

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 2.4.1.2 Exceptional circumstances for secondary claims

2.32 Who can make a secondary claim

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

2.33 Exceptional circumstances for secondary 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 is the partner of the primary claimant for the child — the primary claimant 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;
 - (d) if the person is not the partner of 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 primary claimant's partner 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 or the primary claimant's partner 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 2.34.

2.34 Unreasonableness and interests of child

- (1) For subparagraph 2.33 (2) (b) (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 subparagraph 2.33 (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 refuses to provide any care for the child or because the child is severely disabled and the primary claimant is incapable of providing for the child's needs.

(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.