

Historic Legislation meets Senate approval Paid Parental Leave Entitlements are here!

Australia's first national paid parental leave scheme has officially passed the vote of the Senate which from next year, will provide 18 weeks parental leave paid at the minimum wage.

The Paid Parental Leave Bill 2010 as passed, provides that a person will be eligible for paid parental leave if they meet the set criteria, including:

- satisfy the work test (ie have performed qualifying work during the work test period)
- satisfy the income test (ie the person's adjusted taxable income is less than \$150,000 indexed)
- satisfy the Australian residency test
- be the child's primary carer
- not have returned to work, and
- not be entitled to a baby bonus(which is now restricted to primary carers of a child who earn less than \$75,000 per annum).

From 1 January to 30 June 2011, employers have the option to choose whether or not to provide paid parental leave to their eligible employees. This will become a requirement for employers from 1 July 2011 for eligible employees with more than 12 months continuous service.

A key amendment to the Bill requires employers to provide the statutory entitlement "in addition to any other obligation" they have to their employees.

Prior to this amendment it was anticipated that employers would be able to absorb the statutory entitlements to any current requirements in place. For example,

- if existing requirements made provision for 12 weeks paid parental leave this would be "topped up" by a further six weeks to meet the 18 week statutory requirement; or
- amending current paid parental leave provisions to provide that employer payment will be reduced by any amounts received under the scheme.

The change means that employers will be prohibited from using the Government scheme to offset paid parental leave benefits they are required to provide employees under industrial instruments or other laws. So, if an employer is currently required under an existing contract to make provision for 12 weeks paid parental leave, as of 1 July 2011, this entitlement will exist in addition to the 18 week paid statutory entitlement, effectively bringing the paid entitlement to a total of 30 weeks.

The provision will not extend to paid parental leave schemes contained in non-binding company policies. However, it is not limited to paid parental leave but extends to “paid leave” which may include paid parental leave but also periods of annual leave or long service leave. The amendment makes it clear that an employer is obliged to pay the employee's full paid leave entitlement in addition to the instalments of parental leave pay payable under the scheme.

For further details about the Paid Parental Leave Bill please contact **Andrew Bland at abland@blandslaw.com.au**