instrument) 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 Disallowable Legislative Instrument

The instrument amends the *Paid Parental Leave Rules 2021* (the Rules) to support the changes made by the *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Act 2024* (Amendment Act).

The Amendment Act introduced a superannuation contribution to the Commonwealth-funded Paid Parental Leave (PPL) Scheme in respect of children born on or after 1 July 2025 (or regarded as having been born on or after this date for the purposes of the Act), to be administered by the Commissioner of Taxation (Commissioner). These matters are contained in Chapter 3A of the *Paid Parental Leave Act 2010* (the Act) and provide for:

- the entitlement to the PPL superannuation contribution (PPLSC);
- calculation of the amount of a person's PPLSC for an income year, which will include a nominal interest rate amount;
- where a person's PPLSC should be directed;
- when the Commissioner must make determinations as to the amount of and where to direct a person's PPLSC;
- how the Commissioner is to correct underpayments and overpayments of the PPLSC, including by way of recovery from a person's PPLSC-payable, superannuation account and their legal personal representative;
- calculation of interest amounts that may be applied to underpayments;
- information the Commissioner must provide PPLSC recipients and superannuation providers in discharging functions under the Act;
- obligations on superannuation providers, and associated enforcement actions available to the Commissioner, in respect of dealing with a person's PPLSC; and
- a right of review for persons affected by a decision made by the Commissioner.

The Commissioner must make certain determinations and actions under Chapter 3A in accordance with any requirements specified in the Rules. The purpose of the instrument is to include Rules prescribing:

- a method for working out a multiplier amount that will be used to calculate the nominal interest rate amount for a person;

- rules for determining where a PPLSC payment should be directed and when it is to be paid;
- when the Commissioner must make determinations as to how much, and where to direct, the PPLSC and ultimately by when it must be paid;
- where underpayments of a PPLSC should be directed, and timeframes for determinations and payments in relation to underpaid amounts; and
- information to be provided to superannuation providers and other entities in respect of payments of PPLSC, and in relation to recovery of overpayments of PPLSC for a person.

This instrument establishes Rules to prescribe the above matters, which are necessary to allow the Commissioner to effect payments of the PPLSC.

Human rights implications

This instrument engages the following rights:

- The right to social security - Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 11(1)(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- The right to a standard of living and security – Article 25 of the Universal Declaration of Human Rights (UDHR);
- The right to just and favourable conditions of work – Article 7 of the UN Committee on Economic, Social and Cultural Rights;
- The right to protection and assistance for families Article 10(2) of the ICESCR;
- The right to maternity leave - Article 11(2)(b) of the CEDAW.

The right to social security

Article 9 of ICESCR recognises the right of everyone to social security, including social insurance.

Article 11(1)(e) of CEDAW recognises the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

The instrument engages these rights by ensuring the changes to the PPL scheme made by the Amendment Act can operate effectively, extending the benefits provided of the PPLSC to parents in their retirement.

The right to a standard of living and security

Article 25 of the UDHR recognises that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, and the right to security in the event of old age.

The addition of a superannuation contribution to the PPL scheme will help reduce the impact on retirement savings of taking time off work to care for a child after birth, supporting parents' standard of living and security in old age. The instrument supports the payment of the PPLSC which will contribute to these objectives.

The right to just and favourable conditions of work

The UN Committee on Economic, Social and Cultural Rights has commented that Article 7 of the ICESCR, regarding the right of everyone to the enjoyment of just and favourable conditions of work, 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 instrument supports the Amendment Act and maintains the ability for parents to continue to receive contributions towards their superannuation whilst taking Commonwealth-funded PPL, reducing the financial impact of taking time off work to care for children after a birth.

The right to protection and assistance for families

In relation to the right to protection and assistance for families, Article 10(2) of the ICESCR recognises that ‘the widest possible protection and assistance should be accorded to the family.’ During such period working mothers and parents should be allowed access to paid leave or leave with adequate social security benefits.

The instrument engages these rights by ensuring the changes in the Amendment Act can operate effectively to provide additional financial support to families, reducing barriers for parents in taking time off work to care for a child after a birth or adoption. The addition of a PPLSC to the PPL scheme will help to normalise parental leave as a workplace entitlement and reduce the impact of parental leave on retirement incomes.

The right to maternity leave

The right to maternity leave is contained within 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.’

The instrument supports the changes to the Amendment Act to increase the total amount of financial support available to eligible parents who take time off work to care for a child after a birth or adoption. The changes also enable parents to continue to receive contributions towards their superannuation when they take time off work, similar to the payment of superannuation on employer-provided leave entitlements.

Conclusion

The instrument is compatible with human rights because it impacts the right to social security, a standard of living and security, just and favourable conditions of work, protection and assistance for families, equal treatment and maternity leave in a beneficial manner.

The Hon Tanya Plibersek MP
Minister for Social Services