



Paid Parental Leave Rules 2021

I, Anne Ruston, Minister for Families and Social Services, make the following rules.

Dated 23 March 2021

Anne Ruston
Minister for Families and Social Services

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Part 1—Preliminary

1 Name

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

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	1 April 2021.	1 April 2021

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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 and dad and partner pay.

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.

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Parts 5 to 8 provide for matters relating to the Secretary making determinations about whether dad and partner pay is payable to a person, eligibility for that pay, persons who can make a claim for that pay and the payment of that pay 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:
- (a) entity;
 - (b) has not previously satisfied the work and income tests;
 - (c) parent;
 - (d) partner;
 - (e) primary carer;
 - (f) law enforcement officer.

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:

- (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 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.

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.

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.

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

Subdivision A—Prescribed conditions for claimants

9 Prescribed conditions for primary claimants

Day other than a flexible PPL day for the child

- (1) For the purposes of subparagraph 31(4)(a)(iv) of the Act, the conditions are that the primary claimant satisfies subsections (2) and (3) of this section on the day (that is not a flexible PPL day for the child).
- (2) The claimant satisfies this subsection on a day if the claimant:
 - (a) is the primary carer of 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 claimant satisfies this subsection on a day if the claimant:
 - (a) has not returned to work on (or before) 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).

Flexible PPL day for the child

- (4) For the purposes of subparagraph 31AA(4)(e) of the Act, the conditions are that the primary claimant satisfies subsections (5) and (6) of this section on the flexible PPL day for the child.
- (5) The claimant satisfies this subsection on a day if the claimant:
 - (a) is the primary carer of 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).
- (6) The claimant satisfies this subsection on a day if the claimant:
 - (a) is performing no more than 1 hour of paid work on that day; or
 - (b) is performing work for a permissible purpose on that day; or
 - (c) satisfies one or more of the following for the child on that day:

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- (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 secondary claimants—general

Day other than a flexible PPL day for the child

- (1) For the purposes of paragraph 31(4)(b) of the Act, the conditions for a secondary claimant who can make a secondary claim for a child because of paragraph 54(2)(a), (b) or (c) of the Act are that the claimant:
 - (a) satisfies on the day (that is not a flexible PPL day for the child):
 - (i) the work test; and
 - (ii) the income test; and
 - (iii) the Australian residency test; and
 - (b) satisfies subsections (2) and (3) of this section on a day.
- (2) The claimant satisfies this subsection on a day if the claimant:
 - (a) is the primary carer of 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 claimant satisfies this subsection on a day if the claimant:
 - (a) has not returned to work on (or before) that day; or
 - (b) satisfies one or more of the following for the child on that day:
 - (i) section 14 (child in hospital following birth);
 - (ii) section 17 (loss of care for child);
 - (iii) section 18 (recall to duty);
 - (iv) section 19 (summons or other compulsory process);
 - (v) section 20 (State, Territory or national emergency).

Flexible PPL day for the child

- (4) For the purposes of paragraph 31AA(5)(b) of the Act, the conditions for a secondary claimant who can make a secondary claim for a child because of paragraph 54(2)(a), (b) or (c) of the Act are that the claimant:
 - (a) satisfies on the flexible PPL day for the child:
 - (i) if the claimant has not previously satisfied the work and income tests—the work test and the income test; and
 - (ii) the Australian residency test; and
 - (b) satisfies subsection (5) and (6) of this section on the flexible PPL day for the child.
- (5) The claimant satisfies this subsection if the claimant:

- (a) is the primary carer of 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).
- (6) The claimant satisfies this subsection if the claimant:
- (a) is performing no more than 1 hour of paid work on that day; or
 - (b) is performing work for a permissible purpose; or
 - (c) satisfies one or more of the following for the child on that day:
 - (i) section 14 (child in hospital following birth);
 - (ii) section 17 (loss of care for child);
 - (iii) section 18 (recall to duty);
 - (iv) section 19 (summons or other compulsory process);
 - (v) section 20 (State, Territory or national emergency).

11 Prescribed conditions for secondary claimants—exceptional circumstances

Day other than a flexible PPL day for the child

- (1) For the purposes of paragraph 31(4)(b) of the Act, the conditions for a secondary claimant who can make a secondary claim for a child because of paragraph 54(2)(d) of the Act are that the claimant:
- (a) satisfies the Australian residency test on the day (that is not a flexible PPL day for the child); and
 - (b) satisfies subsections (2) and (3) of this section on the day.

Note: For when a person can make a secondary claim for the child because of paragraph 54(2)(d) of the Act, see section 28 of this instrument.

- (2) The claimant satisfies this subsection on a day if the claimant:
- (a) is the primary carer of 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 claimant satisfies this subsection on a day if the claimant:
- (a) has not returned to work on (or before) that day; or
 - (b) satisfies one or more of the following for the child on that day:
 - (i) section 15 (transitioning care arrangements);
 - (ii) section 17 (loss of care for child);
 - (iii) section 18 (recall to duty);
 - (iv) section 19 (summons or other compulsory process);
 - (v) section 20 (State, Territory or national emergency).

Flexible PPL day for the child

- (4) For the purposes of paragraph 31AA(5)(b) of the Act, the conditions for a secondary claimant who can make a secondary claim for a child because of paragraph 54(2)(d) of the Act are that the claimant:

Part 2 Eligibility for parental leave pay

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

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- (a) satisfies the Australian residency test on the flexible PPL day for the child; and
- (b) satisfies subsections (5) and (6) of this section on a day.

Note: For when a person can make a secondary claim for the child because of paragraph 54(2)(d) of the Act, see section 28 of this instrument.

- (5) The claimant satisfies this subsection on a day if the claimant:
 - (a) is the primary carer of 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).
- (6) The claimant satisfies this subsection on a day if the claimant:
 - (a) is performing no more than 1 hour of paid work on that day;
 - (b) is performing work for a permissible purpose on that day;
 - (c) satisfies one or more of the following for the child on that day:
 - (i) section 15 (transitioning care arrangements);
 - (ii) section 17 (loss of care for child);
 - (iii) section 18 (recall to duty);
 - (iv) section 19 (summons or other compulsory process);
 - (v) section 20 (State, Territory or national emergency).

12 Prescribed conditions for tertiary claimants

Day other than a flexible PPL day for the child

- (1) For the purposes of paragraph 31(4)(b) of the Act, the conditions are that on the day (that is not a flexible PPL day for the child) the tertiary claimant:
 - (a) satisfies the Australian residency test; and
 - (b) satisfies subsections (2) and (3) of this section.
- (2) The claimant satisfies this subsection on a day if the claimant:
 - (a) is the primary carer of 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 claimant satisfies this subsection on a day if the claimant:
 - (a) has not returned to work on (or before) that day; or
 - (b) satisfies one or more of the following for the child on that day:
 - (i) section 15 (transitioning care arrangements);
 - (ii) section 17 (loss of care for child);
 - (iii) section 18 (recall to duty);
 - (iv) section 19 (summons or other compulsory process);
 - (v) section 20 (State, Territory or national emergency).

Flexible PPL day for the child

- (4) For the purposes of paragraph 31AA(5)(b) of the Act, the conditions are that on the flexible PPL day for the child the tertiary claimant:
 - (a) satisfies the Australian residency test; and
 - (b) satisfies subsections (5) and (6) of this section.
- (5) The claimant satisfies this subsection on a day if the claimant:
 - (a) is the primary carer of 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).
- (6) The claimant satisfies this subsection if the claimant:
 - (a) is performing no more than 1 hour of paid work on that day; or
 - (b) is performing work for a permissible purpose on that day; or
 - (c) satisfies one or more of the following for the child on that day:
 - (i) section 15 (transitioning care arrangements);
 - (ii) section 17 (loss of care for child);
 - (iii) section 18 (recall to duty);
 - (iv) section 19 (summons or other compulsory process);
 - (v) 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 18 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.

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- (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.

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) in the case of a primary claimant—the birth mother of the child; or
 - (ii) in the case of a secondary claimant—a father of the child, a partner of the birth mother or a partner of a father of the child; 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 a primary claimant—that day is on or after the 14th day after the day the child is born.

15 Transitioning care arrangements

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

- (a) if the person is a secondary claimant:
 - (i) the child has stopped being in the care of the primary claimant before the day; and
 - (ii) on the day the secondary claimant is performing paid work; and
 - (iii) the Secretary is satisfied that the day is within a period that is reasonable in the circumstances for the secondary claimant to make arrangements in relation to work and care for the child; and
- (b) if the person is a tertiary claimant:
 - (i) the child has stopped being in the care of the secondary claimant before the day; and
 - (ii) on the day the tertiary claimant is performing paid work; and

- (iii) the Secretary is satisfied that the day is during a period that is reasonable in the circumstances for the tertiary claimant to make arrangements to in relation to work and care for the child.

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 be the primary carer of the child within 26 weeks after that day; or
 - (ii) was the primary carer of the child before that day; and
- (b) on that day, the person is unable to be the primary carer of 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 be the primary carer 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
- (d) on that day, there is no determination in force under the Act that parental leave pay is payable for the child to another person for that day; and
- (e) the Secretary is satisfied that the person would have been the child's primary carer for that day except for the person's temporary inability to be the child's primary carer.

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 the primary carer 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; and
- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for 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

Part 2 Eligibility for parental leave pay

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

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- (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.

Subdivision C—Exemption to newly arrived resident’s waiting period

21 Exemption to waiting period—primary and secondary claimants making joint claims with secondary claimant to get all the parental leave pay

Purpose

- (1) For the purposes of subsection 31A(6) of the Act, this section prescribes circumstances in which subsection 31A(1) of the Act does not apply to a person who is:
 - (a) a primary claimant for a child in relation to whom paragraphs 15(1)(a), (b) and (c) of the Act apply; or
 - (b) a secondary claimant for a child in relation to whom paragraphs 15(1)(a), (b) and (c) of the Act apply.

Circumstances for primary claimants

- (2) If the person is the primary claimant for the child, the circumstances are that:
 - (a) if the PPL period for the secondary claimant for the child would start on the day the child was born—on the day the child was born, the primary claimant satisfies subsection (4); and
 - (b) if paragraph 15(4)(a) of the Act would apply in relation to a determination under that section for parental leave pay for the child—on each day during the period referred to in that paragraph of the Act the primary claimant satisfies subsection (4) of this section; and

- (c) if paragraph 15(4)(b) of the Act would apply in relation to a determination under that section for parental leave pay for the child—on the day the child was born the primary claimant satisfies subsection (4) of this section; and
- (d) if paragraph 15(4)(c) of the Act would apply in relation to a determination under that section for parental leave pay for the child—on each day during the first part of the period referred to in subparagraph 15(4)(c)(i) of the Act, the primary claimant satisfies subsection (4) of this section.

Circumstances for secondary claimants

- (3) If the person is the secondary claimant for the child, the circumstances are that:
 - (a) if the PPL period for the secondary claimant would start on the day the child was born—on the day before the day the child was born the secondary claimant satisfies subsection (4); and
 - (b) if paragraph 15(4)(a) of the Act would apply in relation to a determination under that section for parental leave pay for the child—on the day before the secondary claimant's PPL period would start the claimant satisfies subsection (4) of this section; and
 - (c) if paragraph 15(4)(b) of the Act would apply in relation to a determination under that section for parental leave pay for the child—on each day during the period referred to in that paragraph of the Act the secondary claimant satisfies subsection (4) of this section; and
 - (d) if paragraph 15(4)(c) of the Act would apply in relation to a determination under that section for parental leave pay for the child—on each day during the last part of the period referred to in subparagraph 15(4)(c)(ii) of the Act the secondary claimant satisfies subsection (4) of this section.

General exemption requirement

- (4) For the purposes of subsections (2) and (3), a claimant satisfies this subsection on a day if the claimant is receiving any of the following payments on the day:
 - (a) a social security pension;
 - (b) a social security benefit;
 - (c) a farm household allowance.

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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:
 - (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.

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 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.

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.

Division 2—Claims for parental leave pay

26 Exceptional circumstances for primary claimants—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)(c) of the Act, the exceptional circumstances in which a primary 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 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:

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- (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 primary claimants—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)(c) of the Act, the exceptional circumstance in which a primary 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;
 - (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.

28 Exceptional circumstances for secondary claimants

- (1) For the purposes of paragraph 54(2)(d) of the Act, the exceptional circumstance in which a secondary 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) 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 court of a State or Territory, under a law of that State or Territory dealing with child protection; and
 - (c) if the person is the partner of the primary claimant for the child—the primary claimant:
 - (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
 - (d) if the person is not the partner of the primary claimant for the child—the person is covered by subsection (2).
- (2) For the purposes of paragraph (1)(d), a person is covered by this subsection if:
- (a) the primary claimant and the primary claimant's partner (if any):
 - (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 primary claimant or the primary claimant's partner 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.

29 Exceptional circumstances for tertiary claimants

- (1) For the purposes of subsection 54(3) of the Act, the exceptional circumstance in which a tertiary 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) 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 court of a State or Territory, under a law of that State or Territory dealing with child protection; and
 - (c) if the person has previously been the primary claimant for the child—either:
 - (i) the secondary claimant had care of the child in exceptional circumstances and those circumstances have ceased to apply; or

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- (ii) the secondary claimant 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; and
 - (d) if the person has not previously been the primary claimant for the child—the person is covered by subsection (2).
- (2) For the purposes of paragraph (1)(d), a person is covered by this subsection if:
- (a) both the primary claimant and the secondary claimant:
 - (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 primary claimant and for the secondary claimant 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.

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

30 Determining a claim to have different flexible PPL days

For the purposes of subsection 57A(4) of the Act, each item of the following table prescribes:

- (a) the circumstances 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) the requirements for determining that the claim is taken to have specified the actual days as flexible PPL days for the child in those circumstances.

Determining a claim to have different flexible PPL days

Item	Circumstances:	Requirements:
1	Both of the following apply: <ul style="list-style-type: none"> (a) the person has a continuous PPL period for the child under subsection 6A(3) of the Act that includes the eligible days; (b) the person’s PPL period for the child is later found to be different from the person’s expected PPL period for the child 	The actual days are to be determined: <ul style="list-style-type: none"> (a) by reference to the end of that PPL period rather than the end of that expected PPL period; and (b) so that they will be included in the person’s continuous PPL period for the child under subsection 6A(1) of the Act
2	All of the following apply: <ul style="list-style-type: none"> (a) the circumstances in item 1 do not apply; (b) the eligible days are consecutive week days; (c) the first of the eligible days is the first week day that occurs after the end of the period (the <i>anticipated PPL period</i>) that: <ul style="list-style-type: none"> (i) starts on the primary claimant’s nominated start date; and (ii) is stated in the claim as the period the person anticipates will be the person’s PPL period for the child; (d) the person’s PPL period for the child is later found to be different from that anticipated PPL period 	The actual days are to be determined by reference to the end of that PPL period rather than the end of that anticipated PPL period

Note 1: Item 1 can only apply if the claim is made before the child’s birth. Item 2 can apply if the claim is made after the child’s birth.

Note 2: The eligible days need not be all of the days specified as flexible PPL days in the person’s claim.

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
 - (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
 - (b) the PPL days (if any) for the person for which the amount was paid; and
 - (c) the flexible PPL days (if any) 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:
 - (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

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- (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;
 - (j) the period for which a final PPL payment is expected to be paid by the Secretary;
 - (k) the frequency with which further PPL payments will be paid by the Secretary.

Part 5—Determinations about whether dad and partner pay is payable to a person

35 Simplified outline of this Part

Under the Act, there are certain circumstances in which the Secretary must not make a payability determination that dad and partner pay is payable to a person for a child, including where there is already in force a payability determination that dad and partner pay is payable to another person for the child. This Part prescribes the circumstances in which that limitation does not apply.

36 Prescribed circumstances—dad and partner pay payable if determination in force to pay to another person for the child

For the purposes of subsection 115BF(2) of the Act, the prescribed circumstances are that:

- (a) the claim is made by an adoptive parent of the child; or
- (b) the claim for the child is made in the circumstances mentioned in one of the following provisions of this instrument:
 - (i) section 46 (partner of a child’s primary carer when care arrangements change);
 - (ii) section 48 (partner of an adoptive parent of the child);
 - (iii) section 49 (surrogacy arrangements).

Part 6 Eligibility for dad and partner pay

Division 1 Simplified outline of this Part

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Part 6—Eligibility for dad and partner pay

Division 1—Simplified outline of this Part

37 Simplified outline of this Part

Under the Act, there are a number of criteria that determine whether a person is eligible for dad and partner pay for a child on a day. In general, a person will not be eligible for dad and partner pay if the person performs 1 hour or more of work other than in certain limited circumstances.

This Part provides for matters relating to:

- (a) the conditions that certain claimants for dad and partner pay for a child must satisfy in order to be eligible for that pay; and
- (b) circumstances in which a claimant for dad and partner pay for a child is taken to be not working.

Division 2—Matters relating to when a DAPP claimant is eligible for dad and partner pay

38 Prescribed conditions—DAPP claimants

- (1) For the purposes of paragraph 115CB(4)(d) of the Act, the conditions are that the DAPP claimant satisfies subsections (2) and (3) of this section on the day.
- (2) The DAPP claimant satisfies this subsection on a day if the claimant:
 - (a) is caring for the child (within the meaning of section 115CL of the Act); or
 - (b) satisfies either or both of the following for the child:
 - (i) section 39 (temporary inability to care);
 - (ii) section 40 (loss of care for child).
- (3) The DAPP claimant satisfies this subsection on a day if the claimant:
 - (a) is not working (within the meaning of section 115CM of the Act); or
 - (b) satisfies one or more of the following for the child:
 - (i) section 41 (recall to duty);
 - (ii) section 42 (summons or other compulsory process);
 - (iii) section 43 (State, Territory or national emergency).

39 Care exception—temporary inability to care

For the purposes of subparagraph 38(2)(b)(i), a DAPP claimant satisfies this section for a child on a day if:

- (a) the claimant is expected to be, within 2 weeks after that day, or was before that day, caring for the child (within the meaning of section 115CL of the Act); and
- (b) on that day, the person is unable to care for the child (within the meaning of section 115CL of the Act) due to circumstances beyond the person's control (other than a circumstance related to an event mentioned in paragraph 40(c)); and
- (c) the claimant is unable to care for the child (within the meaning of section 115CL of the Act):
 - (i) on that day; and
 - (ii) for a continuous period of less than 2 weeks that starts on or before that day; and
- (d) there is no determination in force under the Act that dad and partner pay is payable for the child to another person for that day; and
- (e) the Secretary is satisfied that the claimant would have been caring for the child (within the meaning of section 115CL of the Act) except for the person's temporary inability to be the child's carer.

40 Care exception—loss of care for child

For the purposes of subparagraph 38(2)(b)(ii), a DAPP claimant satisfies this section for a child on a day if:

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- (a) the claimant was before that day caring for the child (within the meaning of section 115CL of the Act); and
- (b) on that day, the claimant, or the claimant's partner:
 - (i) is the child's parent; or
 - (ii) is otherwise legally responsible for the child; and
- (c) an event occurs, without the claimant or the claimant's partner's consent that prevents the child being in the claimant's care on that day; and
- (d) if the child is in the care of another parent—the claimant or the claimant's partner has a court order or a parenting plan that provides that the child is to live with the claimant or the claimant's partner on that day; and
- (e) the claimant or the claimant's partner has taken reasonable steps on or before that day for the child to be in the claimant's care again after that day; and
- (f) there is no determination in force under the Act that dad and partner pay is payable for the child to another person for that day.

41 Work exception—recall to duty

For the purposes of subparagraph 38(3)(b)(i), a DAPP claimant satisfies this section for a child on a day if the claimant:

- (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.

42 Work exception—summons or other compulsory process

For the purposes of subparagraph 38(3)(b)(ii), a DAPP claimant satisfies this section for a child on a day if the claimant is performing paid work because the claimant 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.

43 Work exception—State, Territory or national emergency

- (1) For the purposes of subparagraph 38(3)(b)(iii), a DAPP claimant satisfies this section for a child on a day if, on that day, the claimant:
 - (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 this section, 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.

Division 3—Circumstances that are taken to be not working

44 Prescribed circumstances in which DAPP claimant taken to be not working

- (1) For the purposes of subsection 115CM(2) of the Act, this section prescribes circumstances in which a DAPP claimant is taken to be ***not working*** on a day.
- (2) The circumstances are that:
 - (a) the claimant:
 - (i) is on unpaid leave from employment with an employer on that day;
and
 - (ii) receives a payment for workers' compensation or accident compensation in relation to the claimant's employment with the employer from another entity for that day; or
 - (b) the claimant receives a payment from the claimant's employer that supplements the claimant's dad and partner pay for that day.

Note: The payment in paragraph (2)(b) includes an adjustment payment to partial or full income replacement.

Part 7—Claims for dad and partner pay

45 Simplified outline of this Part

Under the Act, certain people can make a claim for dad and partner pay for a child. The following are all permitted under the Act to make a claim for dad and partner pay for a child:

- (a) the biological father of a child;
- (b) the partner of the child's birth mother;
- (c) an adoptive parent of the child.

A person who satisfies prescribed circumstances is also permitted to make a claim for dad and partner pay for a child. This Part prescribes those circumstances.

46 Prescribed circumstance—partner of a child's primary carer when care arrangements change

- (1) This section applies if:
 - (a) the person is the partner of the child's primary carer; and
 - (b) the child's primary carer is not the biological father or an adoptive parent of the child; and
 - (c) section 49 (which deals with surrogacy arrangements) does not apply in relation to the child.
- (2) For the purposes of paragraph 115DD(d) of the Act, the prescribed circumstance in which a claim can be made is that:
 - (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 child came into the care of the person:
 - (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) the following 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:
 - (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); and
 - (d) the Secretary is satisfied on reasonable grounds that:
 - (i) the child came into the care of the person in special circumstances; and

- (ii) it would be unreasonable for the persons mentioned in subparagraph (c)(i) or (ii) (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; and
- (e) 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 court of a State or Territory, under a law of that State or Territory dealing with child protection.

Note 1: For the meaning of *incapable of caring* for a child, see section 7.

Note 2: For when it is *unreasonable* for a person to care for a child, see section 6.

47 Prescribed circumstance—partner of the biological father of the child

For the purposes of paragraph 115DD(d) of the Act, if the person is the partner of the biological father of the child, the prescribed circumstance in which a claim can be made is that:

- (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 child:
 - (i) is not in the care of the child's birth mother; and
 - (ii) has not been, or is unlikely to be, in the care of the child's birth mother for a continuous period of at least 26 weeks.

48 Prescribed circumstance—partner of an adoptive parent of the child

For the purposes of paragraph 115DD(d) of the Act, if the person is the partner of an adoptive parent of the child, the prescribed circumstance in which a claim can be made is that:

- (a) the birth mother has relinquished care of the child; and
- (b) 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.

49 Prescribed circumstance—surrogacy arrangements

- (1) This section applies in relation to a child born because of a surrogacy arrangement.
- (2) For the purposes of subsection (1), matters to consider when working out whether the child was born because of a surrogacy arrangement include:

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- (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.
- (3) For the purposes of paragraph 115DD(d) of the Act, the prescribed circumstance in which a claim can be made is that:
- (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 child came into the care of the person 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 care for the child for the long-term;
 - (ii) whether the child's birth mother has relinquished care of the child;
 - (iii) any other matter the Secretary considers relevant.

Part 8—Payment of dad and partner pay by Secretary

50 Simplified outline of this Part

This Part provides for matters relating to the payment of dad and partner pay by the Secretary.

It prescribes the information the Secretary must give a person if the Secretary pays dad and partner pay to the person in particular circumstances.

51 Record of payment

- (1) This section applies if the Secretary:
 - (a) pays dad and partner pay to or in relation to a person for a child; and
 - (b) has not previously paid dad and partner pay to or in relation to the person for that child.
- (2) For the purposes of section 115EE of the Act, the following information is prescribed:
 - (a) a statement that the payment is a dad and partner pay payment paid by the Secretary;
 - (b) the name of the person to whom the payment is paid;
 - (c) the period to which the payment relates;
 - (d) the date on which the payment is paid;
 - (e) the gross amount of the payment;
 - (f) the amount withheld from the payment under section 12-110 in Schedule 1 to the *Taxation Administration Act 1953*;
 - (g) the net amount of the payment, as determined excluding:
 - (i) any amount withheld as mentioned in paragraph (f); and
 - (ii) any amounts deducted by the Secretary under section 115EI of the Act.

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.

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.

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 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*.

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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:

- (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;
 - (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

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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
 - (ii) dad and partner 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

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

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**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.

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.

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.

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.

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.

Section 84

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.

Schedule 1—Repeals

Paid Parental Leave Rules 2010

1 The whole of the instrument

Repeal the instrument.