



# **Paid Parental Leave Rules 2010<sup>1</sup>**

*Paid Parental Leave Act 2010*

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I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make these Rules under section 298 of the *Paid Parental Leave Act 2010*.

Dated 22 December 2010

JENNY MACKLIN

Minister for Families, Housing, Community Services and Indigenous Affairs

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## **Part 1-1            Introduction**

### **1.1        Name of Rules**

These Rules are the *Paid Parental Leave Rules 2010*.

### **1.2        Commencement**

These Rules commence on the day after they are registered.

**Rule 1.3**

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**Part 1-2 Definitions****1.3 Definitions**

In these Rules:

*Act* means the *Paid Parental Leave Act 2010*.

*incapable of caring for a child* has the meaning given by rule 1.4.

*parenting order* has the meaning given by subsection 64B (1) of the *Family Law Act 1975*.

*parenting plan* has the meaning given by subsection 63C (1) of the *Family Law Act 1975*.

**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.

## **Part 2-3 Eligibility for parental leave pay**

### **Division 2.3.1 When a person is eligible for parental leave pay**

#### **Subdivision 2.3.1.1 When a primary claimant is eligible for parental leave pay**

##### **2.1 When primary claimant is eligible for parental leave pay**

This Subdivision is made for subparagraph 31 (4) (a) (iv) of the Act and prescribes the conditions that a person who is a primary claimant must satisfy to be eligible for parental leave pay for a child.

*Note* Under paragraph 31 (4) (a) of the Act, a primary claimant must satisfy the work test, the income test and the Australian residency test in addition to the conditions prescribed by this Subdivision.

##### **2.2 Conditions — primary claimants**

- (1) The conditions are that:
  - (a) the person:
    - (i) is the primary carer of the child; or
    - (ii) satisfies the requirements of rule 2.3 or rule 2.4; or
    - (iii) satisfies the requirement of rule 2.6; and
  - (b) the person:
    - (i) has not returned to work, unless paragraph 2.6 (b) applies; or
    - (ii) if the person satisfies the requirements of rule 2.4 — has returned to work only for the period the child is not in the person's care; or
    - (iii) satisfies the requirements of rule 2.5; and
  - (c) the person is covered by subrule (2).
- (2) A person is covered by this subrule if both of the following are satisfied:
  - (a) the person and the person's partner are not entitled to baby bonus for the child;
  - (b) a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

##### **2.3 Care requirements for primary claimants — temporary inability to care**

For subparagraph 2.2 (1) (a) (ii), the requirements are as follows:

- (a) the person will be, or previously was, the primary carer of the child;

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- (b) the person is temporarily unable to be the primary carer of the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 2.4 (b);
- (c) the period of the temporary inability is likely to be less than 26 weeks;
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day;
- (e) the Secretary is satisfied that the person would have been the child's primary carer except for the person's temporary inability to be the child's primary carer.

**2.4 Care requirements for primary claimants — loss of care for child**

For subparagraph 2.2 (1) (a) (ii), the requirements are that:

- (a) the person previously was the primary carer of the child; and
- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent — the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and
- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day.

**2.5 Work requirements for primary claimants — recall to duty**

For subparagraph 2.2 (1) (b) (iii), the requirements are that the person:

- (a) is a defence force member; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

**2.6 Birth mother relinquishing child**

For subparagraph 2.2 (1) (a) (iii), the requirement is that, on a day that is within 18 weeks of the child's birth, the person is the birth mother of the child and is not caring for the child because:

- (a) the person relinquished the child:
  - (i) as part of the process for the adoption of the child; or
  - (ii) because the child was born of a surrogacy arrangement; or
  - (iii) because the child was removed from the person's care by a State or Territory child protection agency; or



- (b) both the following apply:
- (i) the child is stillborn or has died before that day;
  - (ii) the person would have relinquished the child in the circumstances mentioned in paragraph (a) had the child not been stillborn or died.

### **Subdivision 2.3.1.2 When a secondary claimant is eligible for parental leave pay**

#### **2.7 When a secondary claimant is eligible for parental leave pay**

This Subdivision is made for paragraph 31 (4) (b) of the Act and prescribes the conditions that a person who is a secondary claimant must satisfy to be eligible for parental leave pay for a child.

#### **2.8 Conditions — secondary claimants in normal circumstances**

- (1) The conditions in this rule apply to a person:
- (a) who is the partner of a primary claimant; or
  - (b) who:
    - (i) is a parent of the child; and
    - (ii) is not the primary claimant; or
  - (c) who is a partner of a person covered by paragraph (b).
- (2) The conditions are that:
- (a) the person satisfies the work test; and
  - (b) the person satisfies the income test; and
  - (c) the person satisfies the Australian residency test; and
  - (d) the person:
    - (i) is the primary carer of the child; or
    - (ii) satisfies the requirements of rule 2.9 or rule 2.10; and
  - (e) the person:
    - (i) has not returned to work; or
    - (ii) if the person satisfies the requirements of rule 2.10 — has returned to work only for the period the child is not in the person's care; or
    - (iii) satisfies the requirements of rule 2.11; and
  - (f) the person is covered by subrule (3).
- (3) A person is covered by this subrule if both of the following are satisfied:
- (a) the person and the person's partner are not entitled to baby bonus for the child;

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- (b) a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

*Note* The conditions that apply to a person who makes a secondary claim in exceptional circumstances are set out in rule 2.12.

**2.9 Care requirements for secondary claimants — temporary inability to care**

For subparagraph 2.8 (2) (d) (ii), the requirements are as follows:

- (a) the person will be, or previously was, the primary carer of the child;
- (b) the person is temporarily unable to be the primary carer of the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 2.10 (b);
- (c) the period of the temporary inability is likely to be less than 26 weeks;
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day;
- (e) the Secretary is satisfied that the person would have been the child's primary carer except for the person's temporary inability to be the child's primary carer.

**2.10 Care requirements for secondary claimants — loss of care for child**

For subparagraph 2.8 (2) (d) (ii), the requirements are that:

- (a) the person previously was the primary carer of the child; and
- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent — the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and
- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day.

**2.11 Work requirements for secondary claimants — recall to duty**

For subparagraph 2.8 (2) (e) (iii), the requirements are that the person:

- (a) is a defence force member; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

**2.12 Conditions — secondary claimants in exceptional circumstances**

- (1) The conditions in this rule apply to a person who satisfies the exceptional circumstances prescribed by Subdivision 2.4.1.2 for making a secondary claim.
- (2) The conditions are that:
  - (a) the person satisfies the Australian residency test; and
  - (b) the person:
    - (i) is the primary carer of the child; or
    - (ii) satisfies the requirements of rule 2.13 or rule 2.14; and
  - (c) the person:
    - (i) has not returned to work; or
    - (ii) if the person satisfies the requirements of rule 2.14 — has returned to work only for the period the child is not in the person's care; or
    - (iii) satisfies the requirements of rule 2.15 or rule 2.16; and
  - (d) the person is covered by subrule (3).
- (3) A person is covered by this subrule if both of the following are satisfied:
  - (a) the person and the person's partner are not entitled to baby bonus for the child;
  - (b) a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

**2.13 Exceptional circumstances care requirements for secondary claimants — temporary inability to care**

For subparagraph 2.12 (2) (b) (ii), the requirements are as follows:

- (a) the person will be, or previously was, the primary carer of the child;
- (b) the person is temporarily unable to be the primary carer of the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 2.14 (b);
- (c) the period of the temporary inability is likely to be less than 26 weeks;
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day;
- (e) the Secretary is satisfied that the person would have been the child's primary carer except for the person's temporary inability to be the child's primary carer.

**2.14 Exceptional circumstances care requirements for secondary claimants — loss of care for child**

For subparagraph 2.12 (2) (b) (ii), the requirements are that:

- (a) the person previously was the primary carer of the child; and

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- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent — the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and
- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day.

**2.15 Exceptional circumstances work requirements for secondary claimants — recall to duty**

For subparagraph 2.12 (2) (c) (iii), the requirements are that the person:

- (a) is a defence force member; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

**2.16 Exceptional circumstances work requirements for secondary claimants — working while care arrangements being settled**

For subparagraph 2.12 (2) (c) (iii), the requirements are that:

- (a) the person performed paid work, other than for a permissible purpose, on a day or days during the period commencing immediately after the primary claimant stopped caring for the child and ending when the care arrangements for the child were settled; and
- (b) care arrangements for the child were settled within a reasonable time after the primary claimant stopped caring for the child.

**Subdivision 2.3.1.3 When a person is eligible for parental leave pay — tertiary claimant**

**2.17 When a tertiary claimant is eligible for parental leave pay**

This Subdivision is made for paragraph 31 (4) (b) of the Act and prescribes the conditions that a person who is a tertiary claimant must satisfy to be eligible for parental leave pay for a child.

**2.18 Conditions — tertiary claimants**

- (1) The conditions are that:
  - (a) the person satisfies the Australian residency test; and
  - (b) the person:
    - (i) is the primary carer of the child; or

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- (ii) satisfies the requirements of rule 2.19 or rule 2.20; and
  - (c) the person:
    - (i) has not returned to work; or
    - (ii) if the person satisfies the requirements of rule 2.20 — has returned to work only for the period the child is not in the person's care; or
    - (iii) satisfies the requirements of rule 2.21 or 2.22; and
  - (d) the person is covered by subrule (2).
- (2) A person is covered by this subrule if both of the following are satisfied:
- (a) the person and the person's partner are not entitled to baby bonus for the child;
  - (b) a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

**2.19 Care requirements for tertiary claimants — temporary inability to care**

For subparagraph 2.18 (1) (b) (ii), the requirements are that:

- (a) the person will be, or previously was, the primary carer of the child; and
- (b) the person is temporarily unable to be the primary carer of the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 2.20 (b); and
- (c) the period of the temporary inability is likely to be less than 26 weeks; and
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day; and
- (e) the Secretary is satisfied that the person would have been the child's primary carer except for the person's temporary inability to be the child's primary carer.

**2.20 Care requirements for tertiary claimants — loss of care for child**

For subparagraph 2.18 (1) (b) (ii), the requirements are that:

- (a) the person previously was the primary carer of the child; and
- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent — the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and

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- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day.

**2.21 Work requirements for tertiary claimants — recall to duty**

For subparagraph 2.18 (1) (c) (iii), the requirements are that the person:

- (a) is a defence force member; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

**2.22 Tertiary claimants working while care arrangements being settled**

For subparagraph 2.18 (1) (c) (iii), the requirements are that:

- (a) the person performed paid work, other than for a permissible purpose, on a day or days during the period commencing immediately after the secondary claimant stopped caring for the child and ending when the care arrangements for the child were settled; and
- (b) care arrangements for the child were settled within a reasonable time after the secondary claimant stopped caring for the child.

**Division 2.3.2 The work test**

**Subdivision 2.3.2.1 Paid leave**

**2.23 Purpose**

This Subdivision is made for subsection 34 (2) of the Act and prescribes what is, or is not, taken to be paid leave.

**2.24 What is taken to be paid leave**

A person is taken to be on paid leave if:

- (a) the person is on unpaid leave from his or her employer; and
- (b) during the period of unpaid leave the person receives workers' compensation payments or accident compensation payments from another body in relation to the person's employment with his or her employer.

**Subdivision 2.3.2.2 Paid work**

**2.25 Purpose**

This Subdivision is made for subsection 35 (5) of the Act and prescribes what is, or is not, taken to be paid work.

## **2.26 What is not taken to be paid work**

- (1) A person is not taken to perform paid work only because the person:
  - (a) performs an activity which is required to be performed as a condition for receiving a social security payment; or
  - (b) both:
    - (i) is a prisoner; and
    - (ii) performs work otherwise than under a formal prisoner employment program; or
  - (c) engages in an activity as a volunteer, whether or not the person directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity; or
  - (d) receives:
    - (i) interest, unless subrule (2) applies; or
    - (ii) rents, dividends or non-share dividends; or
    - (iii) any other passive income.
- (2) Subparagraph (1) (d) (i) does not apply if:
  - (a) the person's principal business consists of lending money; or
  - (b) the interest is received in relation to a debt due to the person for goods supplied or services rendered by the person in the course of the person's business.
- (3) In this rule:

***passive income***, for a person, means income that is not obtained as a result of, or derived from, the personal exertion of the person.

***social security payment*** has the same meaning as in section 23 of the *Social Security Act 1991*.

**Rule 2.27**

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## **Part 2-4 Claims for parental leave pay**

### **Division 2.4.1 Claims for parental leave pay**

#### **Subdivision 2.4.1.1 Exceptional circumstances for primary claims**

##### **2.27 Who can make a primary claim**

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

##### **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.



**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.

**2.30 Exceptional circumstance — surrogacy arrangements**

- (1) This rule applies to a person who is a parent of a child born because of a surrogacy arrangement.
- (2) For a person to whom this rule applies, the circumstances are that the person became the parent of the child because a court made an order:
  - (a) under a law prescribed for the purposes of section 60HB of the *Family Law Act 1975*; or
  - (b) under a law of a State or Territory transferring the parentage of the child to the claimant.

**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

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- (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.

**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.

### **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;

**Rule 2.37**

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- (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.

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## Part 3-2 Payment of instalments by employer

### 3.1 Definitions

In this Part:

*PPL payment* has the meaning given by rule 3.2.

### 3.2 Information required

For section 80 of the Act, the information that an employer must give to a person after paying 1 or more instalments (the *PPL payment*) to the person on a day is as follows:

- (a) the employer's name;
- (b) the employer's ABN;
- (c) the person's name;
- (d) the period to which the PPL payment applies;
- (e) the date on which the PPL payment was paid;
- (f) if no other payments are made by the employer to the person for the period:
  - (i) the gross amount of the PPL payment and a statement identifying the PPL payment as parental leave pay; and
  - (ii) the net amount of the PPL payment; and
  - (iii) the amount of income tax withheld from the PPL payment;
- (g) if other payments in addition to the PPL payment are made by the employer to the person for the period:
  - (i) the gross amount of the PPL payment and a statement identifying the PPL payment as parental leave pay; and
  - (ii) the total net amount paid to the person for the period; and
  - (iii) the total amount of income tax withheld for the period;
- (h) if a deduction from the PPL payment is made under section 67 or 69 of the Act:
  - (i) the amount of each deduction; and
  - (ii) the name of the entity to whom the amount deducted is paid; and
  - (iii) the bank account details into which the amount deducted is paid.

### 3.3 Form of information

For section 80 of the Act, the information prescribed by rule 3.2 must be:

- (a) in the form of a payslip or a separate written advice; and
- (b) either:
  - (i) in electronic form; or
  - (ii) in hard copy.

**Rule 3.4**

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**3.4 Records to be made and kept**

- (1) For subsection 81 (1) of the Act, the kind of record that an employer must make and keep in relation to each person for whom an employer determination for the employer comes into force is a record that specifies:
  - (a) the PPL funding amounts received by the employer for the person and the PPL days for which the PPL funding amounts were paid; and
  - (b) the date of each PPL payment paid to the person and the period to which the PPL payment applies; and
  - (c) the gross amount of each PPL payment paid for the person and a statement identifying the PPL payment as parental leave pay; and
  - (d) if no other payments are made by the employer to the person for the period:
    - (i) the net amount of the PPL payment; and
    - (ii) the amount of income tax withheld from the PPL payment; and
  - (e) if other payments in addition to the PPL payment are made by the employer to the person for the period:
    - (i) the total net amount paid to the person for the period; and
    - (ii) the total amount of income tax withheld for the period; and
  - (f) the total amount deducted under section 67 and 69 of the Act from each PPL payment paid for the person.
- (2) For subsection 81 (2) of the Act, the record must be:
  - (a) in the English language; and
  - (b) legible; and
  - (c) in a form that is readily accessible by a person exercising compliance powers in accordance with the Act.

## Part 3-3 Payment of instalments by Secretary

### 3.5 Record of payment

- (1) This rule applies if the Secretary pays 1 or more instalments (the *PPL payment*) to, or in relation to, a person on a day, in the circumstances mentioned in sections 84, 85 86 or 87 of the Act.
- (2) For section 89 of the Act, the Secretary must give the person the following information in connection with the PPL payment:
  - (a) information that the payment:
    - (i) is paid by the Secretary; and
    - (ii) is a PPL payment;
  - (b) the name of the person to whom the PPL payment is paid;
  - (c) the period to which the PPL payment applies;
  - (d) the period for which a final PPL payment is expected to be paid;
  - (e) the frequency with which further PPL payments will be paid;
  - (f) the date on which the PPL payment is paid;
  - (g) the gross amount of the PPL payment;
  - (h) the net amount of the PPL payment;
  - (i) the total amount of income tax withheld from the gross amount of the ; PPL payment
  - (j) if a deduction from the PPL payment is made under section 67 or 69 of the Act:
    - (i) the amount of each deduction; and
    - (ii) the name of the entity to whom the amount deducted is paid; and
    - (iii) the bank account details into which the amount deducted is paid.
- (3) The information is required to be given to the person:
  - (a) only once; and
  - (b) at the time the first PPL payment is made to the person.

**Rule 4.1**

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## **Part 4-1 Information gathering**

### **Division 4.1.1 General**

#### **4.1 Purpose**

This Part is made for subsection 128 (4) of the Act and sets out guidelines for the exercise of the Secretary's power to give certificates for the purposes of paragraph 128 (1) (a) of the Act.

#### **4.2 Definitions**

(1) In this Part:

**Centrelink** means the Agency established under section 6 of the *Commonwealth Services Delivery Agency Act 1997*.

**Department** means the Department of Families, Housing, Community Services and Indigenous Affairs.

**family assistance law** means any 1 or more of the following:

- (a) the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- (b) the *A New Tax System (Family Assistance) Act 1999*;
- (c) regulations under the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- (d) Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

**Family Assistance Office** means:

- (a) Centrelink; or
- (b) Medicare Australia.

**family assistance payment** means:

- (a) a payment of a benefit, allowance or advance that constitutes family assistance within the meaning of the *A New Tax System (Family Assistance) Act 1999*; or
- (b) a payment of an advance determined under section 219Q of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
- (c) a payment of one-off payment to families.

**family member** has the same meaning as in the *Social Security Act 1991*.

**Minister** means:

- (a) the Minister administering the Act; or
- (b) a Minister of State administering any part of:
  - (i) the social security law; or
  - (ii) the family assistance law; or
  - (iii) the *Commonwealth Services Delivery Agency Act 1997*; or



- (c) the Prime Minister; or
- (d) the Minister administering the *Fair Work Act 2009*; or
- (e) the Minister administering the *Medicare Australia Act 1973*.

**one-off payment to families** has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*.

**public interest certificate** means a certificate, under paragraph 128 (1) (a) of the Act, for the disclosure of relevant information.

**relevant information** means information acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the Act.

**social security payment** has the same meaning as in the *Social Security Act 1991*.

*Note* The following expressions are defined in the Act:

- officer
- protected information
- Secretary.

- (2) In subrule (1), a reference to the social security law is a reference to:
  - (a) the *Social Security Act 1991*; and
  - (b) the *Social Security (Administration) Act 1999*; and
  - (c) any other Act that is expressed to form part of the social security law.

## **Division 4.1.2 Guidelines — public interest certificate**

### **4.3 Matters to which Secretary must have regard**

In giving a public interest certificate, the Secretary must have regard to:

- (a) any situation in which the person to whom the information relates is, or may be, subject to physical, psychological or emotional abuse; and
- (b) whether the person in such a situation may be unable to give notice of his or her circumstances because of:
  - (i) age; or
  - (ii) disability; or
  - (iii) social, cultural, family or other reasons.

### **4.4 When public interest certificate may be given**

- (1) The Secretary may give a public interest certificate for the disclosure of relevant information under this Part if:
  - (a) the information cannot reasonably be obtained from a source other than the Department; and
  - (b) the person to whom the information will be disclosed has sufficient interest in the information; and

#### Rule 4.5

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- (c) the Secretary is satisfied that the disclosure is for the purpose of rule 4.5, 4.6, 4.7, 4.8, 4.9, 4.11, 4.12, 4.13, 4.14, 4.15 or subrule 4.10 (1) or (2).
- (2) A person has *sufficient interest* in the relevant information if:
  - (a) the Secretary is satisfied that, in relation to the purpose of the disclosure, the person has a genuine and legitimate interest in the information; or
  - (b) the person is a Minister.

#### 4.5 Threat to life, health or safety

Relevant information may be disclosed for the purpose of this rule if the disclosure is necessary to prevent, or lessen, a serious threat to the life, health or safety of an individual.

#### 4.6 Enforcement of laws

- (1) Relevant information may be disclosed for the purpose of this rule if:
  - (a) the disclosure is necessary:
    - (i) for the enforcement of a criminal law that relates to an indictable offence punishable by imprisonment of 2 years or more; or
    - (ii) for the enforcement of a law imposing a pecuniary penalty equivalent to 40 penalty units or more; or
    - (iii) to prevent an act that may have a significant adverse effect on the public revenue; or
  - (b) the disclosure relates to an offence or threatened offence:
    - (i) against a Commonwealth employee; or
    - (ii) against Commonwealth property; or
    - (iii) in Department premises; or
    - (iv) in Family Assistance Office premises.
- (2) In this rule:
  - criminal law* means:
    - (a) for Australia — a criminal law of the Commonwealth or of a State or Territory; and
    - (b) for a place outside Australia — a criminal law that may be recognised under an extradition arrangement to which Australia is a party.

*penalty unit* has the same meaning as in section 4AA of the *Crimes Act 1914*.

*Note* Subsection 4AA (1) of the *Crimes Act 1914* provides that a penalty unit is \$110.

#### **4.7 Mistake of fact**

Relevant information may be disclosed for the purpose of this rule if:

- (a) the disclosure is necessary to correct a mistake of fact in relation to the administration of a program of the Department; and
- (b) either:
  - (i) the integrity of the program will be at risk if the mistake of fact is not corrected; or
  - (ii) the mistake of fact relates to a matter that was, or will be, published (whether by, or with or without the consent of, the person to whom the information relates).

#### **4.8 Ministerial briefing**

Relevant information may be disclosed for the purpose of this rule if the disclosure is necessary:

- (a) to brief a Minister so that the Minister can consider complaints or issues raised by or on behalf of a person with the Minister (in writing or orally), and respond to that person in relation to the complaints or issues; or
- (b) to brief a Minister for a meeting or forum that the Minister is to attend; or
- (c) to brief a Minister in relation to issues raised or proposed to be raised publicly by or on behalf of the person to whom the relevant information relates so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement; or
- (d) to brief a Minister about an error or delay on the part of the Family Assistance Office or the Fair Work Ombudsman; or
- (e) to brief a Minister about an instance of an anomalous or unusual operation of the Act or the *Fair Work Act 2009*.

## Rule 4.9

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### 4.9 Missing person

Relevant information may be disclosed to a court, coronial enquiry, Royal Commission, department or any other authority of the Commonwealth or a State or Territory, for the purpose of this rule if:

- (a) the information is about a reported missing person; and
- (b) the disclosure is necessary:
  - (i) to assist the court, coronial enquiry, Royal Commission, department or authority of the Commonwealth or a State or Territory, in relation to the whereabouts of the missing person; or
  - (ii) to locate a person (including the missing person); and
- (c) there is no reasonable ground to believe that the missing person would not want the information disclosed.

### 4.10 Deceased person

- (1) Relevant information may be disclosed for the purpose of this subrule if:
  - (a) the information is about a deceased person; and
  - (b) the disclosure:
    - (i) is necessary to assist a court, coronial enquiry, Royal Commission, department, or any other authority of the Commonwealth or a State or Territory, in relation to the death of the person; or
    - (ii) is necessary to help a person locate a relative or beneficiary of the deceased person; or
    - (iii) is necessary to help an individual or authority responsible for the administration of the estate of the deceased person in relation to the administration of the estate of the deceased person; and
  - (c) there is no reasonable ground to believe that the deceased person would not have wanted the relevant information disclosed.
- (2) Relevant information may be disclosed for the purpose of this subrule if the information is to establish:
  - (a) the death of a person; or
  - (b) the place where the death of a person is registered.

### 4.11 Research and statistical analysis

Relevant information may be disclosed for the purpose of this rule if the disclosure is necessary for the purpose of:

- (a) research into (including evaluation or monitoring of, or reporting on) matters of relevance to a department that is administering any part of:
  - (i) the Act; or
  - (ii) the family assistance law; or
  - (iii) the social security law; or
- (b) statistical analysis of those matters.

#### **4.12 Operation of the Family Responsibilities Commission**

(1) Relevant information may be disclosed for the purpose of this rule if the disclosure is necessary to assist in the performance of the functions, or the exercise of the powers, of the Family Responsibilities Commission.

(2) In this rule:

*Family Responsibilities Commission* means the Commission established by section 9 of the *Family Responsibilities Commission Act 2008* (Qld).

#### **4.13 Reparations**

Relevant information may be disclosed to a department or any other authority of the Commonwealth or a State or Territory for the purpose of this rule if the disclosure is necessary for the purpose of contacting the person in respect of their possible entitlement to compensation or other form of recompense in a reparation process.

#### **4.14 Child protection agencies**

(1) Relevant information may be disclosed to a Child Protection agency of a State or Territory for the purpose of this rule if the disclosure is necessary for the purpose of contacting the parent or relative in relation to the child.

(2) In this rule:

*Child Protection agency* means a government agency that carries out child protection functions.

#### **4.15 Public Housing Administration**

Relevant information may be disclosed to a department or any other authority of a State or Territory for the purpose of this rule if:

- (a) the information is about a resident or tenant of public housing or other State or Territory managed housing; and
- (b) the disclosure is necessary to facilitate:
  - (i) rent calculation or rent deduction in relation to public housing, or State or Territory managed housing; or
  - (ii) the administration of an income confirmation service in relation to public housing or State or Territory managed housing to avoid mistakes, underpayments and overpayments of rent, pensions, benefits and allowances.

**Rule 4.16**

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## **Part 4-3 Debt recovery**

### **Division 4.3.1 Debt notices and interest on debts**

#### **4.16 Penalty interest rate**

For subsection 180 (2) of the Act, the penalty interest rate is 3% per year.

### **Division 4.3.2 Penalty interest guidelines**

#### **4.17 Purpose of Division**

For subsection 180 (3) of the Act, this Division prescribes guidelines for the operation of the provisions of the Act dealing with penalty interest.

#### **4.18 Arrangement entered into after final debt payment day**

- (1) This rule applies to a person who is liable to pay interest on the outstanding amount of a debt under subsection 175 (4) of the Act.
- (2) The Secretary should make a determination under section 178 of the Act that interest is not payable by the person if, after the final debt payment day, the person:
  - (a) has entered into an arrangement under section 190 of the Act to pay the outstanding amount of the debt; and
  - (b) is making payments in accordance with the arrangement.
- (3) If the Secretary makes a determination in the circumstance mentioned in subrule (2), the Secretary should:
  - (a) determine that interest is not payable on and after the day when the first payment made in accordance with the arrangement is received by, or on behalf of, the Commonwealth Services Delivery Agency; and
  - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the arrangement.
- (4) In this rule:

*final debt payment day* has the meaning given by subsection 175 (2) of the Act.

#### **4.19 Payments resumed in accordance with existing arrangement or new arrangement entered into after failure day**

- (1) This rule applies to a person who is liable to pay interest on the outstanding amount of a debt under subsection 175 (6) of the Act.

**Rule 4.20**

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- (2) The Secretary should make a determination under section 178 of the Act that interest is not payable by the person if, after the failure day:
  - (a) the person has resumed making payments in accordance with the arrangement mentioned in subsection 175 (5) (the *existing arrangement*); or
  - (b) the person:
    - (i) has entered into a new arrangement under section 190 of the Act (the *new arrangement*) to pay the outstanding amount of the debt; and
    - (ii) is making payments in accordance with the new arrangement.
- (3) If the Secretary makes a determination in the circumstance mentioned in paragraph (2) (a), the Secretary should:
  - (a) determine that interest is not payable on and after:
    - (i) the day when the first payment made in accordance with the existing arrangement, after the failure day, is received by, or on behalf of, the Commonwealth Services Delivery Agency; or
    - (ii) if that day occurs before the liability day — the liability day; and
  - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the existing arrangement.
- (4) If the Secretary makes a determination in the circumstance mentioned in paragraph (2) (b), the Secretary should:
  - (a) determine that interest is not payable on and after:
    - (i) the day when the first payment made in accordance with the new arrangement is received by, or on behalf of, the Commonwealth Services Delivery Agency; or
    - (ii) if that day occurs before the liability day — the liability day; and
  - (b) specify, as a condition of the determination, that the person must continue to make payments in accordance with the new arrangement.

- (5) In this rule:

*failure day*, for a person to whom subsection 175 (6) of the Act applies, means the day when the person failed to make the payment mentioned in paragraph 175 (5) (b) of the Act.

*liability day*, in relation to a person's liability to pay interest on the outstanding amount of a debt under subsection 175 (6) of the Act, means the day mentioned in paragraph 175 (6) (a) or (b) of the Act from and including which the person is liable to pay interest on the outstanding amount.

#### **4.20 Garnishee notice issued in respect of debt**

- (1) This rule applies to a person (the *debtor*) who is liable to pay interest on the outstanding amount of a debt under subsection 175 (4) or (6) of the Act.

**Rule 4.21**

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- (2) The Secretary should make a determination under section 178 of the Act that interest is not payable by the person for a period if a notice (the *garnishee notice*) has been given to another person under subsection 184 (1) of the Act requiring the other person to pay to the Commonwealth an amount under paragraph 184 (2) (b) or (c) of the Act in relation to the debt.
- (3) If the Secretary makes a determination in the circumstance mentioned in subrule (2), the Secretary should determine that interest is not payable only for the period:
  - (a) beginning on the day when the person who has been given the garnishee notice becomes liable to pay to the debtor the first payment to which the garnishee notice applies; and
  - (b) ending at the end of the day when the person who has been given the garnishee notice becomes liable to pay to the debtor the last payment to which the garnishee notice applies.

**4.21 No capacity to pay debt**

- (1) This rule applies to a person who is liable to pay interest on the outstanding amount of a debt under subsection 175 (4) or (6) of the Act.
- (2) The Secretary should make a determination under section 178 of the Act that interest is not payable by the person for a period if, during the period, the person had or has no capacity to repay the debt.



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## Part 6-3 Other matters

### 6.1 Definitions

In this Part:

**Chief Commissioner of Police of Victoria** means the person holding office as Chief Commissioner of Police under the **Police Regulation Act 1958** (Vic).

**law enforcement officer of Victoria** means:

- (a) a member of the police force of Victoria; or
- (b) a person appointed to a position for the purpose of being trained as a member of the police force of Victoria; or
- (c) a person who has the powers and duties of a member of the police force of Victoria;

and, without limiting paragraphs (a), (b) and (c), includes a police reservist, a police recruit, a police cadet, a junior constable, a police medical officer, a special constable, an ancillary constable or a protective services officer.

### 6.2 Extension of Act to persons who are not employees and employers

For subsection 299 (1) of the Act, the Secretary may make an employer determination under Part 3-5 of the Act for the Chief Commissioner of Police of Victoria and a person who is a law enforcement officer of Victoria.

### 6.3 Modification of Act

In relation to persons provided for in rule 6.2, the Act is modified as follows:

- (a) references in section 56 of the Act to an employer are taken to be references to the Chief Commissioner of Police of Victoria; and
- (b) references in Chapter 3 of the Act to an employer are taken to be references to the Chief Commissioner of Police of Victoria; and
- (c) a reference in paragraph 101 (1) (d) of the Act to an employee is taken to be a reference to a law enforcement officer of Victoria; and
- (d) references in Division 4 of Part 3-5 of the Act to an employee are taken to be references to a law enforcement officer of Victoria; and
- (e) a reference in paragraph 117 (g) of the Act to an employer are taken to be references to the Chief Commissioner of Police of Victoria; and
- (f) references in Parts 4-2 and 4-3 of the Act to an employer are taken to be references to the Chief Commissioner of Police of Victoria; and
- (g) a reference in section 172 of the Act to an employee is taken to be a reference to a law enforcement officer of Victoria; and

**Rule 6.3**

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- (h) references in Chapter 5 of the Act to an employer are taken to be references to the Chief Commissioner of Police of Victoria.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.