

Paid parental leave – remove mandatory employer role

Regulation impact statement

This Regulation Impact Statement (RIS) has been prepared by the Commonwealth Department of Social Services (DSS). Its purpose is to assist the Australian Government to make decisions regarding removing the mandatory employer role under the national paid parental leave (PPL) scheme.

This RIS has been prepared in accordance with the Australian Government Best Practice Regulation Handbook, July 2013, issued by the Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet, and in consultation with the OBPR.

An options-stage RIS is not required for this proposal, as no decision has been previously announced and the proposal is giving effect to an election commitment.

1. Background

The national paid parental leave (PPL) scheme started on 1 January 2011. The PPL scheme is designed to provide financial support to eligible working parents to take time off work to care for a newborn or recently adopted child.

Two payments are provided under the national scheme:

- parental leave pay (PLP) which provides up to 18 weeks' pay at the rate of the National Minimum Wage to eligible primary carers (usually birth mothers) since 1 January 2011;
- dad and partner pay (DAPP) which provides up to two weeks' pay at the rate of the National Minimum Wage to eligible dads or partners caring for a child born or adopted from 1 January 2013.

The employer role is a feature of the current PPL scheme. Under the scheme, the Department of Human Services (DHS) funds employers to provide PLP to their eligible long-term employees. The employer role was recommended by the Productivity Commission to benefit employers through improved retention rates, and to help change community attitudes by sending a strong signal that taking leave from work around the time of birth or adoption is seen as part of the normal course of work and life.

The employer role became a mandatory requirement from 1 July 2011 for employers of PLP recipients who are long-term employees of the employer:

- more than 125,000 employees have received PLP from their employer since the start of the PPL scheme from 1 January 2011 to 30 June 2013;
- in June 2013, 76 per cent of recipients were receiving their PLP from their employer (either mandatory employees or employees for whom their employer has opted to pay).

Employers do not have a role in the administration of DAPP payments.

In its 2013 Federal Election policy document, *Our Plan: Real Solutions for all Australians*, as part of the government red tape reduction process, the Government committed to “give employers the option of ‘opting in’ to managing the administration of Paid Parental Leave to their employees. If they choose not to be the government’s paymaster, payments will be made directly to the employee” (p27).

The Government made a further 2013 Election commitment in its 2013 Federal Election policy document, *The Coalition’s Policy for Paid Parental Leave*, to enhance the PPL scheme from 1 July 2015 so that working mothers would be able to access 26 weeks of payment at their replacement wage plus superannuation, rather than being limited to 18 weeks of payment at national minimum wage.

2. Problem

The Government is currently undertaking a legislated review of the PPL scheme (‘the review’), in addition to an evaluation being undertaken to assess whether the scheme is meeting its objectives (‘the evaluation’).

In their feedback to the review, employer and industry groups generally did not support the employer role, particularly in relation to small business. These stakeholders considered the employer role 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.

The Australian Chamber of Commerce and Industry conducted a survey of members on the PPL scheme in May 2013. In the survey, 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”.

The evaluation of the scheme has found the employer role is generally operating smoothly. While employers were mostly positive about the process to make payments, quantitative data was not collected as to their attitude towards the employer role. Quantitative data collected on process issues did not highlight significant differences across employer organisation size. However, a number of smaller employers were more negative in their views during qualitative interviews.

PPL administrative data suggests that some employers may be more likely to find the PPL role valuable or cost-effective, and therefore opt in to provide payments beyond what is required under legislation:

- PPL administrative data for 2012-13 shows that 11.7 per cent of all businesses opted in to provide parental leave pay to non-mandatory employees.
 - This proportion was significantly higher amongst large businesses (27.7 per cent) than medium (10.8 per cent) and small (6.7 per cent) businesses.
- In 2012-13, only 10 per cent of small businesses paid PLP in respect of more than one of their employees.

3. Objectives

A removal of the mandatory employer role under the PPL scheme could assist in meeting the following objects:

- helping to reduce administration and compliance costs on employers , particularly those who feel the role is not beneficial for their organisation;
- where the employer has administrative capacity and has found the role to be beneficial for their organisation, continue to provide an option for employers to take on this role voluntarily.

4. Options

In terms of assessing the regulatory impact, this statement reports on three options:

- Implementing the measure from 1 March 2014;
- Implementing the measure from 1 July 2015 as part of the broader reforms to the PPL scheme; or
- Removing the employer role completely, with all payments under the PPL scheme to be made by DHS.

Implementing the measure from 1 March 2014

This option would remove the PPL mandatory employer role from 1 March 2014, while still allowing employers to opt into providing payments under the PPL scheme to employees on voluntary basis, where both the employer and employee agree.

Implementing the measure from 1 July 2015 as part of the broader reforms to the PPL scheme.

This option would implement the measure with a start date of 1 July 2015, in line with commencement of the broader reforms to the PPL scheme.

Removing the employer role completely, with all payments under the PPL scheme to be made by DHS

A complete removal of the employer role, either from 1 March 2014 or 1 July 2015, could also be considered. Under this option, employers could no longer make any payments to employees, with all payments to be made by DHS.

5. Impact

Impact on employers

All three options would result in the same outcome: to shift administration costs from the employer to Government.

The evaluation Phase 2 report found the additional costs for employers were mainly due to the extra workload, rather than purchasing a new payroll system or hiring additional staff to administer the scheme:

- Among the 29 per cent of employers who felt additional costs were involved, almost all (94 per cent) said these costs involved taking on extra workload themselves, while half (51 per cent) said the workload of current staff had been increased to implement PPL.
- In terms of staff hours needed to implement PPL, the median identified by all organisations was 22 hours:
 - 4 per cent of organisations reported that no hours were needed;
 - 23 per cent of organisations reported 1-2 hours were needed;
 - 34 per cent reported implementation required 3-15 staff hours;
 - 30 per cent of all organisations reported the implementation of PPL took more than 15 staff hours; and
 - 9 per cent of organisations reported that they did not know.
- The median cost identified by all organisations to implement PPL was \$1,783:
 - nearly half (45 per cent) of employers estimated the cost to be less than \$250;
 - 21 per cent estimated the cost to be between \$250-\$1,000;
 - 20 per cent estimated the cost to exceed \$1,000; and
 - 14 per cent did not know the level of costs involved.

It is possible that smaller business would have larger proportional impact, as they do not have the same economies of scale when applying the process for a single employee. As noted earlier, for 90 per cent of small businesses who provided PPL to an employee in 2012-13, this employee was the only PLP recipient in that business in the 2012-13 financial year. Therefore, it is likely that for many small businesses, costs incurred to administer PLP payments are mostly one-off costs.

Forty one per cent of employers felt organising payments was time consuming and submissions to the review indicated that, even though costs may not have been significant, the process was viewed by some as time-consuming.

Some employers find the administration of PPL problematic. A very small number report very high monetary costs. Evaluation interviews found some employers experienced problems, especially small, private organisations.

While there would be benefits to employers in the form of increased workforce attachment and overall participation, these are difficult to quantify. As raised earlier, most employers are of the view that costs to administer the scheme outweigh any benefits that a mandatory employer role may deliver. The evaluation results showed that most employers felt it was too soon to tell if there would be gains but most agreed that there had been good workplace attachment in women on parental leave.

Impact on employees

The measure has no impact on regulatory or compliance costs for employees, as they would still undertake the same claim process as currently required.

While most of the impact in removing the mandatory employer role would be felt by employers, there is an impact on employees with salary sacrifice arrangements in place. Where their employer is administering the PLP payment, these 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 DHS 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.

Impact on Government

As noted above, the measure would result in a shift of administration costs from employers to Government. Currently DHS administer payments for around 24 per cent of employees (non-mandatory employees or recipients who do not have an employer), however under the measure they would be responsible for making the majority of payments to employees. The additional cost to Government to implement the measure is \$7 million over five years.

Impacts associated with particular options

- **Implementing the measure from 1 March 2014**

For employers who consider the employer role to be an unnecessary burden, this option would provide an early removal of the mandatory nature of the current employer role.

Proceeding with this option would also provide an opportunity to monitor employer involvement and any issues raised through an 'opt-in' role well before commencement of the enhanced PPL scheme from 1 July 2015.

- **Implementing the measure from 1 July 2015 as part of the broader reforms to the PPL scheme.**

Delaying the start date of the measure to 1 July 2015 would allow time for further consultation with business community to occur before making any changes, which could have interactions with other private workplace arrangements.

However, this delayed start date would not be beneficial for employers who no longer wish to play a role in administering PLP and incurring related costs.

- **Removing the employer role completely, with all payments under the PPL scheme to be made by DHS**

Consultation with business community would need to occur before a change such as this could be implemented, as some businesses may have negotiated private workplace arrangements on the understanding that they would be the paymaster for their employees.

- **Regulatory Burden Estimate Table**

Average Annual Change in Compliance Costs (from BAU)				
Sector/Cost Categories	Business	Not-for-profit	Individuals	Total by cost category
Administrative Costs	\$44 million (savings)	\$4 million (savings)	\$	\$48 million (savings)
Substantive Compliance Costs	\$	\$	\$	\$
Delay Costs	\$	\$	\$	\$
Total by Sector	\$44 million (savings)	\$4 million (savings)	\$	\$48 million (savings)
Proposal is cost neutral?	<input checked="" type="radio"/> yes	<input type="checkbox"/> no		
Proposal is deregulatory	<input checked="" type="radio"/> yes	<input type="checkbox"/> no		

6. Consultation

The opposition of employer groups to the mandatory employer role was first established during public consultations conducted in 2009, prior to implementation of the existing scheme. An ongoing implementation working group which is made up of representatives from small business and large employer groups, employee, womens' and community groups (which Government established to inform the PPL implementation process) has been specifically asked to comment on the mandatory employer role and has provided direct feedback indicating that it should be removed.

A public consultation process was undertaken as part of the PPL Review including:

- A public submission phase, including a general call for submissions and direct emails to employee, employer and community peak bodies;
- Face to face consultation with key stakeholders;
- The formation of a PPL Review steering committee made up of representatives from employer, employee, womens' and community groups.

Feedback on the employer role has also been received through direct contact made by members of the public, generally small business employers who have been recently notified of their mandatory obligations.

The measure directly responds to all these forms of feedback received over a significant period of time. As outlined earlier, employer groups have an overwhelming and sustained opposition to the mandatory employer role, and have put forward their own proposals to remove its mandatory nature. While a specific implementation date for the removal of the mandatory nature of the employer role was not discussed with concerned employers, the feedback received was that this should occur as soon as practicable as a matter of priority. The 1 March 2014 date is the earliest date on which the measure could proceed, due to administrative practicalities. Employer groups did not raise any opposition to a continuing role should an employer voluntarily choose to do so.

Some representative bodies expressed support for the role (such as bodies representing employees and other interest groups). The view of these organisations

is that having an employer administer the PLP payment reaffirms the nature of the payment as an industrial entitlement, rather than a welfare entitlement. These groups particularly view the employer role to be beneficial in situations where employers 'top-up' PLP payments so that parents above minimum wage continue to be paid at their normal wage for a period, and so that parents continue to receive pay in line with their usual pay cycle. A small number of employers have also responded that they favour this approach. The measure directly responds to this view by ensuring that employers who value the role can continue to have this arrangement with their employees (should the employee wish).

Further consultation with interested parties will occur in the lead up to commencement of the enhanced PPL scheme from 1 July 2015, to gauge the relevance of a continued opt-in employer role under the new scheme and whether any issues would need to be resolved to ensure effective arrangements from 1 July 2015.

7. Conclusion

Given feedback from employers and the Government's commitment to move to an 'opt-in' role, the preferred option could be to move to an opt-in employer role under the PPL scheme from either 1 March 2014 or 1 July 2015. However, it is considered that an earlier start date of 1 March 2014 would be more beneficial for employers and provide a useful indicator of the effectiveness of the opt-in arrangements well before the commencement of the enhanced PPL scheme on 1 July 2015.

8. Implementation and review

Under the measure to remove the mandatory employer role from 1 March 2014, all employers registered for the PPL scheme will be "opted out" on that date and payments of parental leave pay will be made by DHS. However, if an employer chooses to 'opt in' to provide the payment and the employee consents to being paid by their employer, an employer determination will be made and payment could be provided by the employer. Where an employer is already providing PLP to an employee on 1 March 2014, that arrangement would not be affected.

Ongoing, where an employee consents to being paid by their employer, employers will be sent a notice with the option to accept or decline an employer determination. If the employer accepts the notice of the employer determination and their obligations to pay instalments of parental leave pay to the person, funds will be transferred to the employer in line with current arrangements. If the employer declines or does not respond to the notice, DHS will provide parental leave pay directly to the customer. To reflect the non-mandatory nature of their role, employers will no longer be potentially subject to a compliance notice for not responding to a notice of an employer determination.

As stated earlier, take up of the opt-in arrangement will be monitored as an indicator for the effectiveness of these arrangements as part of the enhanced PPL scheme to commence on 1 July 2015. Key performance indicators could include:

- number of employees who consent to their employer providing PLP;
- number of employers who accept or decline the employer determination;

- number of employers who opt-in after 1 March 2014.