

*Your responses suggest that you may be able to make an effective tertiary claim for PPL.*

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

### *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.

## **2.33 Exceptional circumstances for secondary claimants — general**

- (1) The circumstances are as follows:
  - (c) if the person has previously been the primary claimant for the child — either:
    - (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

## **55 When a claim is effective**

- (1) A claim for parental leave pay is not effective unless the requirements of the following provisions that apply to the claim are satisfied:
  - (a) section 56 (which deals with the form etc. of the claim);
  - (b) section 57 (which deals with the nominated start date);
  - (c) section 58 (which deals with expected date of birth etc.);
  - (d) section 59 (which deals with tax file number statements);
  - (e) section 60 (which deals with when to make the claim).
- (2) A claim for parental leave pay is also not effective if it is made by a person who cannot make that type of claim under section 54.
- (3) A claim for parental leave pay that is not effective is taken not to have been made.

## **56 Requirements of the claim**

- (1) The claim for parental leave pay must:
  - (a) be made in the form approved, and the manner required, by the Secretary for that type of claim; and
  - (b) contain any information (including information about the claimant's employer or the claimant's employment with that employer) required by the Secretary; and
  - (c) be accompanied by any documents required by the Secretary.

- (2) For the purposes of paragraphs (1)(b) and (c), the Secretary may require that different information be contained in, and different documents accompany:
- (a) different types of claims; or
  - (b) different claims of the same type of claim.

## 57 Nominated start date

- (1) If the claim is a primary claim, the claim must state a specific date (the ***nominated start date***) on which the primary claimant wants parental leave pay to start being paid.
- Note 1: For the purposes of subsection (1), “6 months after the birth of the child” would not be a specific date. However, the “date of birth of the child” would be.
- Note 2: Even though a primary claimant nominates a specific date, parental leave pay may not be payable from that date because, for example, the primary claimant has not verified the child’s birth before that date: see subsection 11(4).
- (2) Before a payability determination is made on the primary claim, the primary claimant may change his or her nominated start date by notifying the Secretary of the new nominated start date.
- (3) If a payability determination is made that parental leave pay is payable to the primary claimant, the primary claimant may only change his or her nominated start date (the ***old date***) by:
- (a) notifying the Secretary, before the old date, of the new nominated start date; and
  - (b) nominating a new nominated start date that is on or after the day the person notifies the Secretary of the change.

## 58 Expected date of birth and expected day of primary care

### *Primary claim*

- (1) If the claim is a primary claim and it is made before the child’s birth, the claim must specify the child’s expected date of birth.

### *Secondary claim*

- (2) If the claim is a secondary claim and it is made before the day the secondary claimant expects to become the child’s primary carer, the claim must specify the day the claimant expects to become the child’s primary carer.

## 59 Tax file number statement

- (1) The claim for parental leave pay must contain the person’s ***tax file number statement***, which is a statement of the kind set out in subsection (2), (3) or (4).

### *Statement of tax file number*

- (2) The first kind is a statement of the person’s tax file number.

### *Statement that person does not know his or her tax file number*

- (3) The second kind is a statement that the person:
- (a) has a tax file number but does not know what it is; and

- (b) has asked the Commissioner of Taxation to inform the person of his or her tax file number; and
- (c) authorises the Commissioner of Taxation to tell the Secretary:
  - (i) whether the person has a tax file number; and
  - (ii) if the person has a tax file number—that number.

*Statement that an application for a tax file number is pending*

- (4) The third kind is a statement that the person:
  - (a) has an application for a tax file number pending; and
  - (b) authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—that number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn.

Parental leave pay is paid to a person for a particular period. That period is called the person's PPL period. The maximum period for which any person may be paid parental leave pay is 18 weeks. A person's PPL period may be the full 18 weeks or a lesser period (e.g. where the person is not eligible for parental leave pay for that full period).

## **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.

## **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.