

15 Determination on primary and secondary claims made jointly— secondary claimant to get all the parental leave pay

When a claim is to be determined under this section

- (1) If:
- (a) a primary claimant has made an effective primary claim for parental leave pay for a child; and
 - (b) a secondary claimant has made an effective secondary claim for parental leave pay for the child at the same time; and
 - (c) in the primary claim, the primary claimant requested that the secondary claimant be paid the full amount of parental leave pay that is or may be payable for the child;
- the Secretary must make a determination on the primary claim and the secondary claim under this section.

When parental leave pay is not payable to primary claimant

- (2) The Secretary must determine that parental leave pay is not payable to the primary claimant.

When parental leave pay is payable to secondary claimant

- (3) The Secretary must determine that parental leave pay is payable to the secondary claimant for the secondary claimant's PPL period if, when making the determination, the Secretary is satisfied that:
- (a) the primary claimant:
 - (i) satisfies the work test and income test on that day; and
 - (ii) satisfied the Australian residency test on the day the child was born; and
 - (iii) is, if the day the child was born is in a newly arrived resident's waiting period the primary claimant is subject to under section 31A, a person to whom subsection 31A(7) or (7A) applies on the day the child was born; and
 - (b) the secondary claimant was or will be eligible for parental leave pay on each day in the secondary claimant's PPL period; and
 - (c) if the secondary claimant's PPL period starts after the day the child was born—subsection (4) applies to the period that:
 - (i) starts on the day the child was born; and
 - (ii) ends on the day before the start of the secondary claimant's PPL period.

Note: The Secretary is prevented from making a determination under this subsection in certain circumstances: see Division 3.

- (4) This subsection applies to the period referred to in paragraph (3)(c) if:
- (a) the primary claimant was or will be eligible for parental leave pay on each day in that period; or
 - (b) the secondary claimant was or will be eligible for parental leave pay on each day in that period; or
 - (c) both of the following are satisfied:
 - (i) the primary claimant was or will be eligible for parental leave pay on each day in the first part of that period;
 - (ii) the secondary claimant was or will be eligible for parental leave pay on each day in the last part of that period.

Secondary claimant's PPL period

- (5) The Secretary must specify in the determination under subsection (3) that the secondary claimant's PPL period:
- (a) starts on the maximum PPL period start day; and
 - (b) ends on:
 - (i) if the Secretary is satisfied that the secondary claimant was or will be eligible on each day in the child's maximum PPL period—the child's maximum PPL period end day; or
 - (ii) if the Secretary is satisfied that the secondary claimant was or will be eligible for a period that is shorter than the child's maximum PPL period—the last day in the child's maximum PPL period that the Secretary is satisfied that the secondary claimant was or will be eligible.

When parental leave pay is not payable to secondary claimant

- (6) The Secretary must determine that parental leave pay is not payable to the secondary claimant if the Secretary is not satisfied of the matters in subsection (3).