Paid Parental Leave Amendment Bill 2014

Luke Buckmaster
Social Policy Section

Contents

Purpose of the Bill ................................................................. 2
Background ................................................................. 2
  Employers and PPL ....................................................... 2
  Removing the employer obligation ..................................... 2
Committee consideration .................................................... 3
  Parliamentary Joint Committee on Human Rights ................ 3
Policy position of non-government parties/independents ......... 4
Position of major interest groups ........................................ 4
  Australian Chamber of Commerce and Industry ............... 4
  Pharmacy Guild of Australia ........................................... 4
  Other ............................................................................ 5
Financial implications ....................................................... 5
Key issues and provisions .................................................. 5
  Why are employers currently required to be involved? ......... 6
  Employer experience of the paymaster role ....................... 7
Concluding comments ...................................................... 7

Date introduced: 19 March 2014
House: House of Representatives
Portfolio: Small Business
Commencement: 1 July 2014

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/
Purpose of the Bill

The purpose of the Paid Parental Leave Amendment Bill 2014 (the Bill) is to amend the Paid Parental Leave Act 2010 (PPL Act) to remove the requirement for employers to make payments to employees under the national Paid Parental Leave (PPL) scheme from 1 July 2014. Instead, employees would be paid directly by the Department of Human Services (DHS), unless the employer chooses to make the payments and the employee consents to this arrangement.

The Government’s reason for making the change is to ‘ease administrative burdens on business’. The Government estimates that total annual (national) savings to employers from removing the paymaster requirement will be $48 million, though it is unclear how it arrived at this figure.

Background

Employers and PPL

Currently, in most cases, the Commonwealth Government funds employers to provide instalments of PPL to their eligible long-term employees for up to 18 weeks at $622.10 per week before tax (based on the rate of the National Minimum Wage). Employers are required to pay PPL instalments to a person if the DHS has determined that they must do so.

Under section 101 of the PPL Act, DHS is required to make an ‘employer determination’ (that the person’s employer is required to pay instalments of PPL) if:

- the person is eligible for PPL
- instalments are likely, if the determination is made, to be payable by the employer for at least 40 consecutive PPL days that are weekdays
- the person has been, or will have been, employed by the employer for at least 12 months immediately before the expected date of birth of the person’s child where the person claims before the birth, or the later of the expected date of birth and the day the child was born where the person claims after the birth
- the person is likely to be an Australian based employee of the employer for the person’s PPL period where a payability determination has been made, or the period of days for which instalments are likely to be payable if a payability determination has not yet been made and
- the employer has an Australian Business Number (ABN).

Employers may also elect to pay PPL to one or more of their employees even if the above conditions have not been met (section 109). In 2012–13, 11.7 per cent of businesses elected to provide PPL to non-mandatory employees.

Removing the employer obligation

The Bill implements a Coalition commitment from the 2010 and 2013 elections that under their paid parental leave scheme ‘employees will be paid directly by the Commonwealth Government, not via their employer’.

The Coalition opposed the requirement that employers act as ‘paymasters’ for the scheme from before the passage of the PPL Act. The then Shadow Minister for Small Business, Bruce Billson, argued in the second reading debate for the Paid Parental Leave Amendment Bill 2010:

The Coalition insists that the small business community not be left holding the parental leave cheque because they do not need to. There is no advantage to it and there are plenty of disadvantages to that model as I have outlined in

---

3. Ibid., p. 17.
my contribution already. So if the Rudd Labor Government has any interest whatsoever in regulatory and compliance burdens and has listened to the legitimate and substantiated concerns of the small business community, they will not force them to be the ones handling the cash with the risks that are attached to that and the inevitable costs of changing their own internal systems, payroll systems and the like; the reporting obligations back and forth to the FAO [Family Assistance Office] and to the employee; the concerns about triggering an increased financial liability for workers compensation and payroll expenses because their payroll budget is inflated by that amount. It adds no advantage whatsoever.\(^7\)

Following the 2010 election, Mr Billson sought to remove the paymaster role from employers through the introduction of a Private Member’s Bill, the Paid Parental Leave (Reduction of Compliance Burden for Employers) Amendment Bill 2010.\(^8\) The Bill did not pass the House of Representatives.

The provisions in the current Bill were originally contained in Schedule 7 of an omnibus Bill, the Social Services and Other Legislation Amendment Bill 2013 (Social Services Bill).\(^9\) Schedule 7 was omitted as a result of Government amendments made at the Consideration of Senate message stage in the House of Representatives, with a view to reintroducing it in a separate Bill at a later date.\(^10\)

**Committee consideration**

*Parliamentary Joint Committee on Human Rights*

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^11\)

The Parliamentary Joint Committee on Human Rights (the Committee) has commented on the Bill and sought advice from the Minister on the impact of the Paid Parental Leave Amendment on employees with salary sacrifice arrangements in place.\(^12\) As explained in the Regulatory Impact Statement for the Bill:

> Where ... [an employee’s] employer is administering the ... [parental leave] payment, [any] salary sacrifice arrangements are able to continue and so the employee’s tax liability would continue to be calculated on a lower salary. However, as DHSS does not offer salary sacrifice deduction functionality, an employee’s tax liability could increase if the mandatory employer role is removed and their employer does not opt back in. This may be a particular issue for employees in the not-for-profit sector. This impact is not a compliance cost, but is an impact on the after-tax income a person may receive, dependent on an employee’s income and the level of salary sacrificed under the arrangement.\(^13\)

The Committee has sought clarification from the Minister as to whether the removal of the requirement for employers to provide government-funded parental leave pay may limit the right to social security and the right to just and favourable conditions of work and, if so, whether any such limitations are permissible. It has also sought further information as to whether the Bill is compatible with the right to equality and non-discrimination, given that “the majority of paid parental leave recipients may be women”.

---

11. The Statement of Compatibility with Human Rights can be found at page 21 of the Explanatory Memorandum to the Bill.
Policy position of non-government parties/independents

The Labor Party’s policy, announced in the 2013 election campaign, is to remove the requirement for employers to make payments under the PPL scheme but only for businesses with fewer than 20 employees.14 For businesses with 20 or more employees, the current arrangements would remain in place.

The Australian Greens opposed the Government’s change to the employer paymaster role when the omnibus Social Services Bill was debated in the Senate.15

The Senate amended Schedule 7 of the Social Services Bill to reflect Labor’s policy that only businesses with fewer than 20 employees be exempted from the requirement to make payments under the PPL scheme.16 As noted above, Schedule 7 was then omitted as a result of Government amendments made in the House of Representatives, with the provisions reintroduced in this Bill.

Position of major interest groups

Australian Chamber of Commerce and Industry

The Australian Chamber of Commerce and Industry (ACCI) has opposed the paymaster role for employers under the PPL scheme since prior to the scheme’s introduction.17 Hence it supports the measure introduced by this Bill. According to ACCI Chief Operating Officer, John Osborn:

Small business people should not be forced to be the unpaid ‘pay-clerks’ for government schemes. This responsibility should be funded and administered by government.18

He added that:

The Abbott Government is trying to doing the right thing by small business in cutting red-tape and the Opposition should support this.

It should be noted that the Government’s approach would exempt all businesses from making PPL scheme payments, not just small businesses (defined by ACCI as ‘those having fewer than 20 employees’).19 Further, as noted above, Labor’s policy would remove the paymaster role for small businesses.

Mr Osborn also cited the 2013 ACCI Pre-election survey which he says ‘found 84.3 per cent of businesses either agreed or strongly agreed that the Government should not require employers to be the paymaster for the Paid Parental Leave scheme’.20 While the survey report contains information on the size of businesses responding to the survey, the type of industry they represent and their location, it is not clear how many businesses responded to the survey overall. While the survey report says that ‘1,700 businesses were surveyed’, another ACCI document refers to the survey having been ‘distributed ... to a total of 1,700 businesses’ [emphasis added].21

Pharmacy Guild of Australia

The Pharmacy Guild also supports the removal of the requirement that employers make payments under the PPL scheme. According to a Pharmacy Guild media release:

... the Guild – along with many other employer groups - was disappointed that the [original PPL] legislation was passed without any amendments to remove the paymaster role from small business employers. The additional work

---

administering the scheme for employers further increases the regulatory burdens already felt particularly by small businesses.

While in Opposition, Bruce Billson made several unsuccessful attempts to have the paymaster function as an opt in for small business. The Guild congratulates the Minister for following through with this commitment in Government, and we urge the Parliament to support the Bill.

Guild members report that they have had to pay employees on PPL before they have received the funds from the Family Assistance Office. They also say that they have had to employ additional staff in their payroll areas to deal with the interaction with FAO. The pharmacy workforce is 87 per cent female; so the instance of PPL is high in our sector.22

Other

In the 2010 report of its inquiry into paid parental leave, the Productivity Commission noted that some employer representatives and individual companies had given qualified support to playing the paymaster role for the PPL scheme. For example, the Motor Trade Association of South Australia said it recognised:

... that employers must play a role in the provision of paid parental leave. Generally employers support the scheme, as it encourages retention of quality staff and female participation in the labour market. MTA SA supports the employer obligation to act as paymaster and guarantee employment.26

However, many (like those highlighted above) were opposed on the grounds of the perceived administrative burden. For example, according to the Australian Mines and Metals Association:

Not only would the identification of employers’ responsibilities be time consuming and costly, the process of actually making the payments would involve immense administrative complication, with the potential to increase organizational costs and administrative pressures for employers.24

The Australian Industry Group (Ai Group) argued in a number of submissions to the inquiry that PPL scheme payments ‘should be paid directly to employees by the Government’.23 However, in its later submission to the Senate inquiry into the exposure draft of the Bill introducing the PPL scheme, Ai Group was more supportive of the employer paymaster role, arguing that it:

... understands the logic behind the Government-funded parental leave payments being channeled (sic) through employers, for employees who are not short-term and who remain attached to the enterprise. Such an approach should reinforce the employee’s link with the workplace, and achieve better return to work outcomes.26

Financial implications

The additional cost to the Government from this measure is estimated as $7 million over five years.27

Key issues and provisions

Under the changes in this Bill, employers will no longer be required to provide PPL to an employee but will still have the option to elect to do so. For an employer to pay PPL, DHS will continue to need to make an employer determination. As explained above, section 101 of the Act sets out when DHS is required to make an employer determination. Items 17 to 20 of the Bill amend section 101, to remove the current requirements for

27. Explanatory Memorandum, Paid Parental Leave Amendment Bill 2014, op. cit., p. 4. Note that that on page 3 of the Explanatory Memorandum, the ‘financial impact’ is said to be ‘$0.7 million over five years’. The correct figure is most likely to be $7 million, given this is the figure listed on pages 4 and 16 of the Explanatory Memorandum to this Bill and also page 5 of the Explanatory Memorandum to the Social Services Bill.
instalments to be payable for least 40 consecutive PPL days (paragraph 101(1)(b)); for the person to have been employed by the employer for at least 12 months (paragraph 101(1)(c)); and for the employer to have an ABN (paragraph 101(1)(e)).

Instead, the Bill adds the following new conditions to those required for an employer determination to be made:

- the person’s employer must have made an election (or ‘opted in’) to pay instalments of PPL and that election must apply to the person (proposed paragraph 101(1)(b))
- the person must have consented in the claim form to the employer paying them instalments of PPL (proposed paragraph 101(1)(c)).

Even where an employer has ‘opted in’ to paying PPL instalments to a person and received notice of an employer determination, they may still (within 14 days ‘or such longer period allowed by the Secretary’ of DHS) inform DHS, orally or in writing, that they do not accept the obligation to pay PPL instalments to the person (proposed subsection 103, at item 21 of the Bill).

Employers who do not respond to a notice of an employer determination will no longer potentially be subject to a compliance notice (proposed subsection 157(1), inserted by item 34 of the Bill). Currently, under subsection 157(1), DHS may give compliance notices to employers who, for example, do not respond to an employer determination or provide bank account and pay cycle information after a review. The amendment is intended to reflect ‘the non-mandatory nature’ of the employer role in paying PPL instalments and that ‘review of an employer determination is no longer required because the employer can simply decline the paymaster role’.

**Why are employers currently required to be involved?**

The employer role in making PPL payments was suggested by the Productivity Commission in its report recommending the current scheme. The Commission argued that:

> ... the more that parental leave arrangements mimic those that exist as part of routine employment contracts, the more they will be seen by employers and employees as standard employment arrangements. 29

It suggested that this would benefit employers in two main ways. First, it would promote ‘employment continuity and workforce retention’. Second, it would signal that ‘a genuine capacity to take a reasonable period of leave from employment to look after children is just a normal part of working life’. 30

As noted above, while during the Commission’s parental leave inquiry, some employer representatives and individual companies gave qualified support to playing the ‘paymaster’ role for the scheme, others were opposed on the grounds of the perceived administrative burden.

The Commission, however, was sceptical of these concerns, suggesting that:

> ... it is arguable whether there would be any material addition to administrative costs, not only for large employers with access to sophisticated payroll and human resource management systems, but also for smaller firms because (as acknowledged by some participants) the probability of an employee actually being on parental leave at any point in time would be quite low. 31

Nevertheless, the Government says that feedback to a legislated review of the PPL scheme suggests that employer groups ‘generally [do] not support the employer role’ because it ‘places an unnecessary administrative burden on business, and any benefits to employers in terms of employee retention were not commensurate with the administrative burden imposed’. 32

As noted above, the Labor Party’s policy is that businesses with fewer than 20 employees should no longer have to administer Government-funded PPL. It argued that ‘the Federal Government’s evaluation of the scheme

---

28. Ibid., p. 6.
30. Ibid.
31. Ibid., p. 8.31.
found that most employers have found their role straightforward and easy, but we recognise that some small businesses would prefer to have Centrelink pay their employees directly.  

Employer experience of the paymaster role

While there is clearly some opposition to the paymaster role among employers, there is evidence from a Government evaluation of the early impacts of the scheme (the 2013 PPL Phase 2 Report) that employer experiences in implementing PPL have generally been positive.  

According to a survey of 501 employers undertaken as part of the evaluation:

- 54 per cent disagreed with the statement that ‘organising payments for PPL has been time-consuming’
- only 29 per cent of employers stated additional costs were involved in implementing the scheme and
- 25 per cent of employers reported one to two hours were needed
- 24 per cent said it required three to five hours and
- 22 per cent reported it took 15 hours or more

In terms of possible retention effects associated with employers providing PPL, interviews conducted as part of the evaluation were inconclusive because ‘most employers had little experience with return to work as the majority of their employees were still on leave’.  

Concluding comments

From the time the idea of a national PPL scheme was first discussed, many employers have opposed the proposition that they be required to manage the pay arrangements for employees participating in the scheme. This has been largely on the grounds of a perceived administrative burden arising from this requirement.  

However, evidence from the 2013 PPL Phase 2 Report indicates that it may be premature to suggest that the benefits of the employer role in providing PPL are outweighed by the costs (especially when the available evidence suggests that employers have generally had positive experiences with the scheme). It could also be argued that the Government’s provision of up to $11,000 to employers towards the costs of parental leave pay for their employees should be considered in evaluating the costs and benefits of the scheme.  

Further, it is worth noting that an argument often used in support of the more generous schemes proposed by the Coalition and the Greens is that PPL should be seen as a workplace entitlement, rather than a welfare payment. On this view, removing the paymaster requirement from employers takes away one of the few aspects of the scheme specifically intended to promote PPL as a standard employment arrangement.  

Finally, it should be noted that the Parliamentary Joint Committee on Human Rights has sought clarification from the Minister for Small Business in relation to the human rights implications of the Bill’s impact on employees with salary sacrifice arrangements in place.

33. K Rudd et al, op. cit.
35. Ibid., p. 114.