

## This edition:

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## Federal Government's Paid Parental Leave scheme

The Federal Government's Paid Parental Leave scheme started on 1 January 2011. The scheme complements employees' entitlement to unpaid parental leave under the National Employment Standards.

The scheme is a significant step forward for Australian employees. However, there are a number of technical traps that employees should know. This update summarises the key elements of the scheme and highlights some areas to watch out for.

### What does the scheme provide?

Eligible working parents can receive up to 18 weeks of paid parental leave. Parental leave pay is a fixed rate for all eligible parents - regardless of their income - and is calculated by reference to the national minimum wage. The current rate is \$570 per week and will be indexed from mid-2012.

The payments are taxable income. Tax will be deducted and payments will be recorded on end of financial year employment statements. Employers are not required to make superannuation contributions on the payments.

### Who is eligible?

The payments are available to an employee who:

- has the primary care of a child born or adopted after 1 January 2011
- is an Australian resident or citizen
- meets the 'work test' immediately before the birth or adoption of the child
- received a taxable income of \$150 000 or less during the previous financial year (individual income – not family income), and
- has taken leave from their workplace, or not engaged in paid work, from the birth of the baby or adoption of the child.

### What is the work test?

To be eligible for the payment, the primary carers must have:

- worked for at least 10 of the 13 months prior to the birth or adoption of the child
- worked for at least 330 hours during that 10 month period, and

- have had no more than an eight-week gap between consecutive working days, with at least one hour of work being performed.

### When can an employee claim?

The earliest a claim can be made is 97 days prior to the expected date of birth or adoption. The last date that a claim can be made is the day before the child's first birthday, or the first anniversary of the child's placement (in the case of adoption).

However, employees need to remember that if a claim is made less than within 18 weeks before the child's first birthday or anniversary of placement, the claimant is only eligible to claim for the period up to the first anniversary. This means that a employee claiming in this period will not receive the full 18 weeks' benefit.

### How does an employee claim?

The Family Assistance Office (FAO) assesses every claim for paid parental leave, even where the payments will be made through the person's employer. The FAO will make a payability determination. The FAO will also make a determination as to whether the paid parental leave must be administered by the person's employer, or through the FAO.

Applications for Paid Parental Leave are not made to employers directly, even when the employer will facilitate the payments.

### Can the Government funded leave be combined with other types of leave?

Paid Parental Leave can be received before, after or at the same time as other entitlements, including employer-provided paid parental leave.

### Who pays?

Paid Parental Leave is funded by the Federal Government. However, for many employees, it will be paid by their employer who, in turn, receives funding for the payments directly from the Government.

Until 1 July 2011, payments to employees can be made directly by the Family Assistance Office. From 1 July 2011, the employer must provide the parental leave pay to employees who have (*see overleaf*):

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- worked for the employer for at least 12 months before the birth or adoption of the child
- are Australian-based employees, and
- are entitled to at least eight weeks of paid leave.

In other cases, the Family Assistance Office will continue to provide the payment.

### **When does the entitlement cease?**

#### **On return to work**

The entitlement to Paid Parental Leave ceases once an employee returns to work. A person is deemed to have returned to work when they perform one or more hours of paid work on a single day. This means that if an employee performs even a single hour of paid work, they cease to be eligible. If they are already receiving payments at the time they return to work, their entitlement to any remaining weeks' benefit ceases from the time they perform the work.

However, employees are entitled to 10 'keeping in touch' days while on leave. A 'keeping in touch' day is a working day that allows an employee to keep in touch with their place of work or that facilitates their return to work after their leave. Training or planning days and attendance at conferences are examples of 'keeping in touch' activities. Ordinary work activities are not 'keeping in touch' days.

#### **If you are relying on the NES entitlement to 12 months unpaid parental leave**

However, an employee who returns to work for a 'keeping in touch day' may lose their entitlement to 12 months unpaid parental leave under the National Employment Standards – and the protections that go with it, such as the right to return to their substantive role. This is because the NES requires unpaid parental leave to be taken in a single continuous block. A 'keeping in touch day' may break the single continuous block.

The Federal Government has announced plans to amend the NES to allow employees to take 'keeping in touch days' without affecting their NES entitlement. In the interim, employees should:

- ensure that if they plan to undertake ad hoc work it falls within the definition of 'keeping in touch', and/or
- avoid any paid work if they are relying on the 12 month unpaid parental leave provisions in the NES.

#### **Childcare arrangements**

Employees should also be mindful that full-time child care may impact on their entitlement. The claimant must remain the child's primary carer. Care of the child cannot be allocated to another person or organisation for more than a reasonable period. The consideration of what is reasonable includes respite for the primary carer. However, a person is likely to cease being the primary carer if the child is in child care for a substantial amount of time. If they cease to be eligible, their entitlement to payments also ceases.

### **Can carers transfer their entitlements to secondary or tertiary carers?**

The Paid Parental Leave scheme contemplates that one person will be the eligible primary carer for the child for the full 18 weeks. However, it provides for transfer provisions to secondary and, in some cases, tertiary carers. In eligible cases, the primary carer may transfer the balance of their entitlement to a person who takes over the role of primary carer. However, the new primary carer cannot claim the 18 week entitlement again.

A employee who plans to return to work or otherwise ceases to be the primary carer, should look to utilise the transfer provisions if possible to maximise the benefit they can receive.

### **Where can I get more information?**

Your union may be able to assist you with more detailed information. A comprehensive Paid Parental Leave guide is available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au). If you are experiencing employment difficulties arising from your parental leave, you may wish to make an appointment to see one of our employment lawyers by calling **1800 810 812**.



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## Fight of a lifetime for union member

Sometimes knowing there's someone on your side can make all the difference in the world. That was certainly the case for an AWU member who suffered a number of accidents while working for Visy.

"If I hadn't been in the union, I probably wouldn't be here now," Joe\* said.

"The union was there for me, they really were.

"It makes a huge difference [to have the union and lawyers on your side]."

The father of three fought Visy for several years after he hurt his shoulder at work, returning only to hurt his other shoulder.

His poor and unfair treatment by Visy over his injuries led to a mental breakdown, and Joe lost his marriage and house as a result.

"I lost everything I had," he said.

"It caused the break-up of my marriage, I lost property, I lived out of my car for quite some time."

Joe believed he did everything right when he was injured. He went to the company's doctor and didn't question the medical opinion.

However, as soon as the doctor said Joe needed an operation, Visy's approach towards Joe changed and they tried to sack him, which led to the mental breakdown.

The AWU got involved, and they recommended that Joe should talk to Maurice Blackburn about his WorkCover and compensation rights.

Joe saw Salvatore Giandinoto at Maurice Blackburn's Reservoir office.

"We took on Joe's case and fought hard for his rights," Mr Giandinoto said.

"Usually compensation claims settle out of court, but Visy refused to budge and initially didn't offer Joe anything at all.

"We knew this was very unfair and we fought to get Joe a substantial payout that will help him move on with life.

"It took a lot for Joe to stand up to Visy when the company continually knocked his courage and questioned what he said.

"Joe's a wonderful guy who suffered a great deal as a result of his treatment at work. I am honoured to have represented him and to get him the outcome he deserves."

## "Unions now are needed more than ever."

Joe said WorkCover seemed to be stalling and blocking his claim every step of the way but there was a "big change of attitude" as soon as Maurice Blackburn got involved, citing medical expenses that were suddenly paid to him.

Joe still gets pain in his shoulders when he tries to do things and he can't live the active life that he used to such as water skiing, although he's got hopes of one day riding a horse again.

He said he is very happy with the settlement.

"I can actually start moving on," he said.

"I can get my life back together again and start the healing process."

Joe said he is "really grateful" to the union and Maurice Blackburn.

"I would absolutely recommend the union and Maurice Blackburn to others," he said.

## Payout win for injured Gold Coast truckie

A Gold Coast truck driver has won a seven year battle against an insurance company which refused to recognise his back injury. Brett Goodin, now 47, has been awarded a substantial disability insurance benefit that CommInsure denied him since 2005.

Maurice Blackburn Associate Melissa Payne said the Queensland District Court found that Mr Goodin was totally and permanently disabled and entitled to the lump sum benefit.

The father of three children had only worked as a manual labourer, security officer and truck driver. The court found that he was no longer able to do work for which he's skilled.

Mr Goodin first claimed with CommInsure after a back injury at work forced him to stop work as a truck driver. After CommInsure rejected Mr Goodin's claim twice, Maurice Blackburn took his case to the District Court and won.

"The practical reality was that Mr Goodin was unemployable and the court agreed with this. Although the award made to Mr Goodin will not replace an income for him for the rest of his life, it provides some security to him for the immediate future - security that has been sorely lacking over the last seven years," Ms Payne said.

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## Law firm takes step towards Aboriginal reconciliation

National law firm Maurice Blackburn chose 'Close the Gap' Day to launch its first Reconciliation Action Plan, on 24 March.

The plan was officially launched by prominent Aboriginal barrister Munya Andrews at the firm's head office in Melbourne.

"It is marvelous to see a high tiered law firm use 'dirty words' such as 'reconciliation' and 'respect'," Ms Andrews said.

She particularly welcomed the work that Maurice Blackburn is involved with for Aboriginal people not consulted about a nuclear waste dump at Muckaty Station in the Northern Territory.

"It's great to have policies but they have to have practical measures," Ms Andrews said.

Maurice Blackburn Chief Executive Greg Tucker said the firm had been dedicated to Aboriginal issues for many years.

"Australia has a reputation as a developed country where there's a fair go for all," Mr Tucker said.

"We developed our plan in consultation with Reconciliation Australia and Aboriginal and Torres Strait Islander representative bodies including the Aboriginal Law Students and Lawyers Association of Victoria, Tarwirri.

"This plan is about action, not lip service. It's a plan that we will continually work towards and update as we progress.

"We have a long history of fighting for social change and justice, and we value fairness and equality.

"The priorities we have set out in our plan are to:

- promote and provide access to justice
- provide enhanced employment opportunities for Aboriginal and Torres Strait Islander Australians
- facilitate positive cultural change within and outside Maurice Blackburn
- develop and extend our relationships with local Aboriginal and Torres Strait Islander peoples, representative bodies and businesses.

The plan will be reviewed and revised annually.



Above: Tarwirri executive officer Aislinn Martin, barrister and guest speaker Munya Andrews, Maurice Blackburn Social Justice Practice Indigenous and Land Rights Sub-Committee member Janet Van der Kolk and Maurice Blackburn trainee lawyer Kaylene Hunter at the launch of the law firm's Aboriginal Reconciliation Action Plan on Close the Gap Day in Melbourne.

## Maurice Blackburn launches interactive "Fight for fair" website

We recognise that people now place more importance in information like opinions of clients, and they like to interact with a business rather than just viewing static information. The new Maurice Blackburn website [fightforfair.com.au](http://fightforfair.com.au) delivers this and brings the firm to life.

The website demonstrates how we fight for fair by including short videos from clients explaining how Maurice Blackburn has helped them. There is a section on our commitment to social justice and community involvement, with an interactive forum for people to comment on activities or ask legal questions online.

Another fun feature of the website is our tv ads, where you can view the ads and some behind-the-scenes comments from our

lawyers who swapped the court room for the camera for a day.

This website is a complimentary extension to the existing website [mauriceblackburn.com.au](http://mauriceblackburn.com.au) and features additional content that gives users an insight into the type of firm we are and the people who work here.

We're really proud of our new website and it's now your chance to do your bit and help us by telling your friends, family and most importantly, referrers, about what we're doing.

Click here to view the website for yourself and explore the latest client stories, news and community involvement - you won't be disappointed!

# Fight for fair!

Maurice Blackburn fights for the rights of everyday Australians. See how we're taking on the banks for charging unfair fees, and how we're fighting for justice for other Australians treated unfairly.

▶ Fighting for you