

Holidays and Other Legislation Amendment Bill 2015

Report No. 6, 55th Parliament
Finance and Administration Committee
August 2015

Finance and Administration Committee

Chair	Ms Di Farmer MP, Member for Bulimba
Deputy Chair	Mr Michael Crandon MP, Member for Coomera
Members	Miss Verity Barton MP, Member for Broadwater Mr Craig Crawford MP, Member for Barron River Mr Duncan Pegg MP, Member for Stretton Mr Pat Weir MP, Member for Condamine

Staff	Ms Deborah Jeffrey, Research Director Dr Maggie Lilith, Principal Research Officer Ms Louise Johnson, Executive Assistant Ms Julie Fidler, Executive Assistant
--------------	---

Technical Scrutiny Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant
---------------------------------------	---

Contact details	Finance and Administration Committee Parliament House George Street Brisbane Qld 4000
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Telephone +61 7 3553 6637

Fax +61 7 3553 6699

Email fac@parliament.qld.gov.au

Web www.parliament.qld.gov.au/fac

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Abbreviations

AMWU	Australian Manufacturing Workers' Union
AWU	Australian Workers' Union
CCIQ	Chamber of Commerce and Industry Queensland
CLA	Committee of the Legislative Assembly
DTMR	Department of Transport and Main Roads
EARC	Electoral and Administrative Review Commission
ETU	Electrical Trades Union
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the <i>Legislative Standards Act 1992</i>
NHVR	National Heavy Vehicle Regulator
OFSWQ	Office of Fair and Safe Work Queensland
OQPC	Office of the Queensland Parliamentary Counsel
QCEC	Queensland Catholic Education Commission
QCU	Queensland Council of Unions
QNU	Queensland Nurses' Union
QTIC	Queensland Tourism Industry Council
QTU	Queensland Teachers' Union of Employees
SDA	Shop Distributive and Allied Employees Association (Queensland Branch)
SLC	Former Scrutiny of Legislation Committee
TMR	Department of Transport and Main Roads
UFUQ	United Firefighters' Union of Australia, Union of Employees, Queensland

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified.
Queen's Birthday	The public holiday is officially the Birthday of the Sovereign, however, it is known generically as the Queen's Birthday. The term 'Queen's Birthday' is used in this report.
the Bill	<i>Holidays and Other Legislation Amendment Bill 2015</i>
the department	Queensland Treasury

Chair's Foreword

This report presents a summary of the Committee's examination of the *Holidays and Other Legislation Amendment Bill 2015*.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders, which should make for better policy and legislation in Queensland.

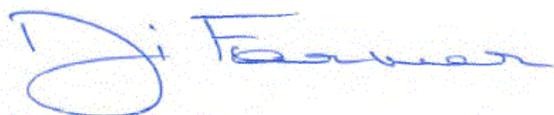
The Bill contains two major components – changing the Queen's Birthday and Labour Day public holidays and implementing changes to the way High Risk Work (HRW) licences are managed. The Committee was unable to reach agreement on the proposed changes to public holidays. The Committee did, however, agree that the proposed amendments to the HRW licences be supported.

The Committee reached agreement on one recommendation – that the Minister work with community and other groups to alleviate any inconvenience caused by the movement of public holidays.

On behalf of the Committee, I would like to thank those who took the time to provide submissions and who met with the Committee and provided additional information during the course of this inquiry. The Committee very much appreciates this assistance. I would also like to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

The Committee would like to thank the Member for Nudgee and the Member for Lockyer for their participation in the Committee's hearings and meetings due to the absence of Committee Members.

Finally, I would like to thank the other Members of the Committee for both their active involvement and their determination to critically address the issues examined in the Bill.



Di Farmer MP
Chair

August 2015

Recommendations

Standing Order 132 states that a portfolio committee report on a Bill is to indicate the Committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for explanatory notes.

The Committee has made the following recommendations:

Recommendation 1

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The Committee recommends that, should the Bill pass, the Minister work with community and other groups, to alleviate any inconvenience caused by the movement of public holidays.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 27 March 2015.¹ The Committee's primary areas of responsibility are:

- Premier, Cabinet and the Arts; and
- Treasury, Employment, Industrial Relations, Aboriginal and Torres Strait Islander Partnerships.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation;
- b) the application of fundamental legislative principles to the legislation; and
- c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

- a) determine whether to recommend that the Bill be passed;
- b) may recommend amendments to the Bill; and
- c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a Bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a Bill is referred may examine the Bill by any of the following methods:

- a) calling for and receiving submissions about a Bill;
- b) holding hearings and taking evidence from witnesses;
- c) engaging expert or technical assistance and advice; and
- d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships introduced the *Holidays and Other Legislation Amendment Bill 2015* (the Bill) to the Legislative Assembly on 3 June 2015. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion requiring the Committee to report to the Legislative Assembly by Monday 10 August 2015.

¹ *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing. The Committee also sought additional written advice from the department and stakeholders.

The Committee considered expert advice on the Bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 3 June 2015. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The closing date for submissions was Tuesday 7 July 2015. The Committee received 25 submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

1.5 Public departmental briefing

The Committee held a public departmental briefing on the Bill with officers from Queensland Treasury and the Department of Transport and Main Roads (DTMR) on Wednesday 15 July 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. The transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

1.6 Public hearing

On Wednesday 22 July 2015, the Committee held a public hearing on the Bill with representatives from organisations which provided submissions. A list of representatives who gave evidence at the hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

1.7 Policy objectives: Holidays and Other Legislation Amendment Bill 2015

The Bill introduces amendments to the following Acts:

- *Holidays Act 1983*;
- *Adult Proof of Age Card Act 2008*;
- *Industrial Relations Act 1999*;
- *Police Powers and Responsibilities Act 2000*;
- *Tow Truck Act 1973*;
- *Transport Operations (Marine Safety) Act 1994*;
- *Transport Operations (Passenger Transport) Act 1994*;
- *Transport Operations (Road Use Management) Act 1995*; and
- *Transport Planning and Coordination Act 1994*;

The explanatory notes outline that, in relation to public holidays, the Bill will achieve its objective by amending the *Holidays Act 1983* to provide that, commencing in 2016:

- Labour Day is to be moved from the first Monday in October to be observed on the first Monday in May; and
- the Birthday of the Sovereign (Queen's Birthday) is to be moved from the second Monday in June to be observed on the first Monday in October.

The Bill also makes a consequential amendment to the *Industrial Relations Act 1999* to ensure that the definition of 'public holiday' in that legislation reflects the new dates of observance of Labour Day and the Queen's Birthday.²

The Bill includes amendments to support the implementation of an online application service for high risk work (HRW) licences using electronic identity verification and the DTMR's digital bank of customer image sets and card production processes.

The explanatory notes state that the amendments to support the implementation of an online application service for HRW licences will:

- streamline service delivery, achieve operational and financial efficiencies for government and improve the customer experience in obtaining HRW licences issued by the Office of Fair and Safe Work Queensland (OFSWQ);
- create a legislative scheme that contains sufficient flexibility so that additional types of government licences or authorities could be authorised by regulation in future to use the DTMR digital bank of customer image sets and card production processes, if so desired.³

The explanatory notes also outline that the Bill will consolidate, into the *Transport Planning and Coordination Act 1994*, the existing provisions about digital photos and digitised signatures contained in the following Acts:

- *Adult Proof of Age Card Act 2008*;
- *Tow Truck Act 1973*;
- *Transport Operations (Marine Safety) Act 1994*;
- *Transport Operations (Passenger Transport) Act 1994*; and
- *Transport Operations (Road Use Management) Act 1995*

The explanatory notes also state that transport legislation will be simplified by the removal of duplication.⁴

The explanatory notes outline that the consolidated provisions will make appropriate provision where the processes for taking, keeping and using digital photos and digitised signatures for transport and non-transport products differ. The amendments in the Bill will also allow a regulation to prescribe those authorities to which the provisions apply.⁵

The explanatory notes state that a regulation will be made to ensure that, on commencement, the provisions apply to those transport authorities that currently utilise the image set provisions and to HRW licences.⁶

² Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 2-3

³ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 2

⁴ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

⁵ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

⁶ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

In relation to the capture and management of digital information, the explanatory notes highlighted that the consolidated provisions will contain a number of technical and minor amendments to better align with contemporary practice.⁷

The department confirmed that a licence to perform high-risk work forms part of a nationally recognised system which authorises individuals to carry out particular classes of work. They noted that there are currently 29 high-risk work licence classes including scaffolding, riggers, doggers and tower crane operators. They advised that there are approximately 260,000 workers in Queensland that currently hold a high-risk work licence, and each year they process approximately 30,000 new applications.⁸

The department advised:

*Implementing an online system will have a number of benefits for both workers and government. In particular, the new process will make it easier for workers to apply for a high-risk work licence, especially for those living in rural or remote areas or for those people who might be fly-in fly-out workers.*⁹

1.8 Outcome of Committee deliberations

Standing Order 132(1)(a), requires that the Committee examine the Bill and determine whether to recommend that the Bill be passed. During its consideration of the Bill it became apparent that the Committee would be unable to reach agreement on some issues of the Bill. There were aspects of the Bill where agreement was reached and areas where agreement could not be reached.

The Committee agreed on the proposed amendments relating to the HRW licences but could not agree on the amendments relating to the moving of the Queen's Birthday holiday and the Labour Day public holiday. The reasons for this are included in the relevant sections of this report.

2 Examination of the *Holidays and Other Legislation Amendment Bill 2015*: Background

2.1 History of the Labour Day public holiday

Labour Day in Australia is known in many countries as International Workers' Day or May Day. It developed out of the 8 hour day movement, which sought to allow for 8 hours for work, 8 hours for leisure and 8 hours for sleep. This movement originated in America in 1880s where, following a long and sometimes violent struggle, 1 May was officially recognised as a day of demonstration in 1893.¹⁰

Australia's May Day activities officially began in 1890, although some workers had achieved the eight hour day as early as 1856. As more and more workers won the reduction in hours by solidarity and industrial action, the day was proclaimed as a holiday in all the states became known as Labour Day.¹¹

One of Australia's first Labour Day marches was held in Queensland in 1891, where striking shearers in Barcaldine marched with flags and banners. The first May Day march in Brisbane followed in 1893.

⁷ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

⁸ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

⁹ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

¹⁰ Submission 8, ETU: 2

¹¹ Unions WA May Day – [A brief History for Australians](#)

The “Eight Hour Day” on the first Monday in May was gazetted as a public holiday by the Queensland government in 1901. It was renamed “Labour Day” in 1912. Since 1901, Labour Day has consistently been celebrated in Queensland on the first Monday in May. All States and Territories observe a public holiday linked to the achievements of the labour movement, although the name and date observed differs.¹²

2.2 History of the Queen’s Birthday public holiday

In Australia, celebrating the sovereign’s Birthday in June dates back to 1788. King George III was born on 4 June 1738. He reigned from 1760 to 1820. On 4 June that year, those who had arrived in Botany Bay to establish a penal colony celebrated George III’s Birthday with festivities, and Governor Arthur Philip had three royal salutes fired from the ships Sirius and Supply.¹³

The Queen’s Birthday public holiday originated in 1912 to observe the Birthday of King George V who was born on 3 June 1865. George V reigned from 1910 to 1936. Over the years Queensland, as with most other states, has continued to observe the Birthday of the Sovereign in June even though the actual Birthday of Queen Elizabeth II is 21 April. The Queen’s Birthday is observed as a mark of respect to the sovereign but is not as widely celebrated in community events as is the case for other public holidays such as Australia Day, Anzac Day and the religious holidays.¹⁴

2.3 Preliminary background – Changes to *Holidays Act 1983*

In September 2011 the Bligh Government released a discussion paper titled *Getting the balance right: A proposal on holidays in Queensland* as part of a review of the State’s holiday system. The former Premier, Hon Anna Bligh MP, stated that most public holidays were clustered in the first half of the year, particularly in the period between March and June.¹⁵ The Government explained that at that time, Queensland was the only state not to have state wide public holidays between mid-June and late December.¹⁶

The then Minister for Education and Industrial Relations, Hon Cameron Dick MP, stated that:

*...the review was prompted by calls from the public and various stakeholders to spread public holidays more evenly throughout the year and to reconsider current arrangements for student-free days in schools.*¹⁷

The review included a consultation paper to provide the community with an opportunity to have input into the review. The survey, which closed on the 31 October 2011, included feedback on the following three proposals relating to holidays in Queensland:

- spreading public holidays across the year;
- allocating an extra public holiday when Christmas, Boxing, or New Year’s days fall on a weekend;
- extending the Easter state school holidays from six week days to two weeks, starting in 2012.¹⁸

¹² Correspondence to FAC from Queensland Treasury dated 21 July 2015: 3-4

¹³ Australian National University, School of History, [A Monarch’s Birthday](#)

¹⁴ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 3-4

¹⁵ [Media release Joint statement](#) Premier and Minister for Reconstruction, The Hon Anna Bligh MP and Education and Industrial Relations, The Hon Cameron Dick MP

¹⁶ Queensland Government, Department of Education, Training and Employment, New holidays for Queenslanders Fact Sheet.

¹⁷ [Media release Joint statement](#) Premier and Minister for Reconstruction, The Hon Anna Bligh MP and Education and Industrial Relations, The Hon Cameron Dick MP

¹⁸ Queensland Government [Getting the balance right: A proposal on holidays in Queensland](#)

The *Holidays and Other Legislation Amendment Bill 2011* was introduced by the then Minister for Employment and Industrial Relations on 15 November 2011. In his introductory speech, the Minister stated:

*The results showed Queenslanders overwhelmingly support shifting the Queen's Birthday holiday to the second half of the year and to a Monday in October.*¹⁹

The Minister explained that serious consideration had been given to the most appropriate public holiday that could be moved to the second half of the year and the Queen's Birthday was selected because the observed date would not affect the way the occasion was celebrated. He stated:

*Occasions observed on public holidays are of significant cultural importance and it is obvious that many could not be moved without impacting on the way the day is celebrated. Some respondents in the consultation process suggested moving Labour Day instead of the Queen's Birthday. It was decided, given Labour Day was first celebrated in May in Queensland back in 1891 and the importance of this day, which continues to be celebrated throughout Queensland to this day, that it was not appropriate to move it.*²⁰

Other amendments within the 2011 Bill included creating a special one-off holiday on Monday 11 June 2012 to mark the Queen's Diamond Jubilee and creating additional public holidays when Christmas Day, Boxing Day and New Year's Day fall on weekends. The 2011 Bill was examined by the former Industry, Education, Training and Industrial Relations Committee (53rd Parliament) which tabled Report No. 6 on 28 November 2011. The results of the survey conducted were included in the report, which states:

DJAG has advised the Committee that the discussion paper directed stakeholders to an online survey where they could voice their opinion by voting for or against the proposals and make comments. DJAG advised that, of the 24,505 people who responded to the online survey:

- *85.4 per cent (19,393 of 22,705 respondents) supported moving the Queen's Birthday holiday to the second half of the year*
- *82.0 per cent of respondents agreed to move it specifically to a Monday in October and the remaining 3.4 per cent agreed to move it, but not to a Monday in October*
- *90.6 per cent supported the creation of additional public holidays when Christmas Day, Boxing Day or New Year's Day fall on a weekend.*²¹

The results from the survey also showed that 81 per cent of those surveyed were in favour of extending Easter school holiday.²²

At the departmental hearing on 15 July 2015, the Committee sought further information regarding the 2011 survey. The department advised that 24,505 people had responded to the survey and that 53 individual submissions and letters were received from members of the public and interested organisations.²³

The department confirmed that the survey specifically related to the Queen's Birthday, that is, that it did not ask questions relating to moving the Labour Day public holiday.²⁴

¹⁹ Queensland Legislative Assembly, Education and Industrial Relations, The Hon Cameron Dick MP Introduction, *Parliamentary Debates (Hansard)*, 15 November 2011: 3627

²⁰ Queensland Legislative Assembly, Minister for Education and Industrial Relations, The Hon Cameron Dick MP Introduction, *Parliamentary Debates (Hansard)*, 15 November 2011: 3628

²¹ Industry, Education, Training and Industrial Relations Committee (53rd Parliament), *Report No 6 – Holidays Other Legislation Amendment Bill 2011*, November 2011

²² Queensland Government, Department of Education, Training and Employment, *New holidays for Queenslanders Fact Sheet*.

²³ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 2-3

²⁴ Mr James, Queensland Treasury, :Public departmental briefing Transcript 15 July 2015: 4

The department explained that these included written submissions from significant organisations such as:

- Queensland Council of Unions;
- Clubs Queensland;
- Bunnings;
- Coles Group Ltd;
- Queensland Hotels Association;
- National Retailers Association;
- Queensland Tourism Industry Council (QTIC);
- Australian Sugar Milling Council;
- Chamber of Commerce and Industry Queensland (CCIQ); and
- Shopping Centre Council of Australia.²⁵

The department stated that analysis of individual submissions showed that 49 per cent (26 of 53) were opposed to moving the Queen's Birthday public holiday to the second half of the year. Of these respondents 25 nominated Labour Day to be moved instead of the Queen's Birthday celebration. The then Government considered that the movement of Labour Day from the first Monday in May was not appropriate because of its link to events of particular importance to the labour movement in Queensland. Therefore the movement of the Queen's Birthday public holiday was considered most appropriate as its observance was not linked to the actual date of the current sovereign and was not generally celebrated by the community in the same way as were the other public holidays.²⁶

On 21 August 2012, the *Holidays and Other Legislation Amendment Bill 2012* was introduced by the then Attorney-General, the Hon Jarrod Bleijie MP. The 2012 Bill was referred to the former Legal Affairs and Community Safety Committee (54th Parliament) (LACSC). In his introductory speech, the then Attorney-General advised that the objective of the Bill was to relocate the Labour Day public holiday from May to the first Monday in October and to return the Queen's Birthday public holiday to its original date on the second Monday in June. The changes would take effect from 2013.²⁷

He stated that:

*Moving the Queen's Birthday public holiday back to its original date of observance in June will also better align Queensland public holidays with those of other states. All states, except for Western Australia, observe the Queen's Birthday public holiday on the second Monday of June. In contrast, the Labour Day public holiday is observed across different months although New South Wales, South Australia and the Australian Capital Territory observe the Labour Day public holiday on the first Monday in October.*²⁸

²⁵ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 2-3

²⁶ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 3

²⁷ Queensland Legislative Assembly, Attorney-General and Minister for Justice, The Hon Jarrod Bleijie MP Introduction, *Parliamentary Debates (Hansard)*, 21 August 2012: 1531

²⁸ Queensland Legislative Assembly, Attorney-General and Minister for Justice, The Hon Jarrod Bleijie MP Introduction, *Parliamentary Debates (Hansard)*, 21 August 2012: 1532

The LACSC noted that some submitters were opposed to changing the Labour Day public holiday from May to October. For example, the former Member for Gregory, Mr Vaughan Johnson MP stated:

May and June are the peak tourism months for the west and many events right across western Queensland are scheduled for this time as we rely on the tourists to ensure they are successful. The Barcaldine Labour Day Festival is one such event. These events coupled with our spectacular tourist attractions help to promote our history. Moving the Labour Day date to October would be very detrimental to this small but vibrant community.

Lastly the weather, namely the heat and often floods and fires make October too late in the year for holding such an event.²⁹

Although the LACSC recommended that the Bill be passed, they had some concerns that the commencement date of 2013 did not sufficiently allow for “already planned” events for the Labour Day long weekend in May 2013.³⁰ The Committee recommended that the 2012 Bill be amended to delay its commencement until 2014.³¹ The then Government did not support the recommendation and stated in the response to the Committee’s report:

Delaying implementation of the public holiday arrangements proposed in the Bill contributes to the continuation of problems (e.g. lack of consistency with public holiday arrangements in other States and Territories and frequent disruptions to production and services for business and industry from the concentration of public holidays in the April-May period) under the current arrangements. Delaying the proposed amendments will also lead to increased uncertainty in the community during 2013. Despite any impacts on particular groups or organisations it is considered that the advantages to the community and business as a whole from the movement of the public holidays outweigh any disadvantage suffered by individual events.³²

During the period from 2012 to 2015, when the above changes were made to the Holidays Act, the following dates were declared as public holidays³³:

	Labour Day	Queen’s Birthday	Other
2012	7 May	1 October	11 June (Queen’s Diamond Jubilee)
2013	7 October	10 June	
2014	6 October	9 June	
2015	5 October	8 June	

It should be noted that Queensland has continued to have a public holiday on the first Monday in June due to a special Queen’s Diamond Jubilee holiday and the changes enacted in 2012. Over the same period, the Labour Day public holiday was held in October in 2013 and 2014.

The *Holidays and other Legislation Amendment Bill 2015* seeks to restore the Labour Day public holiday to the first Monday in May and to move the Queen’s Birthday public holiday from June to October commencing in 2016.

²⁹ Legal Affairs and Community Safety Committee (54th Parliament), *Report No 9 – Holidays Other Legislation Amendment Bill 2012*, September 2012: 16

³⁰ Legal Affairs and Community Safety Committee (54th Parliament), *Report No 9 – Holidays Other Legislation Amendment Bill 2012*, September 2012: 19

³¹ Legal Affairs and Community Safety Committee (54th Parliament), *Report No 9 – Holidays Other Legislation Amendment Bill 2012*, September 2012: 21

³² Queensland Government, Response to Legal Affairs and Community Safety Committee (54th Parliament), Report No. 9, October 2012: 1-2

³³ Queensland Government, [Queensland Public Holiday dates](#)

2.4 Alternative ways of achieving policy objectives

The explanatory notes indicate that the policy objectives could only be achieved by legislative amendment.

In relation to public holidays, no other alternatives were considered. The explanatory notes outline that the decision to amend the public holiday arrangements were announced publicly as part of the Government's pre-election commitment 'Honouring the real Labour Day'.³⁴ The Treasurer announced on 17 March 2015 that the moving of the Labour Day public holiday to the first Monday in May would commence in 2016.³⁵

In relation to the HRW Licences, the explanatory notes detail that two other alternatives for achieving the policy objectives were considered. The explanatory notes state:

The first alternative considered was to retain the status quo and to continue to require an over-the-counter application at an Australia Post outlet. This alternative was rejected because:

- *it was not considered a customer-focussed approach. This option would require customers to continue to travel to the nearest Australia Post outlet during business hours and provide a passport photo. Some Australia Post outlets do not offer a passport photo service, meaning the customer has to source one from another provider before making the application;*
- *it did not provide time and cost savings for government, business and customers. Continuing to use Australia Post as a service agent incurs a significant cost to government and requires additional operating costs for OFSWQ.*

The second alternative considered was to implement an online application with an over-the-counter identity verification process by OFSWQ. This alternative was rejected because:

- *it was not considered a customer-focussed approach. This option would continue to require customers to complete an over-the-counter transaction during business hours to verify their identity;*
- *it did not provide time and cost savings for government, business and customers. This approach would not provide any time or cost savings compared to the existing process and would not provide any additional flexibility for regional or fly in/fly out workers. This option would also require the re-establishment of OFSWQ front counter services across the State, with the additional expense of administrative staff and training. However, this would not be cost effective as it does not offer any additional benefit over the current arrangements with Australia Post.³⁶*

2.5 Stakeholder consultation

In relation to the public holidays, the Committee requested an explanation from the department as to why consultation was not considered necessary and whether the previous 2011 review was taken into account.

³⁴ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 6

³⁵ [Media release statement](#) Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, The Hon Curtis Pitt MP, March 17, 2015

³⁶ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 4-5

The department stated:

...there was a very clear policy position of this government to honour the real Labour Day, and that was their choice. So that was very clear about restoring Labour Day to the first Monday in May, and that is in recognition of particular specific events in Queensland's history. In 2011 there was a survey conducted, and the Queensland community responded very strongly to have a public holiday in the second half of the year. This Bill seeks to maintain the community's desire to keep a public holiday in the second half of the year, and it also recognises the government's policy position to recognise Labour Day on the first Monday of May.³⁷

In regards to the HRW licences, the explanatory notes state that no formal community consultation was undertaken. The explanatory notes also outline that there will be no adverse community impacts with alternative processing methods available for those who are unable to use the proposed online application service.

With regard to the consultation process on the proposed amendments to the HRW licences, the department advised that:

...we have spoken to both representatives of employers and workers including the Chamber of Commerce and Industry Queensland, the Australian Industry Group, the Australian Workers' Union and also the Queensland Council of Unions. In addition, we have also consulted with the Office of the Information Commissioner and the Privacy Commissioner.³⁸

The Committee sought clarification regarding whether there have been any major concerns had been raised by any of the stakeholders. The department advised:

We have consulted representatives of both employers and workers. Generally everyone was definitely supportive of the proposal because of the benefits that it provides to both employers and workers. The one question we did have from the AiG was around whether the process would be compatible with smart phone technology and tablet devices. A lot of the time people may not have a PC at home—whether that would be compatible. The system itself will be built on a platform that is compatible with all different operating systems. You will be able to do it on your tablet or Apple iPad from the comfort of your couch. I think that is good news as well.³⁹

2.6 Estimated cost of government Implementation

The explanatory notes state that the changes to public holidays will not incur any costs for Government implementation, nor any costs to industry, as the proposed amendments only move the date of observance of existing public holidays. As there are no additional public holidays being appointed, the explanatory notes outline that there will not be a need for additional public holiday penalty payments.⁴⁰

The Committee sought additional information on whether the department had conducted any analysis of potential costs to different industries or organisations by the movement of the public holidays.

³⁷ Mr James, Queensland Treasury, :Public departmental briefing Transcript 15 July 2015: 3

³⁸ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

³⁹ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

⁴⁰ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 5

The department advised:

In regard to the financial impact directly relating to the movement of the public holidays, the explanatory notes indicate that there is no financial impact that is directly related to the shifting of public holidays. That is because we have not increased the number of public holidays. Effectively what we have done is exchange the Queen's Birthday weekend to October and then Labour Day back to May. So the government has not increased the number of public holidays. There is still the same number of public holidays available to Queenslanders. On that basis, there is no particular increase to the obligations in terms of paying for additional public holidays.

In terms of events, the government was aware of events in 2015, and if this Bill is passed it will take effect in 2016. It was an election commitment of the government which was released in May 2013 to flag their intention, and there was a public statement by the Treasurer and Minister for Employment and Industrial Relations on 17 March to announce his intention to move the public holidays and that they would take effect in 2016. It was considered that that would give the community sufficient notice—and it was considered as very important to give sufficient notice to the community to make changes to its events.⁴¹

In relation to the HRW licence applications, the explanatory notes state that capital investment will be required to enhance information technology systems and implement operational arrangements. These will be funded from the Office of Fair and Safe Work Queensland's (OFSWQ) existing budget allocations. The information technology system enhancements will establish re-usable infrastructure, allowing additional government licences and authorities to be produced under similar arrangements in the future. This has the potential to yield an increasing return on investment if other licences administered by QFSWQ are produced using the developed system infrastructure.⁴²

The Committee sought additional information on the approximate amount of capital investment and what the savings will be to offset the capital outlay for the implementation of the new system.

The department advised that the initial IT establishment costs range between \$1.7 million and \$2.45 million. There will be ongoing costs of between \$1 million and \$1.2 million as well.⁴³ The department provided additional details of the costs and the costs under the new system. A copy of this information is contained in Appendix D.

2.7 Consistency with legislation of other jurisdictions

The explanatory notes outline the proposed amendment to Queen's Birthday public holidays will achieve some consistency in observing a public holiday in the second half of the year. Labour Day is observed on various dates in other States and territories.⁴⁴

The Committee notes that, with the exception of Western Australia, all other states celebrate the Queen's Birthday holiday on the second Monday in June.

⁴¹ Mr James, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 3

⁴² Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 5

⁴³ Mr James, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 3

⁴⁴ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 7

Labour Day and Queen’s Birthday public holidays comparison in all jurisdictions are as follows:

	NSW ⁴⁵	VIC ⁴⁶	TAS ⁴⁷	SA ⁴⁸	WA ⁴⁹	NT ⁵⁰	ACT ⁵¹	QLD (current)	QLD (proposed)
Labour Day	1 st Mon Oct	2 nd Mon Mar	2 nd Mon Mar	1 st Mon Oct	Mon on or 1 st Mon following 1 st Mar	1 st Mon May (May Day)	1 st Mon Oct	1 st Mon Oct	1 st Mon May
Queen’s Birthday	2 nd Mon Jun	Day to be appointed each year by proclamation 2015: 28 Sept 2016: 26 Sept	2 nd Mon Jun	2 nd Mon Jun	2 nd Mon Jun	1 st Mon Oct			

In relation to HRW licence applications – using DTMR database, the explanatory notes state that the provisions in the Bill are not uniform or complementary with legislation of the Commonwealth or another State.

The following table shows the Public holidays (state wide) in the second half of the year (from July) for other jurisdictions:

State/Territory	Public Holiday
NSW	1 st Mon Oct (Labour Day)
VIC	None. Melbourne Cup is for metro only
TAS	1 st Mon Nov (for all parts of the State which do not observe Royal Hobart Regatta)
SA	1 st Mon Oct (Labour Day)
WA	Queen’s Birthday Public Holiday appointed each year by proclamation (usually in Sept).
NT	1 st Monday August (Picnic Day)
ACT	Monday after term 3 of the ACT school terms - Family and Community Day 1 st Monday in October (Labour Day)
QLD	1 st Mon Oct (currently Labour Day. Proposed amendment to Queen’s Birthday).

2.8 Commencement (Clause 2)

The Bill specifies that the Act, other than Parts 3 and 4, which relate to the amendments to the Holidays Act and the Industrial Relations Act, commence on a day to be fixed by proclamation. Parts 3 and 4 will commence on 6 October 2015.

If passed, the change will take effect from 2016.⁵²

⁴⁵ Section 4, [Public Holidays Act 2010](#) (NSW)

⁴⁶ Section 6, [Public Holidays Act 1993](#) (Vic)

⁴⁷ Section 4, [Statutory Holidays Act 2000](#) (Tas)

⁴⁸ Section 2, [Holidays Act 1910](#) (SA)

⁴⁹ Section 2, [Public and Bank Holidays Act 1910](#) (WA)

⁵⁰ Section 2, [Public Holidays Act](#) (NT)

⁵¹ Section 3, [Holidays Act 1958](#) (ACT)

⁵² Mr James, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 1

3 Examination of the *Holidays and Other Legislation Amendment Bill 2015 – Amendment of Holidays Act 1983 (Clauses 11 – 12) and Industrial Relations Act 1999 (Clauses 13 – 14)*

3.1 Clause 12 – Amendment of schedule (Public holidays)

The explanatory notes outline that Clause 12 provides for new dates of observance for the Labour Day (first Monday in May) and Birthday of the Sovereign (first Monday in October) public holidays in the Schedule to the Holidays Act 1983. Current schedule is as follows:

Birthday of the Sovereign

A public holiday is to be observed on the second Monday in June.

Labour Day

A public holiday is to be observed on the first Monday in October.

The proposed amendment will amend the schedule to reflect the following:

Labour Day

A public holiday is to be observed on the first Monday in May.

Birthday of the Sovereign

A public holiday is to be observed on the first Monday in October.

The explanatory notes state that the amendments provide for new dates of observance for the Labour Day and Birth of the Sovereign public holidays in the Schedule to the *Holidays Act 1983*.

The Committee received a number of submissions advising of their reasons for and against the movement of the Queen’s Birthday holiday from June to October.

Carpentaria Shire advised the Committee that the Normanton Show, Rodeo and Campdraft is traditionally held on the Queen’s Birthday long weekend in June. The Normanton Show Holiday is on the preceding Friday and the annual rodeo is able to be staged over three days while allowing the fourth day for return travel for competitors and spectators, many of whom travel over 1,000 kilometres to attend the event. They advised that this is a significant tourism event for the region.⁵³

They advised that moving these events from June to October is not feasible due to the high temperatures experienced at that time of the year which would cause heat stress to cattle and horses.⁵⁴ The Committee queried why the event could not be held in May and was advised that May is too early because of the wet season and it is too wet to move cattle.⁵⁵

The Goondiwindi and District Historical Society Inc advised the Committee that they consider that the current public holiday agenda should not be altered. They consider that the balance for public holidays with Easter, June and October is right. They advised that to not have a long weekend in June means that there is a big break between May and October.⁵⁶

⁵³ Submission 1, Carpentaria Shire: 1

⁵⁴ Submission 1, Carpentaria Shire: 1

⁵⁵ Mayor Pascoe, Carpentaria Shire, Public Hearing transcript 22 July 2015: 15

⁵⁶ Submission 11: Goondiwindi and District Historical Society Inc: 1

They advised that they organise a Planes, Trains, Automobiles and Bikes event on the June long weekend. They noted that the October long weekend aligns with the National Rugby League (NRL) grand finals and therefore would not be suitable for them to hold the event on that weekend.⁵⁷ The Committee sought information regarding how long this event had been held in June and was advised that was their first attempt at the Planes, Trains, Automobiles and Bikes event and it was an outstanding success.⁵⁸

They also advised that the weather impacts tourism events. They advised that the weather in May, June and October is vastly different and that it is their experience that tourists like to travel to their area in winter and so these months are their peak tourism time. They advised that they have trouble getting people to visit in the summer because there is a perception that it is too warm in the west.⁵⁹

CCIQ advised the Committee that the Queensland business community's preferred option is to leave the Queen's Birthday holiday as it is in June on the basis that it aligns with holidays in other Australian jurisdictions, with the exception of Western Australia.⁶⁰

The North Burnett Regional Council advised the Committee that they would object to the change of the Queen's Birthday holiday from June to another date as it would have a detrimental impact both socially and economically on their community and other communities. They advised that they have been holding the Gayndah Orange Festival on this long weekend for over 50 years as it coincides with citrus season. It is a major tourism and economic event for their region.⁶¹

United Voice advised the Committee that the observance of Labour Day in May gives proper recognition to the struggles and achievements of the labour movement on a date of true significance. They advised that:

*In Queensland tradition, Labour Day has been celebrated for over 100 years. Historically, Labour Day has been commemorated in May with the first Brisbane May Day march in 1893. In 1901, the Eight Hour Day was formally changed to the first Monday in May, when it was gazetted as a public holiday by the Queensland government. In 1912 the day was renamed Labour Day.*⁶²

The Australian Manufacturing Workers' Union (AMWU) advised the Committee that suggesting that relocating Labour Day to another part of the year to make the public holidays spread more evenly devalues the importance of the day to the ordinary worker. They advised that:

*Without Labour Day in May there is no opportunity to gather as a community to reflect on the current situation workers find themselves in to remember the struggles past and to honour the efforts of those who fought the good fight and achieved what many in our community today take for granted.*⁶³

The Electrical Trades Union (ETU) also agreed that Labour Day is a day of great significance to its members as it provides an opportunity to remember and honour the efforts and sometimes sacrifices of the many people who have been responsible for achieving the working conditions that are enjoyed today. They supported the movement of the Labour Day holiday to May and the Queen's Birthday holiday to October.⁶⁴

⁵⁷ Submission 11: Goondiwindi and District Historical Society Inc: 1

⁵⁸ Mr McMahon, Goondiwindi and District Historical Society Inc, Public Hearing transcript 22 July 2015: 12

⁵⁹ Mr McMahon, Goondiwindi and District Historical Society Inc, Public Hearing transcript 22 July 2015: 12

⁶⁰ Submission 18, CCIQ: 1

⁶¹ Submission 25, North Burnett Regional Council: 1

⁶² Submission 2, United Voice: 1-2

⁶³ Submission 6, AMWU: 1

⁶⁴ Submission 8, ETU: 1

The Australian Workers' Union (AWU) also supported the movement of the Labour Day holiday to May and the Queen's Birthday holiday to October. They advised that there has been a long and historical connection between Labour Day and the first Monday in May. They advised that there is a direct relevance to their members in Queensland due to the shearer's strike in 1891 which galvanised shearers and labourers in rural Queensland and provided momentum for workers to pursue legislative representation in the State Assembly.⁶⁵

The Queensland Council of Unions (QCU) supports the proposition to move Labour Day back to May. QCU advised that Labour Day has a special place in Queensland history. They advised that the first May Day march was held in 1891 during the shearers' strike in Barcaldine and the first Monday in May was chosen in 1901 when it was proclaimed a public holiday. They advised that:

Labour Day recognises the vast majority of the community who go about their jobs with little or no recognition. It also demonstrates the power that labour (with a u) holds and the contribution that ordinary workers make to society and the economy.

Labour Day celebrates the achievements of workers within, and for, their community. It's a time to recognise how this progress has benefited Australian society as a whole. Ticking off achievements like the 8 hour day is satisfying but there remains much hard work ahead together to ensure we continue to live in a civil society.⁶⁶

The Queensland Teachers' Union of Employees (QTU) supported the amendments and noted that May 1 is a national holiday in more than 80 countries and that there are significant cultural and historical celebrations attached to the Labour Day holiday being returned to May.⁶⁷

They noted that the Bill remedies the disconnect between the celebrations conducted in May by various labour movements and the actual public holiday in October.⁶⁸

Whilst advising that it would have had no concerns if the Bligh government or the Newman government had not changed the public holidays at all, the United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) noted that the Bill is the fulfilment of the Palaszczuk Government's election promise made during the election campaign in January 2015 to move the Labour Day public holiday back to May.⁶⁹

The UFUQ advised that the 'Eight Hour Day' was formally acknowledged as the first Monday in May in 1901, when it was a gazetted public holiday. They stated that the public holiday was renamed 'Labour Day' in 1912. They advised that the public holiday was continued for over a century and traditionally involved an organised procession through the streets ending at a park where a festival takes place to entertain participants and their families. They noted that the traditional procession and family activities still occur in May, but for the past two years have been held on a Sunday as there is no public holiday.⁷⁰

The UFUQ also advised that the current situation of having a Labour Day public holiday in October, when the traditional Labour Day march and ensuing celebrations are held in May is incongruous. They support the policy objective of the Bill of restoring a Labour Day public holiday to the first Monday in May as it returns it to its rightful place.⁷¹

⁶⁵ Submission 10, AWU: 1

⁶⁶ Submission 16, QCU: 1

⁶⁷ Submission 17, QTU: 4

⁶⁸ Ms Edmonds, QTU, Public Hearing Transcript 22 July 2015: 3

⁶⁹ Submission 22, UFUQ: 3

⁷⁰ Submission 22, UFUQ: 4

⁷¹ Submission 22, UFUQ: 4

The UFUQ advised the Committee that the disconnect between the celebration and public holiday has meant that the numbers attending their traditional family event were reduced on attendances at events in previous years.⁷²

The QTU also confirmed that attendances at their events were also reduced. They advised that where events fall within the school year has an impact on the ability of people to attend as a family get together.⁷³

The Queensland Nurses' Union (QNU) advised that Labour Day marks a day of great cultural significance in Queensland and Australia. They advised:

*It is a day where workers celebrate the winding back of the excessive working hours that were the standard during the first half of the nineteenth century. It is also a day of reflection on the advances that the labour movement has achieved in the ensuing decades. Notwithstanding that the Queen's Birthday public holiday also has some historical links, it does not occur on her actual Birthday. The 3rd of June is the Birthday of a previous monarch and is a mark of respect rather than a day of celebration and community events across the state as is Labour Day.*⁷⁴

The QNU further advised:

*Labour history matters to workers and trade unions because it signifies courage and perseverance in the face of economic and political might. Labour history matters to the LNP but for different reasons. For them, it is a confronting reminder of the spirit of collective action and the great tradition of the labour movement.*⁷⁵

The Committee noted that the Labour Day public holiday is celebrated on various days across Australia and sought clarification regarding what occurs in other states. The QCU advised that different states celebrate the events that are relevant to them. They advised that it has always been celebrated in May in Queensland.⁷⁶ The QNU advised that Queensland has the largest Labour Day march and has tended to celebrate it with more vigour than other states.⁷⁷ The UFUQ confirmed that the states do not combine their celebrations and it is not a nationally consistent position.⁷⁸

Many submissions also supported the spreading of public holidays across the year.

United Voice advised the Committee that it supported the restoring the balance of public holidays across the calendar year.⁷⁹

The Goondiwindi and District Historical Society Inc advised that:

*... Goondiwindi has a show holiday on the first Friday in May, the May Day holiday happens on that following Monday so means a four day weekend. If Easter is celebrated late in the month of April you could have a situation of Easter and show day and May Day happening in the space of 2-3 weeks.*⁸⁰

⁷² Mr Spreckley, UFUQ, Public Hearing Transcript 22 July 2015: 4

⁷³ Ms Edmonds, QTU, Public Hearing Transcript 22 July 2015: 4

⁷⁴ Submission 24, QNU: 2

⁷⁵ Submission 24, QNU: 3

⁷⁶ Ms Watson, QCU, Public Hearing Transcript 22 July 2015: 4

⁷⁷ Mr Gilbert, QNU, Public Hearing Transcript 22 July 2015: 5

⁷⁸ Mr Spreckley, UFUQ, Public Hearing Transcript 22 July 2015: 5

⁷⁹ Submission 2, United Voice: 2

⁸⁰ Submission 11: Goondiwindi and District Historical Society Inc: 1

Wujal Wujal Aboriginal Shire Council advised the Committee that their preference is for the Labour Day holiday to remain on the current October date.⁸¹

CCIQ stated that, to achieve an even spread of holidays across the year, but leaving the Queen's Birthday holiday in June, infers leaving the Labour Day holiday in October. They noted that:

This option has positive implications for tourism and economy, but relegates the current government's commitment to the union movement to reinstate Labour Day to May.

CCIQ notes that national consistency and an even spread of holidays across the year are the two outcomes that best grow the economy and create jobs. Despite this however, CCIQ requests the Committee note that most important to Queensland businesses is the core 11 public holidays and no more. In this light, the decision to move Labour Day in 2016 allows for ample planning and does not unnecessarily slug employers with an additional impost that would have been at odds with any credible jobs prioritization.⁸²

They advised that they have primary and secondary principles when it comes to public holidays. The primary principle is supporting 11 public holidays being celebrated each year. The secondary principle relates to national consistency of public holidays with other states and an even spread across the calendar year. They advised that on this basis they support the existing arrangements.⁸³

The Queensland Catholic Education Commission (QCEC) indicated that they support the retention of a public holiday in June and a public holiday in October. They advised that placing a public holiday in May would compress the spread of holidays throughout the calendar year and would not be in the educational interest of Queensland school students.⁸⁴ They advised that having public holidays close together is not helpful from an administrative perspective and continuity in schools.⁸⁵

QCEC advised:

The prime intent of our submission and the key point that we wish to highlight is the spread of holidays across the school year and the evenness of that spread. The early part of the school year, especially from late March to early May, is vested in a number of holidays. Very often those holidays are on a Monday. In the interests of student learning and teaching, we would like to see those holidays remain spread, with both the June and the October holidays recognised. The nomenclature of those holidays is not of primary importance to us; it is how those holidays are spread for children in schools everywhere in Queensland.⁸⁶

⁸¹ Submission 13, Wujal Wujal Aboriginal Shire Council: 1

⁸² Submission 18, CCIQ: 1-2

⁸³ Mr Behrens, CCIQ Public Hearing Transcript 22 July 2015: 3

⁸⁴ Submission 19, QCEC: 1

⁸⁵ Submission 19, QCEC: 2

⁸⁶ Ms Anderson, QCEC, Public Hearing Transcript 22 July 2015: 3

The Committee sought the QTU's response to this issue. The QTU explained that:

...on a practical delivery basis, the Australian curriculum is delivered in 10-week blocks and the English curriculum within that is delivered in five-week blocks. So it really depends on where the holiday falls and the number of holidays within that period as to how it is going to affect student learning. So that is the gravamen of the issue to me. If each term is a 10-week block, it depends on where the holidays fall in that term. For example, the traditional Australia Day public holiday can be blocked out from the beginning. It sits right at the beginning of the first 10 weeks. Generally, the Easter vacation period sits either at the end or at the beginning of the next one, and then you might have two holidays in between. The next block is term 3, where in the south-east corner we will have the show holiday, and then having one of the holidays in the last term certainly makes the Australian curriculum able to be delivered successfully.⁸⁷

QTIC advised that they have conducted an online survey of its members to assess the potential impacts of moving the Queen's Birthday holiday to the second half of the year and they found strong support from the industry with 80 per cent of respondents supporting the move. They advised that their members' preferred date to move the Queen's Birthday holiday was the first Monday in October which matches the date proposed in the Bill.⁸⁸

The UFUQ advised that while they are not concerned about when the monarch's Birthday is observed, they are concerned about preserving the traditional May date for the Labour Day holiday.⁸⁹

Some stakeholders supported the alignment of Queensland public holidays with other states. The National Heavy Vehicle Regulator (NHVR) suggested that the Committee should give due consideration to the implementation of provisions that would seek to align Queensland public holidays with those of other States and Territories, particularly NSW, ACT and Victoria. They advised that they considered that co-ordinating public holidays across the country would best enable national delivery standards to be met.⁹⁰

The CCIQ advised the Committee that it supports national consistency in regards to public holidays in order to ensure minimal disruption to Queensland businesses, particularly for those who operate across state and territory borders.⁹¹

The CCIQ confirmed that the greater issue for them is the national consistency of the Queen's Birthday holiday in June rather than whether Labour Day is celebrated in October or May. They explained:

The practical implications of this Bill are that it nets itself out in terms of the movement of holidays to the second half of the year, because simply all we are doing is taking Labour Day and putting it back in May and we are taking the Queen's Birthday and putting it back in October. So that neutralises itself. The practical implications of this Bill to our mind are that it takes the Queen's Birthday out of alignment with all other states in June, so we lose consistency with those states in June. Then we lose consistency with other states in May, because we are putting a holiday in May. The issue for us—and the reason that we favour the retention of existing arrangements—is that we lose consistency of those holidays with other states.⁹²

⁸⁷ Ms Edmonds, QTU, Public Hearing Transcript 22 July 2015: 6-7

⁸⁸ Submission 20: QTIC: 1

⁸⁹ Submission 22, UFUQ: 4

⁹⁰ Submission 7, NHVR: 1

⁹¹ Submission 18, CCIQ: 1

⁹² Mr Behrens, CCIQ, Public Hearing Transcript 22 July 2015: 7

The Committee sought advice from the department regarding the business community's preference for the consistency of public holidays between the states. They advised that there are numerous examples where public holidays are celebrated across Australia on different days. They advised that they have not done any analysis of the financial impact of celebrating public holidays on different days to other states.⁹³

The department provided a response to the issues raised by stakeholders in submissions and stated that the proposed amendments:

- restore the arrangements for the Queen's Birthday public holiday in response to the wishes expressed by the community during consultation undertaken in 2011;
- deliver on the Government's election commitment to return the Labour Day public holiday to May and move the Queen's Birthday holiday to October; and
- by continuing observance of a public holiday in October, maintain an alignment between Queensland's public holiday arrangements and those in the majority of other States and Territories which observe a public holiday in the second half of the year. In this regard it is noted that WA, NSW, SA and the ACT all observe a public holiday in the second half of the year around October.⁹⁴

3.2 Clause 14 – Amendment of schedule 5 (Dictionary)

Schedule 5 of the *Industrial Relations Act 1999* includes a definition of a public holiday. This definition is currently as follows:

public holiday means—

(a) the following days—

- New Year's Day (1 January)
- Australia Day (26 January)
- Good Friday
- Easter Saturday (the day after Good Friday)
- Easter Monday (the Monday after Good Friday)
- Anzac Day (25 April)
- Birthday of the Sovereign (the second Monday in June)
- Labour Day (the first Monday in October)
- Christmas Day (25 December)
- Boxing Day (26 December)
- another day appointed as a public holiday under the *Holidays Act 1983*, section 2, 11 or 12; or

(b) a day appointed under the *Holidays Act 1983* to be a substitute holiday for a day mentioned in paragraph (a);

or

(c) a show holiday.

The Bill proposes to amend paragraph (a), seventh and eighth dot points as follows:

- Labour Day (the first Monday in May)
- Birthday of the Sovereign (the first Monday in October)

The explanatory notes detail that the proposed amendment will align the *Industrial Relations Act 1999* to reflect the new dates appointed in the *Holidays Act 1983*.

⁹³ Mr James, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 1

⁹⁴ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 5

3.3 Other issues

Carpentaria Shire submitted an alternative proposal for consideration. They suggested that allowing local governments a say in when the Queen's Birthday holiday is held would allow for greater consideration to be given to local events and circumstances. They considered that this would be similar to the current arrangements in determining local show holidays. They suggested that the available dates be limited to either June or October for councils to select from.⁹⁵

In regard to this suggestion, CCIQ advised that the commerce that occurs between South East Queensland and regional Queensland is far more significant than the commerce that occurs across interstate borders. They advised that if the consistency of public holidays across regions is broken down, it would impose a significant burden on the business community and they would not support the proposal.⁹⁶

The department responded to this issue and stated:

In regard to the proposal that local governments be given the discretion to observe the Queen's Birthday public holiday in either June or October, it is noted that the Holidays Act 1983 provides for local governments to observe a public holiday for the local agricultural show on a day at their discretion. Providing an additional capacity for local governments to determine the date for observing what would otherwise be a 'state-wide' public holiday is likely to generate uncertainty for businesses and the Queensland community and cause disruption between regions across the State.⁹⁷

The other issue raised by stakeholders was the issue of the changing dates of the public holiday schedule.

The Goondiwindi and District Historical Society Inc also advised the Committee that they cannot plan for success into the future if the public holiday schedule is uncertain. They noted that planning for large events is started well in advance and event organisers around the state want surety that their event is going to happen each year and around the same time.⁹⁸

The department advised that:

Making the changes effective from 2015 delivers certainty and stability to business and the community by giving considerable notice of the changes and allows organisations and local governments lead time to make alternative arrangements for events being considered for 2016 and beyond.⁹⁹

The UFUQ also highlighted its concern that it would:

...hate for the swapping around of public holidays to become linked to which particular government holds the majority in parliament.¹⁰⁰

The Shop Distributive and Allied Employees Association (Queensland Branch) (SDA) and the QNU also made submissions seeking the recognition of other days as public holidays, however, these issues are outside the scope of the Bill and have not been considered by the Committee.

3.4 Committee comments

The Committee was unable to reach agreement in respect of the movement of both the Labour Day and Birthday of the Sovereign public holidays.

⁹⁵ Submission 1, Carpentaria Shire: 1-2

⁹⁶ Mr Behrens, CCIQ, Public Hearing Transcript 22 July 2015: 9

⁹⁷ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 6

⁹⁸ Submission 11: Goondiwindi and District Historical Society Inc: 1

⁹⁹ Correspondence to FAC from Queensland Treasury dated 21 July 2015: 5

¹⁰⁰ Submission 22, UFUQ: 4

The non-government Members of the Committee do not support the proposed changes with regard to public holidays in Queensland. When in government the LNP had a common sense approach to the balance and spread of public holidays across Queensland. When in government, the LNP was of the opinion that moving the Labour Day holiday, which is currently celebrated on four different dates across the jurisdictions, would be less disruptive than moving the Queen's Birthday holiday, which is celebrated on the second Monday of June in every state and territory with the exception of Western Australia.

The non-government Members of the Committee are concerned the Government's approach is more about ideology and showing gratitude to the union movement than the wants and needs of Queenslanders in modern times. The non-government Members of the Committee appreciate the passionate views held by those associated with the union movement; however, believe the views of Queenslanders, the majority of whom do not have direct links with the union movement, are being ignored in favour of repaying dues to the union movement.

The non-government Members of the Committee are concerned about the impact this change will have on rural and regional Queensland where events are often planned to coincide with the gazetted public holidays and where event planning takes time and has already begun for the 2016 calendar year. In particular, the non-government Members are concerned about the impact the proposed move of the Queen's Birthday holiday to October would have on communities in western and northern Queensland. The events, which range from rodeos to camp drafts to picnic races, are often the main social and fundraising event for these communities and are held in June because the weather is cooler, the timing will not affect or harm stock, the reduced chance of bush fires in the west and the wet season is over in the north. The non-government Members of the Committee are also cognisant of the impact the proposed changes would have on regional tourism.

The non-government Members of the Committee are cognisant that it is beneficial for workers across Queensland to have an even spread of public holidays to allow them adequate respite and time with their families. The non-government Members of the Committee believe the concentration of public holidays in the first half of the year, which include New Year's Day, Australia Day, ANZAC Day and the Easter weekend, and the lack of public holidays in the latter half of the year necessitate the even spread of public holidays for the benefit of Queensland workers. The proximity of Labour Day to the fixed public holidays of ANZAC Day and Easter is a factor the non-government members believe needs to be given greater consideration. The dates on which Good Friday, Easter Sunday and Easter Monday are observed are dependent on the Gregorian calendar and the Paschal Full Moon. In 2016, Good Friday will be observed on March 25. In the past decade, it has been observed as follows:

2005	March 25
2006	April 14
2007	April 6
2008	March 21
2009	April 10
2010	April 2
2011	April 22
2012	April 6
2013	March 29
2014	April 18
2015	April 3

The above table helps show where Labour Day is observed in May, Queensland has an uneven balance of public holidays across the year with six public holidays being observed before the end of May and only three observed from June 1 until the end of the year (not including Show Holidays).

The non-government Members of the Committee are cognisant of the impacts an uneven spread might have on business through diminished productivity. If Labour Day was observed in October, Queensland would have five public holidays observed before the end of May and four observed from June 1 until the end of the year (not including Show Holidays). The non-government members of the Committee note that the celebration of Labour Day in the latter half of the year would not, and has not in recent times, prevented the union movement from acknowledging the day.

The non-government Members cited as an example the Winternationals drag racing event which are held at the Willowbank Raceway near Ipswich. They noted that this event is held over four days and attracts a large number of visitors both locally and interstate and they consider that the alignment of the holiday in June across the eastern seaboard has contributed to its success. The non-government Members also noted that the Queen's Birthday week is the only holiday celebrated in winter which usually allows for cool and dry weather which is attractive to regional tourism and events. They considered that the May weekend is too early in the year and the October weekend is usually too hot, particularly in the north and west of the state.

Government Members of the Committee strongly support the proposed amendments regarding Queensland public holidays. This support is based on a number of factors.

Government Members affirm their belief that, in their decision-making, legislators have a responsibility to take into account the views of the community. In this context, they point to the results of the extensive consultation which was undertaken by the Bligh Government in 2011, to gauge public opinion on a more even spread of public holidays across the year. Queensland was, at that time, the only state not to have statewide public holidays between mid-June and late December. The consultation included an on-line survey, which generated 24,505 responses, and an overwhelming indication of the opinion of respondents. A total of 85.4 per cent of respondents supported moving the Queen's Birthday holiday to the second half of the year. A total of 82.0 per cent supported moving it to a Monday in October. These results subsequently informed the amendments which were proposed for the *Holidays and Other Legislation Amendment Act 2011*.

Government Members point to the amendment, which were subsequently made to the Holidays Act by the Newman Government in 2012. This amendment moved the Labour Day public holiday to October, and returned the Queen's Birthday public holiday to the June long weekend. In contrast to the 2011 Bill, no public or stakeholder consultation of any kind was undertaken by the Government to inform these amendments. Government Members note the significant criticism which was aimed at the Government at that time for the disruption which was caused to the business and broader Queensland community by altering public holiday arrangements so soon after the 2011 amendments, particularly when there had been no apparent impetus for change. There was strong suggestion at the time that the Government's decision had been based solely on an ideological opposition to unionism.

Government Members acknowledge and sympathise with the concerns raised by the three Councils – Goondowindi, Carpentaria and Wujal Wujal – who submitted to the Committee regarding the impact on significant local events, of a change to the Queen’s Birthday public holiday. They also acknowledge the issues which were raised by non-government Members regarding the Winternationals event in Ipswich, although they noted that since 2014 this event had reverted to a Thursday-to-Sunday format and so the issue of the Monday public holiday is no longer applicable. A number of submitters raised similar concerns with the Legal Affairs and Community Safety Committee in 2012, including one of the Government Members of the time, when that Committee was considering the proposals by the Newman Government Bill to change the Labour Day public holiday to October. No other Councils or other organisations submitted to the Finance and Administration Committee on this occasion, on the basis of a disruption to local events.

Government Members strongly urge the Minister to work with community and other organisations to minimise any inconvenience that may arise as a result of a change of the Queen’s Birthday public holiday to October.

Putting the overwhelming results of the extensive 2011 community consultation to one side, Government Members agreed that, in order to achieve a spread of public holidays across the year, the only alternatives to consider for movement to an October date, are either the Labour Day or the Queen’s Birthday public holiday. They note the comments of the non-government Members and of some submitters, that there is national consistency across the majority of states, of the Queen’s Birthday public holiday in June, but that this is not the case for the celebration of the Labour Day long weekend; and that this justifies the movement of Labour Day to October. Their case was that national consistency is important to the business community, and that a lack of consistency may affect productivity. There was, however, no evidence submitted to the Committee by any stakeholders, including when requested, that a lack of national consistency across public holidays has a financial or other impact on business. It was, in fact, pointed out to the Committee, that such inconsistency has existed for many years without measurable impact, not only across the states, but even across local government areas within Queensland – the celebration of local show days being a case in point.

Government Members also point out that, although the non-government Members raise tourism as an important consideration for the retention of the Queen’s Birthday public holiday in June, the QTIC reported to the Committee a strong preference by their members for the movement of the June public holiday to October – a preference which indicated to them through an extensive statewide survey.

Of greater importance to Government Members in considering the two alternatives was the cultural and community significance attached to the celebration of Labour Day in Queensland on the first Monday in May, with no corresponding significance attached to the celebration of the Queen’s Birthday in June. It was the view of Government Members that the suggestion by non-government Members that the timing of the Queensland Labour Day weekend should simply align with other states, fails to reflect an understanding of the history of the celebration in Queensland, and its significance to Queenslanders in general.

Government Members consider that it is the preservation of Queensland’s history that should be a priority for the Queensland Parliament, not that of other states. Although Labour Day (or its equivalent) is celebrated in many countries across the world, to mark the struggle by workers to achieve the eight hour working day, Government Members point to the fact that one of Australia’s first Labour Day marches was held in Queensland, in 1891, where striking shearers in Barcardine marched with flags and banners. The “Eight Hour Day” on the first Monday in May was gazetted as a public holiday by the Queensland Government in 1901 and was renamed “Labour Day” in 1912. It has been consistently celebrated in Queensland on the first Monday in May since that time, traditionally combining a march with community festivities.

Government Members strongly refute the suggestion by non-government Members that a return of the Labour Day public holiday to May is a move by the Government to pander to the union movement. Although the achievement of the eight hour working day, and of subsequent rights and conditions for workers, is celebrated in a particularly strong way by unionists, Government Members point out that these hard-won rights and conditions have impacted all Queenslanders since. They argue that it is this, and the significant history of the event in May in Queensland, which deserves recognition.

Recommendation 1

The Committee recommends that, should the Bill pass, the Minister work with community and other groups, to alleviate any inconvenience caused by the movement of public holidays.

4 Examination of the *Holidays and Other Legislation Amendment Bill 2015 – Amendment of Adult Proof of Age Card Act 2008, Police Powers and Responsibilities Act 2000, Tow Truck Act 1973, Transport Operations (Marine Safety) Act 1994, Transport Operations (Passenger Transport) Act 1994, Transport Operations (Road Use Management) Act 1995 and Transport Planning and Coordination Act 1994*

The explanatory notes detail that the Bill will establish a legislative framework authorising the DTMR chief executive to take, keep and use image sets of HRW licence applicants for reproduction on a HRW licence. This will include using image sets previously taken, for example on the grant of a person's driver's licence, to issue a HRW licence. The Bill will also allow image sets provided as part of HRW licence application to be used to issue a transport authority in future.¹⁰¹

The proposed amendments will also facilitate an online application service for HRW licences and streamline the HRW licence application process. The proposed legislative framework will also consolidate the existing provisions about digital photos and digitised signatures into the Transport Planning and Coordination Act 1994 in order to simplify transport legislation by removing duplication.¹⁰²

¹⁰¹ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

¹⁰² Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

The department advised:

A licence to perform high-risk work forms part of a nationally recognised system which authorises individuals to carry out particular classes of work. There are currently 29 high-risk work licence classes. Some examples include scaffolding, riggers, doggers and tower crane operators. We have approximately 260,000 workers in Queensland that currently hold a high-risk work licence, and each year we process approximately 30,000 new applications.

For an individual to obtain a licence they first attend a registered training organisation and get trained in a unit of competency and then they get assessed as competent. Following that process, they then attend an Australia Post outlet where they submit their application form, pay their fee, supply a passport sized photograph and actually have their identity verified by Australia Post staff.¹⁰³

They further advised that:

...the Department of Transport and Main Roads is in a very good position to provide this service on behalf of the office of high-risk work licences. The changes are customer focused.

Approximately 95 per cent of the adult population already has a TMR product, whether that be a driver's licence, an adult proof-of-age card or a marine licence of some description. We took approximately 850,000 images last financial year across our 183 centres, so that includes customer service centres, QGAPs and Queensland police centres that will issue driver's licence type products on behalf of TMR.¹⁰⁴

The department outlined that the benefits of implementing the system proposed in the Bill will include:

- making it easier for workers to apply for a high-risk work licence, especially for those living in rural or remote areas or for those people who might be fly-in fly-out workers;
- saving both time and money for workers in no longer needing to attend an Australia Post outlet;
- allowing workers to apply for their licence 24 hours a day, seven days a week at any location;
- saving workers and employers on the basis of not having to travel to attend an Australia Post outlet or purchase a passport sized photograph
- allowing for the digital photographs and signature across transport licensing products
- reducing the ongoing administrative costs to government;
- reducing delays in processing applications; and
- allowing for a more robust identification and verification process.¹⁰⁵

¹⁰³ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

¹⁰⁴ Mr Mahon, DTMR, Public departmental briefing, Transcript 15 July 2015: 2-3

¹⁰⁵ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

The legislative framework proposed in the Bill will consolidate the existing provisions about digital photos and digitised signatures contained in the following Acts into the *Transport Planning and Coordination Act 1994*:

- *Adult Proof of Age Card Act 2008*,
- *Tow Truck Act 1973*,
- *Transport Operations (Marine Safety) Act 1994*,
- *Transport Operations (Passenger Transport) Act 1994* and
- *Transport Operations (Road Use Management) Act 1995*

The explanatory notes state that this approach will simplify transport legislation by removing duplication. The consolidated provisions will make appropriate provision where the processes for taking, keeping and using digital photos and digitised signatures for transport and non-transport products differ.¹⁰⁶

The consolidated provisions will also contain a number of technical and minor amendments to better align the provisions relating to the capture and management of digital information with contemporary practice. These enhancements will improve customer service for transport customers, remove unnecessary administrative processes and allow the DTMR chief executive to provide greater support to other jurisdictions in relation to particular law enforcement functions.¹⁰⁷

DTMR confirmed that in preparing the Bill they consolidated some of the provisions that were made across five different Acts to put them into one place. They also confirmed that the same privacy standards will apply as those that already apply to DTMR products.¹⁰⁸

The Committee sought additional information regarding privacy issues that may arise with sharing of information between departments.

...we have met with the Office of the Information Commissioner and the Privacy Commissioner on a couple of occasions to discuss the proposal. I guess there are a couple of points to make. The existing privacy provisions or controls that are contained in the transport legislation with regard to how this information can be used, who it is shared with and when it is able to be shared and retained is not being changed in the legislation. So that primary act is staying the same. What we will be doing, due to the information privacy principles, is alerting everyone who applies for a high-risk work licence, the law that we are actually collecting the information under, for what purpose we are collecting it and also who we will share it with including third-party providers. For example, we will be sharing that information with Queensland Transport for the purposes of issuing a licence but then subsequently that information will be shared with the third-party card production provider. That will be all set up up-front in that collection notice. We will be liaising with the Office of the Information Commissioner to develop that notice subject to the legislation being passed in the House.

¹⁰⁶ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

¹⁰⁷ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

¹⁰⁸ Mr Mahon, DTMR, Public departmental briefing, Transcript 15 July 2015: 3

I should also say that the meeting with the Information Commissioner and the Privacy Commissioner did not raise any concerns regarding the proposal or any privacy or information sharing concerns. It was supported on the basis that this proposal sort of allows just one government agency to collect this information. So there are fewer government agencies collecting the same information. So they were supportive of it from that point of view.¹⁰⁹

The department advised that it anticipates that workers and employers will save approximately \$1.6 million per year and government will save approximately \$690,000 to \$750,000 per year in administration costs.¹¹⁰

The explanatory notes also detail that the proposed amendments will allow a regulation to prescribe those authorities to which the provisions apply. It is proposed to make a regulation to ensure that, on commencement, the provisions apply to those transport authorities that currently utilise the image set provisions and to HRW licences. This also provides a mechanism to allow other government agencies and licence applicants to gain the same benefits as have been identified in relation to HRW licences in future.¹¹¹

The proposed amendments were supported by stakeholders who provided comment on the amendments.

The QCU advised the Committee that the proposed amendments appear to be advantageous to government, employers and the employees holding the licence.¹¹²

CCIQ strongly supported the implementation of an online application service for HRW licenses using electronic identity verification and the DTMR digital bank of customer image sets and card production processes. They stated:

CCIQ overwhelmingly supports the introduction of better procedures for the sharing of information and identity verification between relevant departments, ultimately having the effect of easing the red tape and administrative burden of those businesses that require HRW licences. The Queensland business community reads these changes as demonstrative of a government well-equipped to implement efficiencies where necessary to ease the burden on business in this area.

With the number of applications made for HRW licences sitting at approximately 30,000 per year, with over 260,000 existing HRW licence holders currently in Queensland, the proposed consolidation of current legislation to streamline requirements will in practical terms save around \$1.6 million per annum for the Department. Additionally, allowing access to applications on a 24/7 basis due to electronic information share grants businesses the freedom to not take time out of their workday to acquire the relevant licences for the operation of their businesses. Overall, the proposed changes work to stem the flow of regulation, while deregulating unnecessary bureaucratic procedures which acts as a perfect example of government making it easier for businesses to comply with their obligations. To this end, CCIQ believes similar efficiency finding models can and should be rolled out across the whole-of-government in the interests of making it easier to do business in Queensland.¹¹³

¹⁰⁹ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

¹¹⁰ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 2

¹¹¹ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 3

¹¹² Submission 16, QCU: 1

¹¹³ Submission 18, CCIQ: 2

CCIQ commended the department for identifying an opportunity for streamlining the process for high-risk work licence applications and renewals.¹¹⁴

They advised that the proposed amendments are a very good example of streamlining regulatory obligation and requirement for business and its interaction with government. They stated:

*We have always been of the belief that each of the departments is the gatekeeper to their own portfolio's regulatory burden and that departments are best placed to identify what can be done to ease the burden of their portfolio's regulatory burden on business. Sitting on the Office of Fair and Safe Work Queensland's regulatory reduction board, this initiative was identified by the department. We think it is a very good example of how you streamline compliance to make it easier for business. Accordingly, I cannot see how anyone would possibly have anything untoward to say about this initiative.*¹¹⁵

4.1 Summary of amendments

The following list details the Acts to be amended by clause.

Amendments to *Adult Proof of Age Card Act 2008* (Clauses 3 – 10)

- Clause 4 – Amendment of section 9 (Application by new card by electronic communication)
- Clause 5 – Amendment of section 11 (Decision on application)
- Clause 6 – Amendment of section 26 (Chief executive must maintain a register)
- Clause 7 – Amendment of section 30 (Restricted written release of information in APA register)
- Clause 8 – Omission of Part 5 (Biometric data and other information relating to adult proof of age card holders)
- Clause 9 – Insertion of new Part 9 (Transitional provision)
- Clause 10 – Amendment of schedule (Dictionary)

Amendments to *Police Powers and Responsibilities Act 2000* (Clauses 15 – 19)

- Clause 16 – Amendment of section 195A (Definitions for Part 5A)
- Clause 17 – Amendment of section 185J (Giving copy of access approval order to relevant entity)
- Clause 18 – Amendment of section 195L (Destruction of registered digital photo)
- Clause 19 – Amendment of schedule 6 (Dictionary)

Amendments to *Tow Truck Act 1973* (Clauses 20 – 25)

- Clause 21 – Amendment of section 14A (Decision on application)
- Clause 22 – Omission of part 3, division 2 (Biometric data and other information relating to driver's certificate or assistant's certificate)
- Clause 23 – Amendment of section 19H (Restricted written release of information)
- Clause 24 – Insertion of new part 8, division 3 (Transitional provisions)
- Clause 25 – Amendment of schedule 2 (Dictionary)

¹¹⁴ Mr Behrens, CCIQ, Public Hearing transcript 22 July 2015: 3

¹¹⁵ Mr Behrens, CCIQ, Public Hearing transcript 22 July 2015: 11

Amendments to *Transport Operations (Marine Safety) Act 1994* (Clauses 26 – 30)

- Clause 27 – Omission of part 5, division 3A (Biometric data and other information relating to marine licences)
- Clause 28 – Amendment of section 63I (Restricted written release of information)
- Clause 29 – Insertion of new part 19, division 6
- Clause 30 – Amendment of schedule (Dictionary)

Amendments to *Transport Operations (Passenger Transport) Act 1994* (Clauses 31 – 35)

- Clause 32 – Omission of chapter 4, part 2 (Biometric data and other information relating to driver authorisation)
- Clause 33 – Amendment of section 35H (Restricted written release of information)
- Clause 34 – Insertion of new chapter 13, part 15 (Transitional provision)
- Clause 35 – Amendment of schedule 3 (Dictionary)

Amendments to *Transport Operations (Road Use Management) Act 1995* (Clauses 36 – 40)

- Clause 37 – Amendment of section 77 (Restricted written or electronic release of person's prescribed authority and traffic history information)
- Clause 38 – Omission of chapter 5, part 3A (Biometric data and other information relating to prescribed authority holders)
- Clause 39 – Insertion of new chapter 7, part 19 (Transitional provision)
- Clause 40 – Amendment of schedule 4 (Dictionary)

Amendments to *Transport Planning and Coordination Act 1994* (Clauses 41 – 50)

- Clause 42 – Amendment of section 3 (Definitions)
- Clause 43 – Insertion of new part 4C (Biometric data and other information for prescribed authorities)
- Clause 44 – Amendment of section 36F (Keeping and using information obtained or kept under particular transport Acts or Adult Proof of Age Card Act 2008)
- Clause 45 – Amendment of section 36G (Smartcard transport authority)
- Clause 46 – Insertion of new section 36GA (Confidentiality)
- Clause 47 – Insertion of new section 37A (Annual report about access to digital photos)
- Clause 48 – Replacement of part 7, heading (Transitional provision for the *Transport and Other Legislation Amendment Act 2014*)
- Clause 49 – Insertion of new part 7, division 2
- Clause 50 – Insertion of new schedule 1 (Dictionary)

4.2 Committee comments

The Committee noted that there was unequivocal support from submitters for the proposed amendments allowing for a legislative framework authorising the use of DTMR image sets for the issuing of HRW licences.

The Committee considered that the proposed amendments will reduce red tape, thereby reducing the burden on employees, employers and government.

The Committee supports the passage of these amendments.

5 Compliance with *Legislative Standards Act 1992* – Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill’s consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee’s examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

The explanatory notes state:

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

This report makes reference to the former Scrutiny of Legislation Committee (SLC). By way of background, two reviews conducted by the Electoral and Administrative Review Commission (EARC) in 1991 and 1992 recommended Queensland replace its then Committee of Subordinate Legislation with a Scrutiny of Legislation Committee with an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).

The *Legislative Standards Act 1992* saw FLPs enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a new SLC to ‘examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation’.

A review of Queensland’s Parliamentary committee system in 2010 led to the abolition of the dedicated SLC in favour of the current system of portfolio-based committees that have operated since mid-2011. Pursuant to section 93 of the *Parliament of Queensland Act 2001* it is now the role of each portfolio committee to consider any FLP’s issues contained in Bills and subordinate legislation within its portfolio area. The Committees are assisted in this work by a dedicated secretariat which performs a very similar role to the former SLC by examining Bills and subordinate legislation for FLP compliance.

The considerable body of work generated by the former SLC and its predecessor Committee regarding FLP issues remains a valuable source of information for the current portfolio committees when considering Bills and sub-ordinate legislation. Similarly, the Office of Parliamentary Counsel (OQPC) frequently references the findings of the former SLC in its work *Fundamental Legislative Principles: The OQPC Notebook*, a very detailed and evolving examination of FLP issues.

It is considered that:

- Clause 12 may impact on the rights and liberties of individuals; and
- Clauses 42, 43 and 45 each contain the same issue of concern regarding the Bill having sufficient regard to the institution of Parliament.

5.1 Rights and liberties – Section 4(2)(a) Legislative Standards Act 1992 – Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 12 amends the ‘Schedule-public holidays’ in the *Holidays Act 1983* to change the public holiday for Labour Day to the first Monday in May and the Queen’s Birthday public holiday to the first Monday in October. This change of dates takes effect (per clause 2(2)) from 6 October 2015 which effectively means they take effect to afford the above holidays from 2016 onwards.

The SLC considered the reasonableness and fairness of the treatment of individuals as relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.

With respect to the changing of existing public holiday dates, it is likely that some persons, businesses, tourism providers and event planners who had already planned events, promotions or work practices taking account of the current public holiday schedule may experience inconvenience, additional costs, decreased revenue, or the prospect of having to cancel particular events, as a result of that change under clause 12.

The Explanatory Notes for the Bill acknowledge that this might be a concern and state:

However it is considered that advance notice of the changes before they take effect in 2016 will mitigate the potential for a person’s affairs to be adversely affected by the changes.¹¹⁶

5.2 Committee comments

The decision to change public holiday dates is essentially a policy decision, however it has potential to adversely impact on individuals and businesses that have planned their business and other affairs around the current public holiday schedule is noted above.

The Committee noted the impact on individuals and businesses is partially mitigated by the delayed commencement of the provisions until 2016.

5.3 Institution of Parliament – Section 4(4)(a) Legislative Standards Act 1992 – Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

Clause 42 amends the section 3 definitions in the *Transport Planning and Coordination Act 1994* (TPCA) to insert a new definition for ‘transport Act’ as meaning ‘an Act prescribed by regulation to be a transport Act’.

Clause 43 inserts a new Part 4C into the TPCA with definitions for that Part being provided by several provisions.

Amongst the new definitions are several that rely on ‘prescription by regulation’ for their meaning – these are:

- the definition of a ‘prescribed authorisation Act’ which means ‘an Act prescribed by regulation for this definition’ (section 28E);
- definition of a ‘prescribed authority’ which means ‘a certificate, licence or other authority or document prescribed under a regulation for this definition’ (section 28E);
- definition of an ‘authorised officer’ for a smartcard identification authority means ‘a person authorised under an Act, to perform a function or exercise a power in relation to the smartcard identification authority and prescribed under a regulation for this definition’ (section 28EG(2)).

¹¹⁶ Explanatory Notes, *Holidays and Other Legislation Amendment Bill 2015*: 5

Clause 45 amends section 36G of the TPCA to change the subsection (3) definition of a 'transport authority' to mean 'a certificate, licence, appointment or other authority prescribed under a regulation for this definition'.

Section 4(4)(a) of the *Legislative Standards Act 1992* provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament. As outlined above, leaving definitions to be prescribed by regulation is delegating the making of those definitions below Parliament, to the Executive.

Legislation that provides a skeletal legislative framework only, leaving the detail to be spelt out in subsequent regulations, is variously called 'skeleton legislation' or 'skeletal legislation'. Skeletal legislation can often arise where there is external pressure to get legislation passed in a timely fashion, regardless of its state of readiness, as might happen with States legislating to meet COAG obligations and deadlines. It may also occur when it is unclear how best to legislate on all the detailed issues arising with a policy implementation, and where it is believed that once a legislative framework is in place, smaller more technical issues and concerns can be resolved over time and prescribed for in regulations as and when more information becomes available.

Identifying so-called 'skeletal legislation' is a subjective exercise, depending as it does on the reader's own view as to what is an appropriate balance between primary and delegated legislation. Clearer examples are those where most of the matters that would normally be covered by primary legislation are left to be later set out in subordinate legislation, that is, the mere policy framework is provided for in the primary legislation with substantive details left to be filled in by regulation.

Several criticisms are typically aimed at skeletal legislation, including that it has an inherent propensity to lay down minimal policy guidance and leaves considerable unguided administrative discretion to the delegate. With respect to Parliament's function as the legislature, by 'filling in the details' later, in subordinate legislation, Members are essentially required to vote for a Bill without knowing what form or scope that 'fleshing out of the details' might subsequently take. With respect to Parliament's scrutiny function, by leaving most of the details to be filled in by regulation, the bulk of the matters which might affect the rights of the citizenry are already operating as law by the time parliamentary committees review them.

Whilst it is subject to a number of criticisms, arguments can also be made in favour of skeletal legislation, including that it offers considerable flexibility to cater to evolving circumstances, and it avoids tying up the House with legislative consideration of often complex technical matters such as, for example, particular industry safety standards.

The Committee sought additional information from the department regarding what other acts might be added to the scheme. The department advised that:

At the moment the acts that will join the scheme will actually be prescribed by regulation. That will occur obviously subject to passage of the Bill. The Work Health and Safety Act will be the first act that will be added to that list, along with a number of other transport ones that are already in that system. Moving forward, we need to consult with our stakeholders in terms of what other licence products we could bring in online. We do issue a number of other licences to individuals such as an asbestos assessor or an assessor for high-risk work classes. They are individuals who are actually licensed by the regulator at the moment. The plan is to look at moving other licences on, but we will need to consult with our stakeholders before we do that.¹¹⁷

DTMR also advised that the Bill has been set up as enabling legislation to allow other types of products that DTMR could develop on behalf of other departments to be prescribed by regulation. They indicated that they do not have any at the moment. However, they consider that there may be others in the future where their card-producing mechanism may be an easier way for departments to issue different products. They noted that the legislation has been set up in a way to allow for the proclamation of other products by regulation should other departments wish to follow a similar process in the future.¹¹⁸

5.4 Committee comments

As outlined above, this Bill leaves five terms subject to definition by regulatory prescription – ‘transport Act’, ‘prescribed authorisation Act’, ‘prescribed authority’, ‘authorised officer’ and ‘transport authority’.

The Committee considered whether those five terms should have been definitively defined in the Bill rather than being left to be defined or further defined by subsequent regulation. It considered that the nature of these definitions inherently limit the chance of their impacting on the average citizen.

Whilst the Committee does not consider that delegation to be of sufficient gravity to criticise the Bill as being skeletal legislation, it considered that the scope to ‘pad out’ definitions by subsequent regulation still leaves a citizen who is subjected to those laws having to go outside the primary Act to try to find where, in subsequent regulations, the relevant definitions have been altered or expanded.

It noted that legislation that leaves key definitions to be spelt out in later regulations means the citizens who are expected to comply with the laws cannot easily find those laws and understand their obligations or legal position, without first traversing subsequent subordinate legislation as well as the Act itself. It considered that it is an imposition on a non-legally-trained member of the public to expect that they would know where and how to look for subsequent regulatory amendments that might have altered the above five definitions.

The Committee highlighted a concern that given how frequently definitions reach across various pieces of legislation, for example, if the definition of a transport Act under traffic legislation is deemed to be ‘a transport Act as provided for under the TPCA’, which may have been expanded by regulation, it is not difficult to see the ripple effect that can happen across legislation when even one key definition is left to evolve, potentially over and over, under later regulation.

¹¹⁷ Mr Bick, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 7

¹¹⁸ Mr Mahon, Queensland Treasury, Public departmental briefing Transcript 15 July 2015: 7

5.5 Proposed new or amended offence provisions

The following table details the proposed new or amended offence provisions:

Clause	Offence	Proposed maximum penalty
43	New 28EG(1) A person may access information stored electronically on a smartcard identification authority only if— (a) the person is the holder of the smartcard identification authority; or (b) the person has the holder’s consent to access the information; or (c) the person is an authorised officer for the smartcard identification authority and the access to the information is for exercising a power under the Act under which the smartcard identification authority is granted; or (d) the person is a police officer who is authorised under the <i>Police Powers and Responsibilities Act 2000</i> to access the information.	20 penalty units
46	New 36GA(1) A person must not disclose, record or use information the person gained— (a) through involvement in the administration of this Act; or (b) because of an opportunity provided by the involvement.	200 penalty units

5.6 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

Appendices

Appendix A – List of Submissions

Sub #	Submitters
1	Carpentaria Shire Council
2	United Voice Queensland
3	Mr Nicholas Johns
4	Mr Graham Quinn
5	Mr Nick Duggan
6	Australian Manufacturing Workers' Union (AMWU)
7	National Heavy Vehicle Regulator (NHVR)
8	Electrical Trades Union of Employees (ETU)
9	Mr Chris Gourlay
10	Australian Workers' Union (AWU)
11	Goondiwindi and District Historical Society Inc
12	Shop Distributive and Allied Employees Association (Queensland Branch) (SDA)
13	Wujal Wujal Aboriginal Shire Council
14	Mr David Lloyd
15	Mrs Verlie Lloyd
16	Queensland Council of Unions (QCU)
17	Queensland Teachers' Union of Employees (QTU)
18	Chamber of Commerce and Industry Queensland (CCIQ)
19	Queensland Catholic Education Commission (QCEC)
20	Queensland Tourism Industry Council (QTIC)
21	Mr Clayton Bray
22	United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)
23	Mrs Tracey Wishart
24	Queensland Nurses' Union (QNU)
25	North Burnett Regional Council

**Appendix B – Officers appearing on behalf of the departments at public departmental briefing –
Wednesday 15 July 2015**

Witnesses
Mr Bradley Bick, Director, Work and Electrical Safety Policy, Office of Industrial Relations, Queensland Treasury
Mr Tony James, Executive Director, Private Sector Industrial Relations, Queensland Treasury
Mr Andrew Mahon, Acting Executive Director (Transport Access and Use), Transport Regulation Branch, Department of Transport and Main Roads

Appendix C – Witnesses appearing at public hearing – Wednesday 22 July 2015

Witnesses – Session 1 – 3:30pm to 4:30pm
Mr Nick Behrens, Director Advocacy and Workplace Relations, CCIQ
Mr Dermot Peverill, Industrial Officer, United Voice
Mr Brian Devlin, Assistant State Secretary, AMWU
Ms Lara Watson, Field Officer, QCU
Mr Darryn Gaffy, Senior Industrial Officer, SDA
Ms Mandy Anderson, Acting Executive Director, QCEC
Ms Thalia Edmonds, Industrial Advocate, QTU
Mr Mark Anghel, Legal Officer, QTU
Mr James Gilbert, Health and Safety Officer, QNU
Dr Liz Todhunter, Research and Policy Officer, QNU
Mr John Spreckley, Senior Industrial Officer, UFUQ

Witnesses – Session 2 – 4:35pm to 4:45pm (by teleconference)
Mr David McMahon, President, Goondiwindi and District Historical Society

Witnesses – Session 3 – 4:45pm to 4:55pm (by teleconference)
Cr Fred Pascoe, Mayor, Carpentaria Shire Council
Mr Bob Owen, Chief Executive Officer, Carpentaria Shire Council

**Appendix D – Cost information provided by Queensland Treasury at public departmental briefing –
Wednesday 15 July 2015**

Mr Tony James
 Tabled by: Office of Industrial Relations
 & Treasury
 At: FAC Departmental Briefing
 Date: 15 July 2015
 Signature: 

Costs

Applicants and employers

Application for a high risk work licence	\$82.50
Renewal of licence	\$74.95 (5 years)
Replacement of licence	\$32.70
Passport photo	\$16.95
Cost of applying at Australia Post office*	\$37

* Based on average time taken to make application as 1 hour, with an average hourly rate of \$37 per person (based on the 2013-14 average weekly earnings and the 2013-14 annual average hours worked per week in Queensland of 32.7 hours)

- It is estimated that the costs to the applicants and their employers in lost time in travelling to and attending an Australia Post outlet are \$1.1 million per year.
- The requirement to take a passport photograph is estimated to cost \$500,000 per annum.
- It is estimated total costs that will be saved by workers and employers is approximately \$1.6 million per annum.

Government

Maintaining contract with Australia Post	Approximately \$1.8 million per annum
Initial establishment costs	Between \$1.7 million and \$2.46 million
Ongoing costs	Between \$1 million and \$1.2 million per annum
Estimated cost savings	Between \$690,000 and \$750,000 per annum.

- Maintaining contract with Australia Post - Approximately \$1.8 million per annum (\$1.23 million for Australia Post as a service agent plus an additional \$570,000 in WHSQ operational costs).
- The initial establishment costs for this option would be between \$1.7 million and \$2.46 million, to enhance information technology systems and implement the required contractual and operational arrangements.
- The costs for the necessary capital investment will be funded from WHSQ's existing budget allocation.
- Ongoing costs under this option are estimated to be between \$1 million and \$1.2 million per annum
- Cost savings for government are estimated to be between \$690,000 and \$750,000 per annum.
- Savings resulting from this change will be used to recoup the initial capital investment, and in future to bring other licence classes into the online application scheme.