



EDUCATION, EMPLOYMENT AND SMALL BUSINESS COMMITTEE

Members present:

Ms LM Linard MP (Chair)
Mr N Dametto MP
Mr MP Healy MP
Mr BM Saunders MP
Mrs JA Stuckey MP
Mrs SM Wilson MP

Staff present:

Ms S Cawcutt (Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE HOLIDAYS AND OTHER LEGISLATION AMENDMENT BILL 2019

TRANSCRIPT OF PROCEEDINGS

MONDAY, 14 OCTOBER 2019

Brisbane

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The committee met at 10.18 am.

CHAIR: Good morning. I declare open this public briefing for the Education, Employment and Small Business Committee's inquiry into the Holidays and Other Legislation Amendment Bill 2019. I acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging. My name is Leanne Linard. I am the chair of the committee and the member for Nudgee. The other members present today are: Mrs Simone Wilson MP, the member for Pumicestone; Mr Bruce Saunders MP, the member for Maryborough; Mr Nick Dametto MP, the member for Hinchinbrook; and Mr Michael Healy MP, the member for Cairns.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. I ask everyone present to please turn mobile phones off or to silent mode.

I remind committee members that departmental officials are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. The purpose of today's proceedings is to assist the committee in its examination of two bills: first, the Holidays and Other Legislation Amendment Bill 2019 until 11 am; and, second, at 11.15 am, the Child Death Review Legislation Amendment Bill 2019.

The Holidays and Other Legislation Amendment Bill was introduced into the parliament on 19 September and referred to the committee for examination. The committee will examine the policies the bill gives effect to and the application of fundamental legislative principles, as set out in section 4 of the Legislative Standards Act 1992. The committee must report to parliament by 4 November. The program for today's briefing has been published on the committee's web page, and there are hard copies available from committee staff.

HOPGOOD, Mr Mark, Principal Industrial Policy Officer, Office of Industrial Relations, Department of Education

JAMES, Mr Tony, Executive Director, Office of Industrial Relations, Department of Education

SCHOSTAKOWSKI, Mr Tony, Director, Regulation and Compliance, Office of Industrial Relations, Department of Education

CHAIR: I welcome representatives from the Office of Industrial Relations in the Department of Education who have been invited to brief the committee on the bill. Thank you for your written briefing on the bill, which is available on the committee's web page. Thank you for the written information you have provided and for the copies of the RIS. I now invite you to make a brief opening statement—anything not covered in the written briefing—and then we will open for questions.

Mr James: Thank you for the opportunity to address the Education, Employment and Small Business Committee during its examination of the Holidays and Other Legislation Amendment Bill. The objective of the Holidays and Other Legislation Amendment Bill 2019 is to provide for Christmas Eve, 24 December, to be observed as a part-day public holiday from 6 pm to 12 midnight. The bill will amend the Holidays Act and make consequential legislative amendments to the Industrial Relations Act and the portable long service leave acts to accommodate Christmas Eve, 24 December, being observed as a part-day public holiday from 6 pm.

The policy objective of the bill is to enliven the industrial relations rights and protections for workers. This means that the public holiday provisions of the Fair Work Act 2009, the Industrial Relations Act 2016 and industrial instruments will come into effect. These provisions generally require the payment of a penalty rate for work performed and they also provide workers with a right to reasonably refuse to work on a public holiday. Beyond this, the amendment does not displace or otherwise impact on Christmas Eve, 24 December, being a business day for other purposes.

Public consultation through a regulatory impact statement was conducted between 4 August and 2 September 2019, following an announcement by the Premier and Minister for Trade and the Minister for Education and Minister for Industrial Relations. A part-day public holiday is estimated to add wages costs between \$41.3 million and \$136 million per annum. The estimate is based on a comparison of estimated employment on Christmas Day, which provides the low estimate, and on Boxing Day, which provides the high estimate.

I will close the opening statement. The Office of Industrial Relations has provided the committee with a written statement, as you have said. My colleagues, Mr Schostakowski and Mr Hopgood, and I welcome any questions the committee may have.

CHAIR: I read your written briefing, but I have not had an opportunity to read all of the RIS so I apologise if some of my questions are answered in that. I will have the opportunity to read that in more detail this week. Did the RIS in any respect cover off on the experiences in South Australia and the Northern Territory around costs? I appreciate that some of the conversation in your written briefing is about the lower estimate being more likely. I think it almost referenced that for South Australia that was their experience. Was that right?

Mr James: The RIS does certainly cover and canvass the South Australian experience. I will get my colleague Mr Schostakowski to talk through that. When you talk about the reference to South Australia in terms of the estimation of costs, the experience in South Australia was that their estimate of costs and what they actually found when they did a subsequent review was that the costs were substantially less.

Mr Schostakowski: The South Australian government introduced a part-day public holiday in 2011 but it actually became operative in 2012. They also introduced a New Year's Eve part-day public holiday—so Christmas Eve and New Year's Eve part-day public holidays—from 7 pm to midnight. They introduced it and then did a review of the impact of the arrangements put in place in 2013. The review goes into costs and basically says that the costs were a lot less than expected when they initially made the changes in South Australia.

The consultation RIS and the decision RIS set out some detail about particular industries—for example, hotels, licensed clubs, service stations, roadhouses, restaurants and retail—that are impacted by such a change. It provided information for our consultation process in relation to what the Queensland government is proposing. It showed that the costs were less than initially predicted in that state.

CHAIR: Was that surprising? I also noted the comment in your written briefing that the high estimate was more reflective of Boxing Day, which we know is a significant trading day. I think it is fair to say that it is quite different to what we are talking about here. Was that surprising or did it actually confirm more what you thought?

Mr Schostakowski: I think it confirmed more. The estimates that the Office of Industrial Relations have done in the consultation RIS and again in the decision RIS were based on a survey conducted in 2011 of employment data at that time and then projected forward of employment estimates on Christmas Day as a low and Boxing Day as a high for wages impacts for the proposed part-day public holiday, which is a new thing. This has not been implemented before in Queensland. The South Australian example does show that the estimates could be a lot less than predicted.

Mr James: I refer the committee to the consultation RIS at page 12, where it goes extensively into an analysis of the South Australian experience. The actual costs in South Australia were around \$3 million to \$4 million in total costs across their public and private sector. They are far lower than the cost estimates for Queensland. Even considering that South Australia is a smaller state, I think it is indicative of what we would suggest—that is, that our low estimate is conservative.

CHAIR: Obviously that is the cost estimate to business. It would be far more difficult, would it not, to estimate the cost to individuals and families of working these hours currently? I am married to a shiftworker so I live with those costs personally. It is difficult to model that and the benefits of that; is it not? Can you talk to me about that?

Mr James: Thank you for that observation. You are quite right. Defining the benefits or rewards to the community is far harder to quantify, but it is absolutely reasonable to suggest that allowing families time off from work to spend with family and celebrate what is a significant event certainly has benefits not only for the individual worker but also across the broader community.

Mrs WILSON: Has there been some economic modelling done around the changes in terms of whether jobs may be lost, whether businesses will potentially not open and whether the prices for consumers may increase with this part-day public holiday?

Mr James: We have not done precise or engaged economic analysis on that. Bearing in mind that it is a 6 pm to midnight period on Christmas Eve, we would not expect that there would be any significant impact on employment. However, through the consultation process employers or businesses have made us aware that because of the increased cost they would make a decision on whether they would remain open or whether they would hire or if they were a small business whether they would work themselves. I cannot tell you that there would be no impact on employment. However, if you put it in perspective, I cannot see that business would be terminating ad infinitum for one occasion, being Christmas Eve.

Mrs WILSON: When you were consulting with stakeholders, what were businesses saying to you? Are they looking at closing from 6 pm? Let us look at the Gold Coast for instance, where there are entertainment precincts where a lot of tourists come to enjoy our beautiful sunshine. What have the businesses there said to you during consultation?

Mr James: I would certainly say that businesses have raised the potential for considering increased costs. It is a matter for the business to determine whether they wish to trade or not. I would suggest that in those large entertainment precincts—I do not run a club—it is simply a matter of the businesses making a decision if they wish to remain open. The same goes for regional Queensland as well.

One of the outstanding features of the consultation was that, particularly in regional Queensland, there is an acknowledgement that small businesses, hotels and even small shops provide a community service beyond just an economic benefit. We did hear that businesses understood that obligation. I cannot tell you that there will not be businesses that will close. I would suggest that there will be those that will make that decision. I do not have any precise economic analysis and nor do I have any specific examples.

Mrs WILSON: Is that something the department will potentially look at doing down the track in a potential review process?

Mr James: I have no instructions on a review being done on this one.

Mrs WILSON: You mentioned that South Australia implemented this in 2012 but they started consultation basically a year earlier. You mentioned that we had a consultation period with key stakeholders from 4 August to 2 September. Do you think that is a practical time frame, considering the changes that will be made with this new piece of legislation coming into effect?

Mr James: I bring the member to page 2 of the explanatory notes. In April the government approved further investigation of a proposal to amend the Holidays Act and the release of a consultation RIS. The government then approved the release of the consultation RIS on 4 August, and it ran through to 2 September. Anything beyond that is a matter for government.

Mr HEALY: We take into account that over the last five years we have seen no or minimal wage growth in the country. Bearing in mind that 62 per cent of our economy is based on household spending, I think any improved protections in wages are very positive and I see that as part of this. Cairns is a tourism economy. Some people have raised issues with me and I have been more than happy to discuss some of those. Thank you very much for your detailed information on the implementation. I am interested in the process after this legislation is enacted and the amount of time a business operator has. What sort of material will the department have to help those businesses?

Mr James: The timing of the bill to come back for debate is a matter for the government, but I expect it would be debated before Christmas Eve this year. The last parliamentary sitting is in November, and you would expect that if it was going to be debated it would be done by then. Subject to promulgation, it would commence on assent. It will be in for this year if it is passed by the House.

In terms of information, it is not particularly complex for an employer to find their obligations under their particular industrial instrument or award. I would imagine that the government will make very clear the announcements of the passage of the bill and its implementation. We will also speak to the Fair Work Ombudsman's office to ensure they are aware that Queensland has introduced a new public holiday from six to 12 on Christmas Eve. We would advise the associations that responded to the RIS as well. I do not think it would be a secret that this matter is going through.

Mr Schostakowski: In terms of the Fair Work Ombudsman, as we know, employers in Queensland predominantly are covered by the fair work system. That means they pay under federal awards and agreements. If this is introduced and passed by the parliament, the conditions of federal awards would nominate those penalty rates for the public holiday which are already in awards and agreements and on the Fair Work Ombudsman's website.

Mr HEALY: Basically, the notification would be pretty much immediate. It just enables those businesses to start to plan for that and, in their process of analysis, make determinations about whether they will be open, pass on costs or anything like that. Is that how that meeting would work?

Mr James: That is right.

Mr DAMETTO: Once again, thank you for coming along this morning to address the committee. People in my community have mixed feelings about this proposed legislation. Small businesses are worrying about whether they will be able to afford to open or decide to shut. Staff are considering whether or not it be economically viable for businesses to open. One thing that did pop up in a lot of conversations concerned staff being paid in cash on that night and that everyone would be happy. This is a bit of a concern, because that dips into the black economy that none of us wants to see businesses dip into. The reality is that that is something that may happen in the community. While the department was working with the government to put together this proposed legislation, was there any consideration of regional concessions or small business concessions to pay the public holiday rate?

Mr James: No considerations were given from our perspective in terms of the application of the Holidays Act to sections of the state. It was a public holiday to be declared for the state and, therefore, it would apply universally across the state. That is the standard for public holidays other than the show days, which are quite unique. In terms of any concessions or financial assistance, no, I had no instructions to consider that aspect.

Mr SAUNDERS: Thank you for your detailed summary. As an old retailer, I quite welcome that. Will anyone from the department or the Fair Work Commission be monitoring this to ensure workers do not suffer wage theft?

Mr James: Mr Schostakowski heads up our compliance branch. As you know, the Commonwealth has responsibility for private sector wages. It is a Commonwealth jurisdiction, but we have close relationships with the Fair Work Ombudsman. If members of the public feel that they have been underpaid, are victims of wage theft or are not getting their correct entitlements, whilst the Fair Work Ombudsman is the body that would investigate those we will talk to those people and refer those matters on to the Fair Work Ombudsman if necessary, if they bring those to our attention. We will also have regular discussions with the Fair Work Ombudsman as to what actions they are taking. It is their jurisdiction and not ours; however, we do have good relationships with them.

Mr Schostakowski: As this is a proposed new part-day public holiday, similar to other public holidays where employees at the moment work and are entitled to penalty rates and extra payments for working on a public holiday, this will be treated exactly the same in terms of regulation and enforcement. We have a close relationship with the Fair Work Ombudsman. From time to time we do pass concerns through our office to the Fair Work Ombudsman and that would continue. If there were any specific issues, I am sure we would speak with the Fair Work Ombudsman about that.

CHAIR: On page 13 of the consultation RIS that you provided to the committee are some ABS statistics about the number of businesses that may be caught within the bill. Is there modelling that shows how many employees may be directly affected? The major retailers—the Westfields for example; there are a number in or near my electorate—have to close anyway. I think in regional areas the sorts of businesses that are operating are very different. Do you have an idea how many employees would be caught, on current numbers?

Mr James: You are right: on page 13 we refer to some ABS statistics, as at 30 June, which talk about the number of businesses. That is taken from some published ABS data—I think it is referenced at the bottom of that page—in terms of the particular portfolio for that. If you were to move to the appendix of that particular RIS, from page 25 through, we have some analysis of numbers. In 2011 the Queensland Treasury engaged a household survey that gave us the number of workers who actually work on a public holiday. There is no other published or available data beyond that, so we have taken those numbers and extrapolated through employment growth from 2011 to 2018-19 to estimate the number of employees who would be in those relevant industries. They do not exactly tie up—for example, we have mentioned in there ABS classifications and then in here we have talked about industry employment levels—but we do have an indication of what we think would be the number of employees. As I said at the start, I believe it is a quite conservative estimate.

CHAIR: Your estimate would fall somewhere between Christmas Day and Boxing Day. Again, they are very different in nature.

Mr James: Absolutely. I point out that in its submission the AIG felt that our estimate was underdone in that it felt it was closer to Boxing Day. I suggest that, since the Trading Hours Act was amended to ensure that large retailers across the state close at 6 pm, that has radically changed the Brisbane

complexion. I do not think Boxing Day is a reasonable comparative day, because Boxing Day is the largest retailing day in the country, led by the large retailers which will not be open on Christmas Eve. Those retailers do have shelf fillers in—they do have some employees; we understand that—but certainly not the large numbers of retail employees that you would expect to be in the Boxing Day figures.

CHAIR: It would have been an interesting process for you to work through and make these high-level assumptions.

Mr James: They are high-level assumptions, but we have reasonable confidence that, statistically, they are reflective of what we anticipate. As I said, they are very conservative. The experience in South Australia showed that what actually happened on the ground was somewhat less.

Mrs WILSON: Mr James, you just raised a really good point with regard to the trading hours legislation. Will the trading hours legislation need to be changed in line with this new legislation?

Mr James: No. The trading hours legislation is not amended by the Holidays Act. The Holidays Act is amended to enliven industrial relations entitlements. The government put a moratorium of five years on trading hours when it did that. This bill specifically does not impact the trading hours, other than when they have to be closed on a public holiday anyway. There are no additional requirements. I think the example concerned car yards, which can open on Christmas Eve. They can continue to open on Christmas Eve should they wish.

CHAIR: Thank you very much for your time today. No matters have been taken on notice. I declare our public briefing closed.

The committee adjourned at 10.43 am.