

## **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.

## **2.28 Exceptional circumstances for primary claimants — general**

- (1) Subject to rule 2.30, the circumstances are that the person:
- (a) has, and is likely to continue to have, care of the child for at least 26 weeks; and
  - (b) became, or will become, the child's primary carer:
    - (i) before the child's first birthday; or
    - (ii) for an adopted child — before the first anniversary of the day of placement of the child; and
  - (c) is covered by subrule (2); and
  - (d) if rule 2.29 applies to the person — satisfies the circumstances mentioned in subrule 2.29 (2).
- (2) For paragraph (1) (c), a person is covered by this subrule if:
- (a) the birth mother, or adoptive parent, of the child is incapable of caring for the child and will be incapable, or is likely to be incapable, of caring for the child for at least 26 weeks; or
  - (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 birth mother, or adoptive parent, of the child 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 2.31.

(Paid Parental Leave Rules 2010)

## **2.31 Unreasonableness and interests of child**

- (1) For subparagraphs 2.28 (2) (b) (ii) and 2.29 (2) (c) (ii), it is unreasonable for a person to care for the child if the Secretary is satisfied 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 subparagraphs 2.28 (2) (b) (iii) and 2.29 (2) (c) (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 child's birth mother refuses to provide any care for the child or because the child is severely disabled and the mother is incapable of providing for the child's needs.

(Paid Parental Leave Rules 2010)

## **1.4 Meaning of *incapable of caring for a child***

- (1) A person is *incapable of caring for a child* on a day if, on that day:
  - (a) there is a parenting order in force resulting in the person not providing care for the child; or
  - (b) the person is deceased; or
  - (c) the person is in prison or otherwise institutionalised; or
  - (d) the person's whereabouts are unknown; or
  - (e) the person suffers from a medical condition that makes the person incapable of providing care for the child; or
  - (f) the Secretary is satisfied that the person is, for a reason outside the control of the person, incapable of providing care for the child.
- (2) The person is not incapable of caring for a child if the person voluntarily chooses not to provide care for the child.

### *Example*

A person may voluntarily choose not to provide care for a child by deciding to travel overseas on a holiday or to visit relatives or friends or by deciding to look after other relatives.

(Paid Parental Leave Act 2010)

## **Division 6—Primary carer**

### **47 When a person is the *primary carer* of a child**

- (1) A person is the *primary carer* of a child on a day in the person's reference period if:
  - (a) the child is in the person's care in that period; and
  - (b) the person meets the child's physical needs more than anyone else in that period.
- (2) A person's *reference period* is the period that is determined by the Secretary for the purposes of making a payability determination on the person's claim.
- (3) Only one person can be a child's primary carer on a particular day.
- (4) Despite subsection (1), a person is not the *primary carer* of a child on a day if, before that day, the child has died.