Paid Parental Leave Rules 2021

made under the

Paid Parental Leave Act 2010

Compilation No. 3

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About this compilation

This compilation

This is a compilation of the *Paid Parental Leave Rules 2021* that shows the text of the law as amended and in force on 1 July 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Paid Parental Leave Rules 2021*.

3 Authority

This instrument is made under the *Paid Parental Leave Act 2010*.

5 Simplified outline of this instrument

This instrument provides for matters for the purposes of the Act that relate to the payment of parental leave pay.

Part 1A provides for matters relating to determinations about whether parental leave pay is payable to a person.

Part 2 provides for matters relating to eligibility for parental leave pay including when a person is eligible for parental leave pay and the work test.

Part 3 provides for matters relating to claims for parental leave pay including exceptional circumstances in which a claim can be made and determining that a claim is taken to have specified one or more other flexible PPL days for a child.

Part 4 provides for matters relating to the payment of instalments for parental leave pay to a person by the person's employer and by the Secretary.

Part 9 provides for matters relating to the disclosure of information and prescribes guidelines for the exercise of the Secretary's power to give a certificate in relation to a disclosure that is necessary in the public interest.

Part 10 provides for matters relating to debts in relation to the paid parental leave scheme and for the recovery of debts owing to the Commonwealth.

Part 11 provides for the Secretary to make employer determinations under the Act in relation to persons who are in a relationship that is similar to the relationship between an employer and an employee.

Part 12 provides for application, saving and transitional provisions that apply in relation to this instrument and any subsequent amendments made to this instrument.

6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

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(a) caring;
(b) entity;
(c) has not previously satisfied the work and income tests;
(d) law enforcement officer;
(e) parent;
(f) partner.

In this instrument:

Act means the *Paid Parental Leave Act 2010*.

AFP Commissioner means the Commissioner within the meaning of the *Australian Federal Police Act 1979*.

AFP officer means:

(a) a member of the Australian Federal Police; or
(b) a person appointed to a position for the purpose of being trained as a member of the Australian Federal Police; or
(c) a person who has the powers and duties of a member of the Australian Federal Police;

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.

APS Code of Conduct means the rules in section 13 of the *Public Service Act 1999*.

Attorney-General's Department means the Department administered by the Attorney-General.

Chief of the Defence Force has the same meaning as in the *Defence Act 1903*.

child protection agency of a State or Territory means an agency of the State or Territory that has functions, powers or duties in relation to the care, protection or welfare of children.

Commissioner of Police of a State or Territory means the person holding the office of Commissioner of Police (however described) in relation to the police force or police service of that State or Territory.

Family Responsibilities Commission means the Family Responsibilities Commission established under the *Family Responsibilities Commission Act 2008* (Qld).

incapable of caring for a child has the meaning given by section 7.

parenting plan has the meaning given by the *Family Law Act 1975*.

PPL payment has the meaning given by subsection 32(2) or paragraph 34(1)(a).

unreasonable: it would be ***unreasonable*** for a person to care for a child if:

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(a) there has been extreme family breakdown, or similar circumstances, in relation to the family situation in which the person has cared, or would care, for the child; or

(b) there is a serious risk to the child's physical or mental wellbeing from violence, neglect or sexual abuse in the family situation in which the person has cared, or would care, for the child.

7 Meaning of *incapable of caring* for a child

(1) A person is ***incapable of caring*** for a child if the person is not able to care for the child because:

(a) there is a parenting order (within the meaning of the *Family Law Act 1975*) 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 after all reasonable efforts have been made to locate the person; or

(e) the person suffers from a medical condition; or

(f) the Secretary is satisfied that there is another reason, beyond the control of the person, that means the person is not able to care for the child.

(2) A person is not ***incapable of caring*** for a child if the person voluntarily chooses not to care for the child.

Example: A person may voluntarily choose not to care for a child by deciding to travel overseas without the child or by deciding to look after other relatives and not the child.

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Part 1A—Determinations about whether parental leave pay is payable to a person

7A Simplified outline of this Part

This Part provides for matters relating to determinations about whether parental leave pay is payable to a person.

Under the Act, there are restrictions that apply in particular circumstances to prevent the Secretary from making a payability determination that parental leave pay is payable to a person. For example, the total number of flexible PPL days for which parental leave pay is payable to more than one person is limited to 10. However, a flexible PPL day does not count towards the total of 10 flexible PPL days in prescribed circumstances. This Part prescribes those circumstances.

7B Limit on number of flexible PPL days for which parental leave pay is payable to more than one person

(1) For the purposes of subsection 21(2) of the Act, subsections (2) to (5) of this section each prescribe a circumstance in which a flexible PPL day (***the relevant day***) for a child does not count towards the total of 10 flexible PPL days referred to in paragraph 21(1)(a) of the Act.

(2) A circumstance is that, as a result of any of following paragraphs applying, it would be unreasonable to count the relevant day towards the total of 10 flexible PPL days:

(a) either:

(i) the child's birth mother underwent caesarean delivery in relation to the child; or

(ii) the child's birth mother developed a complication or medical condition in connection with the child's birth;

(b) both:

(i) the child was required to remain in hospital after the child's birth, or was hospitalised immediately after the child's birth; and

(ii) as at the relevant day, the child has been or is likely to remain in hospital for a period of at least 14 days;

(c) both:

(i) the child developed a complication or contracted an illness during the period of gestation, at birth or immediately following the birth; and

(ii) because of the complication or illness, the child has higher care needs and requires an extended period of medical care or treatment;

(d) on or before the relevant day, the person is affected by a severe medical condition.

(3) A circumstance is that, on or before the relevant day, the child is stillborn or has died.

(4) A circumstance is that the child and another child were born during the same multiple birth.

(5) A circumstance is that the Secretary is satisfied that there is any other reason that makes it unreasonable to count the relevant day towards the total of 10 flexible PPL days.

Part 2—Eligibility for parental leave pay

Division 1—Simplified outline of this Part

8 Simplified outline of this Part

Under the Act, there are a number of criteria that determine whether a person is eligible for parental leave pay for a child on a day. This Part provides for matters relating to:

(a) when a person is eligible for parental leave pay; and

(b) the work test.

Subdivisions A and B of Division 2 prescribe conditions that certain claimants must satisfy to be eligible for parental leave pay on a flexible PPL day for a child.

Subdivision C of Division 2 prescribes circumstances that, if satisfied by certain claimants, will result in those claimants not being eligible for parental leave pay on a flexible PPL day for a child.

Division 3 prescribes matters relating to the work test including:

(a) when unpaid leave is taken to be paid leave;

(b) when activities undertaken by a person are taken not to be paid work.

Division 3 also prescribes a method relating to how to calculate the number of hours a person is taken to have worked if the person performs qualifying work on a day that is in a jobkeeper payment period or COVID-19 Australian Government payment period.

Further, Division 3 also prescribes special circumstances for the purposes of a person satisfying the work test on a day.

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Division 2—Matters relating to when a person is eligible for parental leave pay

Subdivision A—Prescribed conditions for claimants

9 Prescribed conditions for PPL claimants and their partners—when a person is eligible

(1) For the purposes of paragraph 31AA(4)(e) of the Act, the prescribed conditions that the person must satisfy on the flexible PPL day are the following:
  (a) the person is a PPL claimant, or a special PPL claimant covered by paragraph 54(2)(a) of the Act;
  (b) the person satisfies subsections (2) and (3) of this section on the flexible PPL day.

(2) The person satisfies this subsection on a day if the person:
  (a) is caring for the child on that day; or
  (b) satisfies one or more of the following for the child on that day:
    (i) section 13 (birth mother relinquishing child);
    (ii) section 16 (temporary inability to care);
    (iii) section 17 (loss of care for child).

(3) The person satisfies this subsection on a day if the person:
  (a) is performing no more than one hour of paid work on that day; or
  (b) satisfies one or more of the following for the child on that day:
    (i) section 13 (birth mother relinquishing child) because of the reason set out in paragraph 13(2)(b);
    (ii) section 14 (child in hospital following birth);
    (iii) section 17 (loss of care for child);
    (iv) section 18 (recall to duty);
    (v) section 19 (summons or other compulsory process);
    (vi) section 20 (State, Territory or national emergency).

10 Prescribed conditions for other special PPL claimants—when a person is eligible

(1) For the purposes of paragraph 31AA(5)(b) of the Act, the prescribed conditions that the person must satisfy on the flexible PPL day are the following:
  (a) the person is a special PPL claimant covered by paragraph 54(2)(b) of the Act;
  (b) the person satisfies the Australian residency test on the flexible PPL day;
  (c) the person satisfies subsections (2) and (3) of this section on the flexible PPL day.

(2) The person satisfies this subsection on a day if the person:

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(a) is caring for the child on that day; or
(b) satisfies either or both of the following for the child on that day:
(i) section 16 (temporary inability to care);
(ii) section 17 (loss of care for child).

(3) The person satisfies this subsection on a day if the person:
(a) is performing no more than one hour of paid work on that day; or
(b) satisfies one or more of the following for the child on that day:
(i) section 17 (loss of care for child);
(ii) section 18 (recall to duty);
(iii) section 19 (summons or other compulsory process);
(iv) section 20 (State, Territory or national emergency).

Subdivision B—Criteria relating to prescribed conditions

13 Birth mother relinquishing child

(1) For the purposes of Subdivision A, a person satisfies this section for a child on a day (the ***eligibility day***) if:
(a) the person is the birth mother of the child; and
(b) the eligibility day is within 20 weeks of the day the child is born; and
(c) on that eligibility day, the person is not caring for the child for a reason set out in subsection (2).

(2) For the purposes of paragraph (1)(c), the reason is either:
(a) because, on or before the eligibility day, the person has relinquished care of the child:
(i) as part of the process for the adoption of the child; or
(ii) due to the child being born because of a surrogacy arrangement; or
(iii) due to the child being removed from the person's care by a child protection agency of a State or Territory, or in accordance with a decision of a court of a State or Territory, under a law of that State or Territory dealing with child protection; or
(b) because:
(i) the child is stillborn or has died before that eligibility day; and
(ii) the person would have relinquished care of the child for a reason set out in paragraph (a) had the child not been stillborn or died.

(3) For the purposes of subparagraph (2)(a)(ii), matters to consider when working out whether the child was born because of a surrogacy arrangement include:
(a) whether the child was born as a result of a surrogacy arrangement (however described) that meets the requirements of the law of a State or Territory that applies in relation to the surrogacy arrangement; and
(b) whether a court has made an order under a law of a State or Territory prescribed under section 60HB of the *Family Law Act 1975* relating to who is a parent of the child.

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14 Child in hospital following birth

For the purposes of Subdivision A, a person satisfies this section for a child on a day if:

(a) the person is:
  (i) the child's birth mother; or
  (ii) a person who is a parent of the child and is not the child's birth mother; or
  (iii) a partner of the child's birth mother; or
  (iv) a partner of a person covered by subparagraph (ii); and

(b) the child is required to remain in hospital after the child's birth, or is hospitalised immediately after the child's birth, for one or more of the following reasons:
  (i) the child was born prematurely;
  (ii) the child developed a complication or contracted an illness during the child's period of gestation or at birth;
  (iii) the child developed a complication or contracted an illness following the child's birth; and

(c) on that day, the child:
  (i) remains in hospital for one or more of the reasons referred to in paragraph (b); or
  (ii) is being discharged after remaining in hospital for one or more of the reasons referred to in paragraph (b); and

(d) if the person is the birth mother of the child—that day is on or after the 14th day after the day the child is born.

16 Temporary inability to care

For the purposes of Subdivision A, a person satisfies this section for a child on a day if:

(a) the person:
  (i) is expected to care for the child within 26 weeks after that day; or
  (ii) was caring for the child before that day; and

(b) on that day, the person is unable to care for the child due to circumstances beyond the person's control (other than a circumstance related to an event mentioned in paragraph 17(c)); and

(c) the person is unable to care for the child:
  (i) on that day; and
  (ii) for a continuous period of no more than 26 weeks that starts on or before that day; and

(e) the Secretary is satisfied that the person would have been caring for the child for that day except for the person's temporary inability to care for the child.

17 Loss of care for child

For the purposes of Subdivision A, a person satisfies this section for a child on a day if:

(a) the person was caring for the child before that day; and

(b) on that day, the person, or the person's partner:

(i) is the child's parent; or

(ii) is otherwise legally responsible for the child; and

(c) on or before that day, an event occurs, without the person or the person's partner's consent that prevents the child being in the person's care on that day; and

(d) if the child is in the care of another parent on that day—the person or the person's partner has a court order or a parenting plan that provides that the child is to live with the person or the person's partner on that day; and

(e) the person or the person's partner has taken reasonable steps on or before that day for the child to be in the person's care again after that day.

18 Recall to duty

For the purposes of Subdivision A, a person satisfies this section for a child on a day if, on that day, the person:

(a) is a defence force member or a law enforcement officer; and

(b) is performing paid work because the person has been compulsorily recalled to duty.

19 Summons or other compulsory process

For the purposes of Subdivision A, a person satisfies this section for a child on a day if, on that day, the person is performing paid work because the person has to comply with the requirements of a summons or other compulsory process to:

(a) give evidence or information; or

(b) produce documents or other things.

20 State, Territory or national emergency

(1) For the purposes of Subdivision A, a person satisfies this section for a child on a day if, on that day, the person:

(a) is a health professional, emergency services worker or other essential worker; and

(b) is performing paid work because the person has returned to work in response to a State, Territory or national emergency (including in response to the coronavirus known as COVID-19).

(2) For the purposes of subsection (1), a person is an ***essential worker*** if the person has specific skills, or is involved in the production of goods or the delivery of services, where the skills, goods or services are essential in responding to an emergency.

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Subdivision C—When a person is not eligible for parental leave pay

21 Prescribed circumstances for claimants—when a person is not eligible

(1) For the purposes of subparagraph 31AB(3)(a)(iii) of the Act, the prescribed circumstances are that the relevant claimant satisfies any of subsections (2) to (7) of this section.

(2) The relevant claimant satisfies this subsection if the partner of the relevant claimant referred to in subparagraph 31AB(3)(a)(i) of the Act:
  (a) is incapable of caring for the child; and
  (b) has been, or is likely to be, incapable of caring for the child for a continuous period of at least 26 weeks.

(3) The relevant claimant satisfies this subsection if the child is stillborn or has died.

(4) The relevant claimant satisfies this subsection if the relevant claimant is experiencing family and domestic violence, or is dealing with the impacts of family and domestic violence.

(5) The relevant claimant satisfies this subsection if the partner of the relevant claimant referred to in subparagraph 31AB(3)(a)(i) of the Act is deployed outside Australia as a defence force member, under conditions specified in a determination made under the *Defence Act 1903* that relates to such deployment, for all of the flexible PPL days for the child.

(6) The relevant claimant satisfies this subsection if:
  (a) both:
    (i) the child was required to remain in hospital after the child's birth, or was hospitalised immediately after the child's birth; and
    (ii) the child has been or is likely to remain in hospital for a period of at least 18 weeks; or
  (b) both:
    (i) the child developed a complication or contracted an illness during the period of gestation, at birth or immediately following the birth; and
    (ii) because of the complication or illness, the child has higher care needs, and requires medical care or treatment, for a period of at least 18 weeks.

(7) The relevant claimant satisfies this subsection if the relevant claimant satisfies section 13 (birth mother relinquishing child) for the child.

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Division 3—Matters relating to the work test

22 Certain unpaid leave taken to be paid leave

For the purposes of subsection 34(2) of the Act, unpaid leave taken by a person on a day is taken to be paid leave for the purposes of paragraph 34(1)(b) of the Act if:

(a) the person receives a payment for workers' compensation or accident compensation for that day; and

(b) the payment relates to the person's employment with an employer; and

(c) the payment is from an entity other than the employer.

23 Certain activities not taken to be paid work

(1) For the purposes of subsection 35(5) of the Act, the following activities are taken not to be paid work:

(a) an activity required to be performed by a person as a condition for the person receiving a social security payment (within the meaning of the Social Security Act);

(b) work performed by a person who is a prisoner (other than work performed under a formal prisoner employment program);

(c) an activity engaged in by a person 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;

(d) the receipt of the following by a person:

(i) interest;

(ii) rents, dividends or non-share dividends;

(iii) any other income that is not obtained as a result of, or derived from, the personal exertion of the person.

(2) However, subparagraph (1)(d)(i) does not apply to interest received by a person 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.

24 Calculating hours of qualifying work on a day in a jobkeeper payment period

(1) For the purposes of subsection 35B(1) of the Act, this section prescribes the method for determining the number of hours of work a person is taken to have performed on a day in a jobkeeper payment period for the person.

(2) If a person performs qualifying work on a day only because the day is in a jobkeeper payment period for the person, the person is taken to have performed on that day:

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(a) if the day is a week day—7.6 hours of work; or
(b) if the day is a Saturday or Sunday—no hours of work.

(3) If a person performs qualifying work on a day because both:
(a) the person performs at least 1 hour of paid work on the day; and
(b) the day is in a jobkeeper payment period for the person;
the person is taken to have performed on that day the greater of:
(c) the hours of work the person would be taken to have performed if subsection (2) applied; and
(d) the number of hours of paid work performed by the person on that day.

(4) If a person performs qualifying work on a day because both:
(a) the person takes a period of paid leave of at least 1 hour on the day; and
(b) the day is in a jobkeeper payment period for the person;
the person is taken to have performed on that day the greater of:
(c) the hours of work the person would be taken to have performed if subsection (2) applied; and
(d) the number of hours of paid leave taken by the person on that day.

24A Calculating hours of qualifying work on a day in a COVID-19 Australian Government payment period

(1) For the purposes of subsection 35C(1) of the Act, this section prescribes the method for determining the number of hours of work a person is taken to have performed on a day in a COVID-19 Australian Government payment period for the person.

(2) If a person performs qualifying work on a day only because the day is in a COVID-19 Australian Government payment period for the person, the person is taken to have performed on that day:
(a) if the day is a week day—7.6 hours of work; or
(b) if the day is a Saturday or Sunday—no hours of work.

(3) If a person performs qualifying work on a day because both:
(a) the person performs at least 1 hour of paid work on the day; and
(b) the day is in a COVID-19 Australian Government payment period for the person;
the person is taken to have performed on that day the greater of:
(c) the hours of work the person would be taken to have performed if subsection (2) applied; and
(d) the number of hours of paid work performed by the person on that day.

(4) If a person performs qualifying work on a day because both:
(a) the person takes a period of paid leave of at least 1 hour on the day; and
(b) the day is in a COVID-19 Australian Government payment period for the person;

the person is taken to have performed on that day the greater of:

(c) the hours of work the person would be taken to have performed if subsection (2) applied; and

(d) the number of hours of paid leave taken by the person on that day.

24B Special circumstances—satisfying the work test on a day

(1) For the purposes of paragraph 36AA(a) of the Act, this section prescribes special circumstances for the purposes of a person satisfying the work test on a day.

(2) The special circumstances are:

(a) the person is experiencing family and domestic violence, or is dealing with the impact of family and domestic violence, that prevents the person from performing paid work; or

(b) the person is affected by a severe medical condition that prevents the person from performing paid work; or

(c) the person is caring for a family member who is affected by a severe medical condition and providing such care prevents the person from performing paid work; or

(d) the person is severely affected by a natural disaster that:

(i) has been declared by the Commonwealth, a State or Territory or a Commonwealth, State or Territory authority responsible for managing responses to natural disasters; and

(ii) prevents the person from performing paid work.

(3) For the purposes of paragraph (2)(c), family member, of the person providing care, means:

(a) the person's partner; or

(b) the person's natural child, adoptive child or stepchild; or

(c) the person's natural parent, adoptive parent or step-parent; or

(d) the person's sibling or step-sibling; or

(e) the parent, adoptive parent or step-parent of the person's partner; or

(f) if the person has legal custody or guardianship over another person—that other person; or

(g) if the person is related to another person according to Aboriginal or Torres Strait Islander kinship rules—that other person.

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Part 3—Claims for parental leave pay

Division 1—Simplified outline of this Part

25 Simplified outline of this Part

This Part provides for matters relating to claims for parental leave pay.

Under the Act, only certain people can make a PPL claim or special PPL claim for a child. However, in addition to the persons specified in the Act, the Act provides that a person who satisfies circumstances that are prescribed as exceptional circumstances can also make a claim. Division 2 prescribes those exceptional circumstances.

In order for a claim for parental leave pay to be effective, it must be made by the right person and satisfy certain requirements. Division 3 prescribes circumstances in relation to the requirement for claims for one or more flexible PPL days to specify each of those days.

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Division 2—Claims for parental leave pay

26 Exceptional circumstances for PPL claims—general

(1) This section applies in relation to a child (other than a child born because of a surrogacy arrangement).

(2) For the purposes of paragraph 54(1)(g) of the Act, the exceptional circumstances in which a PPL claim can be made are:

(a) the child:

(i) is in the care of the person; and

(ii) has been, or is likely to be, in that care for a continuous period of at least 26 weeks; and

(b) the person became, or is likely to 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 placement of the child; and

(c) one of the circumstances in subsection (3) applies; and

(d) if the person is not a parent or a partner of a parent of the child—the person satisfies the additional circumstance in subsection (4).

(3) For the purposes of paragraph (2)(c), the circumstances are that either:

(a) the child's birth mother, or the child's adoptive parent or adoptive parents, as the case requires:

(i) are incapable of caring for the child; and

(ii) have been, or are likely to be, incapable of caring for the child for a continuous period of 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 child's birth mother, or the child's adoptive parent or adoptive parents, as the case requires, to care for the child; and

(iii) taking into account the arrangements for the child's care with the person in comparison with those in the child's previous family situation, it is in the interests of the child for the person to care for the child.

(4) For the purposes of paragraph (2)(d), the additional circumstance is:

(a) the partner (if any) of the child's birth mother, or of the child's adoptive parent or each of the adoptive parents, as the case requires, is incapable of caring for the child; and

(b) on the day the child came into the care of the person, the child was not entrusted to the care of the person or the person's partner (if any) under a decision made by a child protection agency of a State or Territory, or a

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court of a State or Territory, under a law of that State or Territory dealing with child protection; and

(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 (if any) of the birth mother, or of the adoptive parent or each of the adoptive parents, of the child to care for the child; and

(iii) taking into account the arrangements for the child's care with the person in comparison with those in the child's previous family situation, it is in the interests of the child for the person to care for the child.

Note: For when it is ***unreasonable*** for a person to care for a child, see section 6.

27 Exceptional circumstances for PPL claims—surrogacy arrangements

(1) This section applies in relation to a child if the child is born because of a surrogacy arrangement.

(2) For the purposes of paragraph 54(1)(g) of the Act, the exceptional circumstances in which a PPL claim can be made is:

(a) the child:

(i) is in the care of the person; and

(ii) has been, or is likely to be, in that care for a continuous period of at least 26 weeks; and

(b) the person became, or is likely to become, the child's primary carer before the child's first birthday; and

(c) the Secretary is satisfied on reasonable grounds that it is in the interests of the child for the person to care for the child, taking into account the following matters:

(i) whether the person intends to be the long-term primary carer of the child;

(ii) whether the child's birth mother has relinquished care of the child;

(iii) any other matter the Secretary considers relevant.

(3) For the purposes of subsection (1), matters to consider when working out whether the child was born because of a surrogacy arrangement include:

(a) whether the child was born as a result of a surrogacy arrangement (however described) that meets the requirements of the law of a State or Territory that applies in relation to the surrogacy arrangement; and

(b) whether a court has made an order under a law of a State or Territory prescribed under section 60HB of the *Family Law Act 1975* relating to who is a parent of the child.

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28 Exceptional circumstances for special PPL claims

(1) For the purposes of paragraph 54(2)(b) of the Act, the circumstances prescribed by subsection (2), (3), (6) or (7) of this section are exceptional circumstances in which a special PPL claim can be made.

Exceptional circumstances—certain partners and other parents

(2) Exceptional circumstances in which a special PPL claim can be made are:

(a) the person (the ***relevant person***) is any of the following:

(i) the partner of the child's birth mother;

(ii) the partner of an adoptive parent of the child;

(iii) a person who is a parent of the child and is not the child's birth mother;

(iv) the partner of a person covered by subparagraph (iii); and

(b) the child:

(i) is in the care of the relevant person; and

(ii) has been, or is likely to be, in that care for a continuous period of at least 26 weeks; and

(c) the relevant person became, or is likely to 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 placement of the child; and

(d) on the day the child came into the care of the relevant person, the child was not entrusted to the care of the relevant person or the relevant person's partner (if any) under a decision made by a child protection agency of a State or Territory, or a court of a State or Territory, under a law of that State or Territory dealing with child protection; and

(e) if the relevant person is covered by subparagraph (2)(a)(i), (iii) or (iv)—the child's birth mother:

(i) is incapable of caring for the child; and

(ii) has been, or is likely to be, incapable of caring for the child for a continuous period of at least 26 weeks; and

(f) if the relevant person is covered by subparagraph (2)(a)(ii)—the adoptive parent, or each of the adoptive parents, of the child, as the case requires:

(i) is incapable of caring for the child; and

(ii) has been, or is likely to be, incapable of caring for the child for a continuous period of at least 26 weeks.

Exceptional circumstances—other persons

(3) Exceptional circumstances in which a special PPL claim can be made are:

(a) the child:

(i) is in the care of the person (the ***relevant person***); and

(ii) has been, or is likely to be, in that care for a continuous period of at least 26 weeks; and

(b) the relevant person became, or is likely to 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 placement of the child; and

(c) on the day the child came into the care of the relevant person, the child was not entrusted to the care of the relevant person or the relevant person's partner (if any) under a decision made by a child protection agency of a State or Territory, or a court of a State or Territory, under a law of that State or Territory dealing with child protection; and

(d) the relevant person is covered by subsection (4) or (5).

(4) For the purposes of paragraph (3)(d), the relevant person is covered by this subsection if the following persons are incapable of caring for the child, and have been, or are likely to be, incapable of caring for the child for a continuous period of at least 26 weeks:

(a) the child's birth mother and the birth mother's partner (if any);

(b) for an adopted child—the adoptive parent of the child and the adoptive parent's partner (if any), or each of the adoptive parents of the child and their respective partners (if any);

(c) the PPL claimant (if any), for the child, who:

(i) is covered by paragraph 54(1)(g) of the Act; and

(ii) is the child's primary carer immediately before the relevant person becomes the child's primary carer.

(5) For the purposes of paragraph (3)(d), the relevant person is covered by this subsection if the Secretary is satisfied on reasonable grounds that:

(a) the relevant person became the primary carer of the child in special circumstances; and

(b) it would be unreasonable for the following persons to care for the child:

(i) the child's birth mother and the birth mother's partner (if any);

(ii) for an adopted child—the adoptive parent of the child and the adoptive parent's partner (if any), or each of the adoptive parents of the child and their respective partners (if any);

(iii) the PPL claimant (if any), for the child, who is covered by paragraph 54(1)(g) of the Act and who is the child's primary carer immediately before the relevant person becomes the child's primary carer; and

(c) taking into account the arrangements for the child's care with the relevant person in comparison with those in the child's previous family situation, it is in the interests of the child for the relevant person to care for the child.

Note: For when it is ***unreasonable*** for a person to care for a child, see section 6.

Exceptional circumstances—previous PPL claimants

(6) Exceptional circumstances in which a special PPL claim can be made are:

(a) the person (the ***relevant person***) has previously been a PPL claimant for the child; and

(b) the child:

(i) is in the care of the relevant person; and

(ii) has been, or is likely to be, in that care for a continuous period of at least 26 weeks; and

(c) the relevant person became, or is likely to 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 placement of the child; and

(d) on the day the child came into the care of the relevant person, the child was not entrusted to the care of the relevant person or the relevant person's partner (if any) under a decision made by a child protection agency of a State or Territory, or a court of a State or Territory, under a law of that State or Territory dealing with child protection; and

(e) another person, who is a PPL claimant or special PPL claimant for the child subsequent to the relevant person being a PPL claimant for the child as referred to in paragraph (a):

(i) had care of the child in exceptional circumstances and those circumstances have ceased to apply; or

(ii) is incapable of caring for the child, and has been, or is likely to be, incapable of caring for the child for a continuous period of at least 26 weeks.

Exceptional circumstances—if there is a previous special PPL claimant

(7) Exceptional circumstances in which a special PPL claim can be made are:

(a) the child:

(i) is in the care of the person (the ***relevant person***); and

(ii) has been, or is likely to be, in that care for a continuous period of at least 26 weeks; and

(b) the relevant person became, or is likely to 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 placement of the child; and

(c) on the day the child came into the care of the relevant person, the child was not entrusted to the care of the relevant person or the relevant person's partner (if any) under a decision made by a child protection agency of a State or Territory, or a court of a State or Territory, under a law of that State or Territory dealing with child protection; and

(d) the relevant person is covered by subsection (8).

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(8) For the purposes of paragraph (7)(d), the relevant person is covered by this subsection if:

(a) a special PPL claimant, for the child, who is covered by paragraph 54(2)(b) of the Act:

(i) is incapable of caring for the child; and

(ii) has been, or is likely to be, incapable of caring for the child for a continuous period of at least 26 weeks; or

(b) the Secretary is satisfied on reasonable grounds that:

(i) the relevant person became the primary carer of the child in special circumstances; and

(ii) it would be unreasonable for a special PPL claimant, for the child, who is covered by paragraph 54(2)(b) of the Act to care for the child; and

(iii) taking into account the arrangements for the child's care with the relevant person in comparison with those in the child's previous family situation, it is in the interests of the child for the relevant person to care for the child.

Note: For when it is ***unreasonable*** for a person to care for a child, see section 6.

Division 3—Determining a claim to have different flexible PPL days

30 Determining a claim to have different flexible PPL days

(1) For the purposes of subsection 57A(4) of the Act:

(a) subsection (2) of this section prescribes the circumstance in which one or more days (the ***eligible days***) specified in a person's claim for parental leave pay as flexible PPL days for a child may be taken to be one or more other days (the ***actual days***); and

(b) subsection (3) of this section prescribes the requirement for determining that the claim is taken to have specified the actual days as flexible PPL days for the child in those circumstances.

Note: The eligible days need not be all of the days specified as flexible PPL days in the person's claim.

(2) The circumstance is that:

(a) the eligible days are at least 5 consecutive week days; and

(b) the first of the eligible days is the first week day that occurs on or after the child's expected date of birth; and

(c) the child's actual date of birth is later found to be different from the child's expected date of birth.

Note: This subsection can only apply if the claim is made before the child's birth.

(3) The requirement is that the actual days are to be determined by reference to the actual date of birth rather than the expected date of birth.

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Part 4—Payment of parental leave pay

31 Simplified outline of this Part

This Part provides for matters relating to the payment of instalments to a person by the person's employer or by the Secretary. It prescribes:

(a) the information and form in which an employer must give a person after paying an instalment; and

(b) the records of the kind an employer must make and keep; and

(c) the information the Secretary must give a person after paying an instalment in particular circumstances.

32 Employer giving person record of payment—prescribed information and form

(1) This section is made for the purposes of section 80 of the Act.

Prescribed information

(2) After paying one or more instalments (together the ***PPL payment***) to a person on a day, an employer must give the following information to the person:

(a) the employer's name and ABN;

(b) the person's name;

(c) the period or periods to which the PPL payment relates;

(d) the date the PPL payment was paid;

(e) the gross amount of the PPL payment, as determined excluding any deductions by the Secretary under Part 3-1 of the Act, and a statement identifying that amount as parental leave pay;

(f) if no other payments are made by the employer to the person on that day for the period or periods:

(i) the net amount of the PPL payment; and

(ii) the amount withheld from the PPL payment under section 12-110 in Schedule 1 to the *Taxation Administration Act 1953*;

(g) if other payments are made by the employer to the person on that day for the period or periods in addition to the PPL payment:

(i) the total net amount paid to the person by the employer for the period or periods; and

(ii) the total amount withheld from payments to the person for the period or periods under Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*;

(h) if the employer has deducted one or more amounts from the PPL payment under section 67 or 69 of the Act—for each deduction:

(i) the amount deducted; and

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(ii) if the amount deducted has been or will be paid to an entity, or into an account of that entity—the name of that entity and, if applicable, the details of that account.

Prescribed form

(3) Information under subsection (2) must be given in the form of a payslip or separate written advice, whether in written or electronic form.

33 Employer records to be made and kept

Prescribed kind of record

(1) For the purposes of 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 relating to:
  (a) the PPL funding amounts received by the employer for the person; and
  (b) the instalments paid by the employer to the person.

Prescribed form

(2) For the purposes of paragraph 81(2)(a) of the Act, a record of a kind mentioned in subsection (1) of this section must be:
  (a) in the English language; and
  (b) legible; and
  (c) readily accessible by a person exercising powers under Part 4-2 of the Act.

Prescribed information

(3) For the purposes of paragraph 81(2)(b) of the Act, the following information is prescribed:
  (a) the name of the person to whom the record relates;
  (b) the information mentioned in subsections (4) and (5) of this section.

(4) For the purposes of paragraph (3)(b), for each PPL funding amount received by an employer for a person, the information is:
  (a) the amount received; and
  (c) the flexible PPL days for a child of the person for which the PPL funding amount was paid.

(5) For the purposes of paragraph (3)(b), for each PPL payment paid by an employer to a person on a day, the information is:
  (a) the date the PPL payment was paid; and
  (b) the period or periods to which the PPL payment relates; and
  (c) the gross amount of the PPL payment, as determined excluding any deductions by the Secretary under Part 3-1 of the Act, and a statement identifying that amount as parental leave pay; and
  (d) if no other payments are made by the employer to the person on that day for the period or periods:

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(i) the net amount of the PPL payment; and

(ii) the amount withheld from the PPL payment under section 12-110 in Schedule 1 to the *Taxation Administration Act 1953*; and

(e) if other payments in addition to the PPL payment are made by the employer to the person on that day for the period or periods:

(i) the total net amount paid to the person for the period or periods; and

(ii) the total amount withheld from payments to the person for the period or periods under Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*; and

(f) the total of any amounts deducted from the PPL payment under section 67 or 69 of the Act.

34 Secretary giving person record of payment—prescribed information

(1) This section applies if:

(a) the Secretary pays one or more instalments (together the ***PPL payment***) to or in relation to a person on a day for a child; and

(b) the Secretary has not paid a PPL payment to or in relation to the person before that day for that child.

(2) For the purposes of section 89 of the Act, the following information is prescribed:

(a) a statement that the PPL payment is parental leave pay paid by the Secretary;

(b) the name of the person to whom the PPL payment is paid;

(c) the period or periods to which the PPL payment relates;

(d) the date on which the PPL payment is paid;

(e) the gross amount of the PPL payment;

(f) the amount withheld from the PPL payment under section 12-110 in Schedule 1 to the *Taxation Administration Act 1953*;

(g) the net amount of the PPL payment, as determined excluding:

(i) any amount withheld as mentioned in paragraph (f); and

(ii) any amounts deducted by the Secretary under section 67, 69, 69A or 69B of the Act;

(h) if the Secretary has deducted one or more amounts from the PPL payment under section 67 or 69 of the Act—for each deduction:

(i) the amount of the deduction; and

(ii) if the amount deducted has been or will be paid to an entity, into an account of that entity—the name of that entity and, if applicable, the details of that account;

(i) if the Secretary has deducted one or more amounts from the PPL payment under section 69A or 69B of the Act—the amount of each deduction.

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Part 9—Disclosing information

Division 1—Simplified outline of this Part

52 Simplified outline of this Part

This Part provides for matters relating to the disclosure of information.

It prescribes guidelines for the exercise of the Secretary's power under paragraph 128(1)(a) of the Act to give a certificate (a ***public interest certificate***) that a disclosure of information, to such persons and for such purposes as the Secretary determines, is necessary in the public interest in relation to a particular case or class of cases.

The guidelines include matters that the Secretary must have regard to in exercising that power to give a public interest certificate and when such a certificate may be given.

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Division 2—Guidelines for disclosing information

Subdivision A—General

53 Guidelines for disclosing information

For the purposes of subsection 128(4) of the Act, this Division 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.

54 Matters to which Secretary must have regard

In certifying for the purposes of paragraph 128(1)(a) of the Act that a disclosure of information is necessary in the public interest, the Secretary must have regard to whether, on the information available to the Secretary:

(a) a person to whom the disclosure of information relates is, or may be, in a situation in which the person is subject to physical, psychological or emotional abuse; and

(b) the person may not be able to report information in relation to that situation or the person's circumstances because of the person's age, disability, social, cultural, family or other circumstances.

55 When public interest certificate may be given

(1) The Secretary may certify for the purposes of paragraph 128(1)(a) of the Act that a disclosure of information is necessary in the public interest if the Secretary is satisfied that:

(a) the information cannot reasonably be obtained from a source other than the Department; and

(b) the disclosure is covered by a section in Subdivision B; and

(c) if the information is not de-identified information—the purpose of the relevant section in Subdivision B could not be achieved by disclosing de-identified information; and

(d) the person to whom the information will be disclosed either:

(i) has a genuine and legitimate interest in the information; or

(ii) is a Minister covered by subsection (2) of this section.

(2) This subsection covers the following Ministers:

(a) the Prime Minister;

(b) a Minister administering any part of:

(i) the Act; or

(ii) the *Fair Work Act 2009*; or

(iii) the family assistance law; or

(iv) the *Human Services (Centrelink) Act 1997*; or

(v) the *Human Services (Medicare) Act 1973*; or

(vi) the social security law.

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(3) For the purposes of paragraph (1)(c), information is ***de-identified*** if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

Subdivision B—Covered disclosures for public interest certificates

56 Threat to life, health or safety

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of preventing, or lessening, a serious threat to the life, health or safety of a person.

57 Enforcement of laws

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for one or more of the following purposes:

(a) enforcing a criminal law of the Commonwealth or of a State or Territory that relates to an indictable offence punishable by imprisonment for a period of 2 years or more;

(b) enforcing a law imposing a pecuniary penalty equivalent to 40 penalty units or more;

(c) preventing an act that may have a significant adverse effect on the public revenue;

(d) extraditing one or more persons to or from Australia, including the making of, or the consideration of whether to make or accept, a request for extradition;

(e) the provision, or the proposed provision, of international assistance in criminal matters by the Attorney-General, or an officer of the Attorney-General's Department, to a foreign country;

(f) obtaining, or the proposed obtaining, of international assistance in criminal matters by the Attorney-General, or an officer of the Attorney-General's Department, from a foreign country.

58 Protecting the Commonwealth

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of investigating, prosecuting or preventing an offence or threatened offence:

(a) against an officer or employee of the Commonwealth; or

(b) against property of the Commonwealth; or

(c) on premises of:

(i) the Department; or

(ii) the Human Services Department.

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59 Proceeds of crime order

(1) For the purposes of paragraph 55(1)(b), this section covers a disclosure to a law enforcement officer that is necessary for the purposes of:

(a) making, or the proposed or possible making of, an order covered by subsection (2) of this section; or

(b) supporting or enforcing such an order.

(2) This subsection covers the following orders:

(a) an order under Division 3 of Part XIII (recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*;

(b) an order under Part VI (proceeds of crime) of the *Mutual Assistance in Criminal Matters Act 1987*;

(c) an order under Part II (confiscation) or III (control of property liable to confiscation) of the *Proceeds of Crime Act 1987*;

(d) an order under Chapter 2 (the confiscation scheme) or Division 1 of Part 3-1 of Chapter 3 (examination orders) of the *Proceeds of Crime Act 2002*;

(e) an order under a law of a State or Territory corresponding to a law mentioned in paragraph (c) or (d);

(f) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*);

(g) a court order (including a declaration or direction) under a law of a State or Territory relating to unexplained wealth.

60 Mistake of fact

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of correcting a mistake of fact in relation to the administration of a program of the Department if:

(a) the integrity of the program will be at risk if the mistake of fact is not corrected; or

(b) 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 disclosed relates).

61 Ministerial briefing

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of briefing a Minister covered by subsection 55(2):

(a) so that the Minister can:

(i) consider a complaint or issue raised by or on behalf of a person with the Minister (in writing or orally) about paid parental leave; and

(ii) respond to that person in relation to the complaint or issue; or

(b) for a meeting or forum that the Minister is to attend; or

(c) in relation to an issue about paid parental leave raised or proposed to be raised publicly by or on behalf of the person to whom the information

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disclosed relates so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement; or

(d) about an error or delay on the part of the Human Services Department or the Fair Work Ombudsman that relates to paid parental leave; or

(e) about an instance of an anomalous or unusual operation of the Act or the *Fair Work Act 2009*.

62 Missing person

For the purposes of paragraph 55(1)(b), this section covers a disclosure to a court, coronial inquiry, Royal Commission, Department or other authority of the Commonwealth or a State or Territory if:

(a) the information disclosed is about a missing person; and

(b) the disclosure is necessary for the purposes of:

(i) helping the court, coronial inquiry, Royal Commission, Department or authority in relation to the missing person; or

(ii) locating 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.

63 Establishing death of person or place where death is registered

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of establishing:

(a) the death of a person; or

(b) the place where the death of a person is registered.

64 Deceased person

For the purposes of paragraph 55(1)(b), this section covers a disclosure if:

(a) the information disclosed is about a deceased person; and

(b) the disclosure is necessary for the purposes of helping:

(i) a court, coronial inquiry, Royal Commission, Department or other authority of the Commonwealth or a State or Territory, in relation to the death of the person; or

(ii) a person to locate a relative or beneficiary of the deceased person; or

(iii) an individual or authority responsible for the administration of the estate of the deceased person in relation to the administration of that estate; and

(c) there is no reasonable ground to believe that the deceased person would not have wanted the information disclosed.

65 Research, statistical analysis and policy development

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of:

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(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; or
(c) policy development.

66 Establishment and operation of the Family Responsibilities Commission

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of assisting in the performance of the functions, or the exercise of the powers, of the Family Responsibilities Commission.

Note: For the definition of ***Family Responsibilities Commission***, see section 6.

67 Reparations

For the purposes of paragraph 55(1)(b), this section covers a disclosure to a Department or authority of the Commonwealth, a State or Territory if the disclosure is necessary for the purposes of contacting a person about the person's possible entitlement to compensation or other form of recompense in a reparation process.

68 Child protection agencies

For the purposes of paragraph 55(1)(b), this section covers a disclosure to a child protection agency of a State or Territory if the disclosure is necessary for the purpose of contacting a parent or relative of a child in relation to the child.

69 Public Housing Administration

(1) For the purposes of paragraph 55(1)(b), this section covers a disclosure to a Department or authority of a State or Territory, or an agent or contracted service provider of a Department or authority of a State or Territory, if:
  (a) the information disclosed relates to a resident, an applicant to become a tenant, or a tenant of public housing or other State or Territory managed housing; and
  (b) subsection (2) of this section applies.

(2) This subsection applies if the disclosure is necessary for one or more of the following purposes:
  (a) facilitating rent calculation or rent deduction in relation to public housing, or State or Territory managed housing;
  (b) facilitating the administration of an income confirmation service in relation to public housing or State or Territory managed housing to avoid mistakes including underpayments and overpayments of rent, pensions, benefits and allowances;

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(c) investigating or taking enforcement action in relation to public housing or State or Territory managed housing, including to assist with an investigation into:

(i) the misreporting of income by tenants of public housing or State or Territory managed housing; or

(ii) the unauthorised occupation of public housing or State or Territory managed housing by any person.

70 Matters of relevance to a Department

(1) For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purposes of facilitating the progress or resolution of a matter that is relevant to, and within the portfolio responsibilities of, a Department administering any part of the Act or these rules or the social security law.

(2) Without limiting subsection (1), a disclosure covered by that subsection includes a disclosure that is necessary for the purposes of facilitating the progress or resolution of a matter that relates to a program administered, or an activity undertaken, by the Department if:

(a) the program or activity provides assistance or services to a class of persons; and

(b) that class of persons includes one or more persons receiving:

(i) parental leave pay; or

(iii) payments or entitlements under the social security law.

71 APS Code of Conduct investigations

For the purposes of paragraph 55(1)(b), this section covers a disclosure that is necessary for the purpose of:

(a) investigating a suspected breach of the APS Code of Conduct; and

(b) making a decision on whether the APS Code of Conduct has been breached.

Note: For the definition of ***APS Code of Conduct***, see section 6

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Part 10—Debt recovery

72 Simplified outline of this Part

Under the Act, the Commonwealth must waive the right to recover certain amounts owing to the Commonwealth and the Secretary may agree that a debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount that is less than the amount of the debt outstanding. The Secretary may only make such an agreement if the Secretary is satisfied that the agreed amount is at least the present value of the unpaid amount.

This Part prescribes the rate of interest that forms part of the basis for calculating that present value.

73 Settlement interest

For the purposes of the definition of ***settlement interest*** in subsection 198(6) of the Act, the annual rate of interest prescribed is 5%.

Part 11—Extension of Act to persons who are not employees and employers

Division 1—Simplified outline of this Part

74 Simplified outline of this Part

Under section 299 of the Act, the Secretary may make employer determinations, extending the operation of the Act to persons who are in a relationship that is similar to the relationship between an employer and an employee.

This Part prescribes:

(a) who the Secretary may make determinations in relationship to; and

(b) how the Act is modified in relation to those persons.

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Division 2—Extension of Act to law enforcement officers of certain States and Territories

75 Extension of Act to persons who are not employees and employers—law enforcement officers of certain States and Territories

For the purposes of subsection 299(1) of the Act, the Secretary may make an employer determination for the following persons who are in a relationship that is similar to the relationship between an employer and an employee:

(a) the Commissioner of Police of a State or Territory (other than Queensland or the Australian Capital Territory);

(b) a person who is a law enforcement officer of that State or Territory (other than the Commissioner of Police).

76 Modification of Act—law enforcement officers of certain States and Territories

For the purposes of subsection 299(2) of the Act, in relation to a person who is a law enforcement officer of a State or Territory (other than Queensland or the Australian Capital Territory) that is not a Commissioner of Police of that State or Territory, the Act is modified as follows:

(a) the Commissioner of Police of that State or Territory is taken to be the law enforcement officer's employer;

(b) the law enforcement officer is taken to be an employee of the Commissioner of Police of that State or Territory (other than for the purposes of paragraph 49(1)(a) of the Act);

(c) a reference to the employment or engagement of the law enforcement officer is taken to be a reference to that officer's role, functions or duties, however described, as a law enforcement officer of that State or Territory;

(d) paragraph 101(1)(e) of the Act is taken to be omitted.

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Division 3—Extension of Act to Queensland law enforcement officers

77 Extension of Act to persons who are not employees and employers—Queensland law enforcement officers

For the purposes of subsection 299(1) of the Act, the Secretary may make an employer determination for the following persons who are in a relationship that is similar to the relationship between an employer and an employee:

(a) the Crown in right of Queensland;

(b) a person who is a law enforcement officer of Queensland.

78 Modification of Act—Queensland law enforcement officers

For the purposes of subsection 299(2) of the Act, in relation to a person who is a law enforcement officer of Queensland, the Act is modified as follows:

(a) the Crown in right of Queensland is taken to be the law enforcement officer's employer;

(b) the law enforcement officer is taken to be an employee of the Crown in right of Queensland (other than for the purposes of paragraph 49(1)(a) of the Act);

(c) a reference to the employment or engagement of the law enforcement officer is taken to be a reference to that officer's role, functions or duties, however described, as a law enforcement officer of Queensland;

(d) paragraph 101(1)(e) of the Act is taken to be omitted.

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Division 4—Extension of Act to Australian Federal Police

79 Extension of Act to persons who are not employees and employers—Australian Federal Police

For the purposes of subsection 299(1) of the Act, the Secretary may make an employer determination for the following persons who are in a relationship that is similar to the relationship between an employer and an employee:

(a) the AFP Commissioner;

(b) a person who is an AFP officer (other than the AFP Commissioner).

80 Modification of Act—Australian Federal Police

For the purposes of subsection 299(2) of the Act, in relation to a person who is an AFP officer (other than the AFP Commissioner), the Act is modified as follows:

(a) the AFP Commissioner is taken to be the AFP officer's employer;

(b) the AFP officer is taken to be an employee of the AFP Commissioner (other than for the purposes of paragraph 49(1)(a) of the Act);

(c) a reference to the employment or engagement of the AFP officer is taken to be a reference to that officer's role, functions or duties, however described, as an AFP officer;

(d) paragraph 101(1)(e) of the Act is taken to be omitted.

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Division 5—Extension of Act to defence force members

81 Extension of Act to persons who are not employees and employers—defence force members

For the purposes of subsection 299(1) of the Act, the Secretary may make an employer determination for the following persons who are in a relationship that is similar to the relationship between an employer and an employee:

(a) the Chief of the Defence Force;

(b) a person who is a defence force member (other than the Chief of the Defence Force).

82 Modification of Act—defence force members

For the purposes of subsection 299(2) of the Act, in relation to a person who is a defence force member (other than the Chief of the Defence Force), the Act is modified as follows:

(a) the Chief of the Defence Force is taken to be the defence force member's employer;

(b) the defence force member is taken to be an employee of the Chief of the Defence Force (other than for the purposes of paragraph 49(1)(a) of the Act);

(c) a reference to the employment or engagement of the defence force member is taken to be a reference to the service of a member of the defence force;

(d) a reference to the Fair Work Ombudsman or Fair Work Inspector is taken to be a reference to the Defence Force Ombudsman;

(e) paragraph 101(1)(e) of the Act is taken to be omitted.

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Part 12—Application, saving and transitional provisions

Division 1—Simplified outline of this Part

83 Simplified outline of this Part

This Part provides for application, saving and transitional provisions that apply in relation to this instrument.

Division 2—Paid Parental Leave Rules 2010

84 Application—claims made on or after 1 April 2021

This instrument applies in relation to:

(a) a claim for parental leave pay for a child made by a person on or after 1 April 2021; and

(b) a claim for dad and partner pay for a child made by a person on or after 1 April 2021.

85 Saving—claims made before 1 April 2021

Despite the repeal of the *Paid Parental Leave Rules 2010* by Schedule 1 to this instrument those rules continue to apply in relation to:

(a) a claim for parental leave pay for a child made by a person before 1 April 2021; and

(b) a claim for dad and partner pay for a child made by a person before 1 April 2021.

86 Application—disclosure of information

Part 9 of this instrument applies in relation to disclosures of information made on or after 1 April 2021, whether the information was obtained before, on or after that day.

87 Transitional—extension of Act to persons who are not employees and employers

(1) This section applies in relation to an employer determination that:

(a) is made under the Act, as applied by Part 6-3 of the *Paid Parental Leave Rules 2010*; and

(b) is in force immediately before 1 April 2021.

(2) The employer determination has effect on and after 1 April 2021 as if it were an employer determination under the Act as applied by Part 11 of this instrument.

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Division 3—Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Rules 2023

88 Application of amendments

The amendments of this instrument made by the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Rules 2023* apply in relation to a claim for parental leave pay made on or after 26 March 2023 for a child who is born on or after 1 July 2023.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Paid Parental Leave Rules 2021	31 Mar 2021 (F2021L00384)	1 Apr 2021 (s 2(1) item 1)	
Paid Parental Leave Amendment (COVID-19 Work Test) Rules 2021	4 Sept 2021 (F2021L01238)	5 Sept 2021 (s 2(1) item 1)	—
Paid Parental Leave Amendment (Work Test Special Circumstances) Rules 2021	27 Oct 2021 (F2021L01465)	4 Sept 2021 (s 2(1) item 1)	—
Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Rules 2023	30 June 2023 (F2023L00906)	1 July 2023 (s 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 4	rep LA s 48C
s 5	am F2023L00906
s 6	am F2023L00906
Part 1A	
Part 1A	ad F2023L00906
s 7A	ad F2023L00906
s 7B	ad F2023L00906
Part 2	
Division 1	
s 8	am F2021L01238; F2021L01465; F2023L00906
Division 2	
Subdivision A	
s 9	rs F2023L00906
s 10	rs F2023L00906
s 11	ed C1
	rep F2023L00906
s 12	rep F2023L00906
Subdivision B	
s 13	am F2023L00906
s 14	am F2023L00906
s 15	rep F2023L00906
s 16	am F2023L00906
s 17	am F2023L00906
Subdivision C	
Subdivision C	rs F2023L00906
s 21	rs F2023L00906
Division 3	
s 24A	ad F2021L01238
s 24B	ad F2021L01465
Part 3	
Division 1	
s 25	am F2023L00906
Division 2	
s 26	am F2023L00906
s 27	am F2023L00906

Endnote 4—Amendment history

Provision affected	How affected
s 28	rs F2023L00906
s 29	rep F2023L00906
Division 3	
s 30	rs F2023L00906
Part 4	
s 33	am F2023L00906
s 34	am F2023L00906
Part 5	rep F2023L00906
s 35	rep F2023L00906
s 36	rep F2023L00906
Part 6	rep F2023L00906
s 37	rep F2023L00906
s 38	rep F2023L00906
s 39	rep F2023L00906
s 40	rep F2023L00906
s 41	rep F2023L00906
s 42	rep F2023L00906
s 43	rep F2023L00906
s 44	rep F2023L00906
Part 7	rep F2023L00906
s 45	rep F2023L00906
s 46	rep F2023L00906
s 47	rep F2023L00906
s 48	rep F2023L00906
s 49	rep F2023L00906
Part 8	rep F2023L00906
s 50	rep F2023L00906
s 51	rep F2023L00906
Part 9	
Division 2	
s 70	am F2023L00906
Part 12	
Division 3	
Division 3	ad F2023L00906
s 88	ad F2023L00906
Schedule 1	rep LA s 48C