

## **2.29 Exceptional circumstances — primary claimants who have no specific relationship with child**

- (1) This rule is made for paragraph 2.28 (1) (d) and applies to a person who is not:
  - (a) the partner of the birth mother of the child; or
  - (b) for an adopted child — the partner of the adoptive parent of the child; or
  - (c) for parents who are divorced or separated:
    - (i) the other legal parent of the child; or
    - (ii) the partner of the other legal parent of the child.
- (2) For a person to whom this rule applies, the circumstances are as follows:
  - (a) the partner of the birth mother, or of the adoptive parent, is incapable of caring for the child;
  - (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) 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 partner of the child's birth mother, or the partner of the child's adoptive parent, 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.

## **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 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.