



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

I, Amanda Rishworth, Minister for Social Services, make the following rules.

Dated 28 June 2023

Amanda Rishworth
Minister for Social Services

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1 Name

This instrument is the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Rules 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------|--|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. | 1 July 2023 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Paid Parental Leave Rules 2021

1 Section 5 (paragraph beginning “This instrument”)

Omit “and dad and partner pay”.

2 Section 5 (after the paragraph beginning “This instrument”)

Insert:

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

3 Section 5 (paragraph beginning “Parts 5 to 8”)

Repeal the paragraph.

4 Section 6 (paragraphs (a) to (f) of the note to heading)

Repeal the paragraphs, substitute:

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

5 After Part 1

Insert:

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.

6 Section 8

Omit:

Division 2 prescribes conditions that certain primary, secondary and tertiary claimants must satisfy to be eligible for parental leave pay on:

- (a) a day other than a flexible PPL day for a child; or
- (b) a flexible PPL day for a child.

Division 2 also prescribes circumstances in which certain persons are not subject to a newly arrived resident's waiting period.

substitute:

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.

7 Sections 9 to 12

Repeal the sections, substitute:

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.

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

8 Paragraph 13(1)(b)

Omit “18 weeks”, substitute “20 weeks”.

9 Paragraph 14(a)

Repeal the paragraph, substitute:

- (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

10 Paragraph 14(d)

Omit “a primary claimant”, substitute “the birth mother of the child”.

11 Section 15

Repeal the section.

12 Subparagraph 16(a)(i)

Omit “be the primary carer of”, substitute “care for”.

13 Subparagraph 16(a)(ii)

Omit “the primary carer of”, substitute “caring for”.

14 Paragraph 16(b)

Omit “be the primary carer of”, substitute “care for”.

15 Paragraph 16(c)

Omit “be the primary carer”, substitute “care”.

16 Paragraph 16(d)

Repeal the paragraph.

17 Paragraph 16(e)

Omit “the child’s primary carer” (first occurring), substitute “caring for the child”.

18 Paragraph 16(e)

Omit “be the child’s primary carer”, substitute “care for the child”.

19 Paragraph 17(a)

Omit “the primary carer”, substitute “caring”.

20 Paragraph 17(e)

Omit “day; and”, substitute “day.”.

21 Paragraph 17(f)

Repeal the paragraph.

22 Subdivision C of Division 2 of Part 2

Repeal the Subdivision, substitute:

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.

23 Section 25

Omit:

Under the Act, only certain people can make a primary, secondary or tertiary 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 which a primary, secondary and tertiary claim may be made.

substitute:

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.

24 Section 26 (heading)

Omit “**primary claimants**”, substitute “**PPL claims**”.

25 Subsection 26(2)

Omit “paragraph 54(1)(c) of the Act, the exceptional circumstances in which a primary claim”, substitute “paragraph 54(1)(g) of the Act, the exceptional circumstances in which a PPL claim”.

26 Section 27 (heading)

Omit “**primary claimants**”, substitute “**PPL claims**”.

27 Subsection 27(2)

Omit “paragraph 54(1)(c) of the Act, the exceptional circumstance in which a primary claim”, substitute “paragraph 54(1)(g) of the Act, the exceptional circumstance in which a PPL claim”.

28 At the end of subparagraph 27(2)(a)(ii)

Add “and”.

29 Sections 28 and 29

Repeal the sections, substitute:

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

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- (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).
- (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

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- (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.

30 Section 30

Repeal the section, substitute:

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.

31 Paragraph 33(4)(b)

Repeal the paragraph.

32 Paragraph 33(4)(c)

Omit "(if any)".

33 Paragraph 34(2)(i)

Omit "deduction;"; substitute "deduction."

34 Paragraphs 34(2)(j) and (k)

Repeal the paragraphs.

35 Parts 5 to 8

Repeal the Parts.

36 Subparagraph 70(2)(b)(ii)

Repeal the subparagraph.

37 In the appropriate position in Part 12

Insert:

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.