

54 Who can make a primary claim, secondary claim or tertiary claim

Primary claim

- (1) Only the following people can make a primary claim for a child:
- (a) the child's birth mother;
 - (b) an adoptive parent of the child;
 - (c) a person who satisfies the circumstances prescribed by the PPL rules as being exceptional circumstances in which a primary claim can be made.

Secondary claim

- (2) Only the following people can make a secondary claim for a child:
- (a) the partner of a primary claimant;
 - (b) a person who:
 - (i) is a parent of the child; and
 - (ii) is not the primary claimant;
 - (c) a partner of a person covered by paragraph (b);
 - (d) a person who satisfies the circumstances prescribed by the PPL rules as being exceptional circumstances in which a secondary claim can be made.

Tertiary claim

- (3) Only a person who satisfies the circumstances prescribed by the PPL rules as being exceptional circumstances in which a tertiary claim can be made can make a tertiary claim for a child.

Subdivision 2.4.1.3 Exceptional circumstances for tertiary claims

2.35 Who can make a tertiary claim

- (1) This Subdivision is made for subsection 54 (3) of the Act and prescribes the circumstances that are exceptional circumstances in which a tertiary claim can be made for a child.
- (2) A person who satisfies the circumstances prescribed by this Subdivision can make a tertiary claim.

2.36 Exceptional circumstances for tertiary claimants — general

- (1) The circumstances are as follows:
- (a) the person has, and is likely to continue to have, care of the child for at least 26 weeks;
 - (b) the child was not entrusted to the care of the person, or to the care of the person's partner, under a decision by a State or Territory child protection agency under legislation dealing with child protection in the State or Territory;

- (c) if the person has previously been the primary claimant for the child — either:
 - (i) the secondary claimant had care of the child in exceptional circumstances and those circumstances have ceased to apply; or
 - (ii) the secondary claimant is incapable of caring for the child and is likely to be incapable of caring for the child for at least 26 weeks; and
 - (d) if the person has not previously been the primary claimant for the child — the person is covered by subrule (2).
- (2) For paragraph (1) (d), a person is covered by this subrule if any of the following apply:
- (a) the primary claimant and the secondary claimant are incapable of caring for the child and are likely to be incapable of caring for the child for at least 26 weeks;
 - (b) the Secretary is satisfied on reasonable grounds that:
 - (i) the person became the primary carer of the child in special circumstances; and
 - (ii) it would be unreasonable for the primary claimant and secondary claimant to care for the child; and
 - (iii) it is in the interests of the child for the person to care for the child.

Note For what is unreasonable and in the interests of the child, see rule 2.37.

2.37 Unreasonableness and interests of child

- (1) For subparagraph 2.36 (2) (b) (ii), it is unreasonable for a person to care for the child if the Secretary is satisfied on reasonable grounds that:
- (a) there has been extreme family breakdown, or similar circumstances, in relation to the child's family situation; or
 - (b) there is a serious risk to the child's physical or mental wellbeing from violence, neglect or sexual abuse in the child's family situation.
- (2) For subparagraph 2.36 (2) (b) (iii), in considering what is in the interests of the child, the Secretary is to consider the arrangements for the child's care with the person in comparison with the arrangements for the child's care in the child's previous family situation.

Example

The Secretary may consider that it is in the interests of the child for the person to care for the child if the primary claimant or secondary claimant refuse to provide any care for the child or because the child is severely disabled and neither the primary claimant nor the secondary claimant is able to provide for the child's needs.