



# Holidays and Other Legislation Amendment Bill 2019

**Report No. 24, 56<sup>th</sup> Parliament**  
**Education, Employment and Small  
Business Committee**  
**November 2019**

## **Education, Employment and Small Business Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by the Office of Industrial Relations, Department of Education.

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## Abbreviations

ARA	Australian Retailers Association
CCIQ	Chamber of Commerce and Industry Queensland
Bill	Holidays and Other Legislation Amendment Bill 2019
committee	Education, Employment and Small Business Committee
Holidays Act	<i>Holidays Act 1983</i>
LSA	<i>Legislative Standards Act 1992</i>
NRA	National Retail Association
OIR	Office of Industrial Relations (Department of Education)
QCU	Queensland Council of Unions
QHA	Queensland Hotels Association
QNMU	Queensland Nurses & Midwives' Union
the Review	Hon. John Mickel, <i>A Review of Queensland's Trading (Allowable Hours) Act 1990, A report by John Mickel, Chair – Trading Hours Review Reference Group, December 2016</i>
RIS	Regulatory Impact Statement
RDA	Retail Drinks Australia
SDA	Shop, Distributive & Allied Employees' Association, Queensland Branch
TAH Act	<i>Trading (Allowable Hours) Act 1990</i>

All Acts are Queensland Acts unless otherwise specified.

## Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Holidays and Other Legislation Amendment Bill 2019.

The Bill amends the *Holidays Act 1983*, the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* and the *Industrial Relations Act 2016*. Amendments to the *Holidays Act 1983*, and other consequential legislative amendments, will provide for a part-day public holiday on Christmas Eve (24 December) from 6pm.

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

The committee received fourteen submissions; most from stakeholder groups representing a large number of affiliated members and/or member organisations. The committee held a public briefing with the Office of Industrial Relations and a public hearing to engage with, and hear from, interested parties.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and appeared before the committee. I also thank our Parliamentary Service staff and officials from the Office of Industrial Relations in the Department of Education.

I commend this report to the House.



**Leanne Linard MP**  
Chair

## Recommendations

### Recommendation 1

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The committee recommends the Holidays and Other Legislation Amendment Bill 2019 be passed.

## 1 Introduction

### 1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility include:

- education
- industrial relations
- employment and small business, and
- training and skills development.

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 areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Holidays and Other Legislation Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 19 September 2019. The committee is to report to the Legislative Assembly by 4 November 2019.

### 1.2 Inquiry process

On 23 September 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Fourteen submissions were received (see **Appendix A** for a list of submitters).

The committee received a written briefing on the Bill from the Office of Industrial Relations (OIR) within the Department of Education. The OIR also provided an oral public briefing on 14 October 2019 and answered committee questions (see **Appendix B** for a list of officials).

The committee received written advice from the OIR in response to matters raised in submissions.

The committee held a public hearing on Friday 25 October 2019 (see **Appendix C** for a list of witnesses).

The submissions, correspondence from the OIR and transcripts of the briefing and hearing are available on the committee's webpage.<sup>2</sup>

### 1.3 Policy objectives of the Bill

The objective of the Bill is to amend the *Holidays Act 1983* (Holidays Act) and make other consequential legislative amendments to provide for a part-day public holiday from 6pm to 12 midnight on Christmas Eve (24 December). Before 6.00pm Christmas Eve will operate as a normal business day. The Bill intends to:

- entitle workers to refuse to work in reasonable circumstances, or to receive the payment of public holiday penalty rates where work is performed on Christmas Eve after 6.00pm, and

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88; Standing Rules and Orders of the Legislative Assembly, SO194.

<sup>2</sup> Education, Employment and Small Business Committee, <https://www.parliament.qld.gov.au/work-of-committees/committees/EESBC>.

- activate the public holiday provisions of the *Fair Work Act 2009* (Cth), the *Industrial Relations Act 2016* and industrial instruments for all employees in the national workplace relations system and the Queensland industrial relations system.<sup>3</sup>

#### 1.4 Government consultation on the Bill

In August 2019 the Premier and Minister for Trade, the Hon. Anastacia Palaszczuk MP, and the Minister for Education and Minister for Industrial Relations, the Hon. Grace Grace MP, announced that the government would consult with stakeholders on a proposal to declare Christmas Eve, from 6.00pm to midnight, a part-day public holiday. As outlined in the explanatory notes, government consulted with stakeholders and the public via a Consultation Regulatory Impact Statement (Consultation RIS).

The government released the Consultation RIS in August 2019, and published a Decision Regulatory Impact Statement (Decision RIS) in September 2019, before the Bill was introduced into the Legislative Assembly. Both documents are attached to the written departmental briefing dated 30 September 2019 and published on the committee's inquiry webpage:

- *Consultation Regulatory Impact Statement: Investigation into Proposed Christmas Eve Part-Day Public Holiday 2019* (Consultation RIS), and
- *Christmas Eve Part-Day Public Holiday 6pm to 12 midnight: Decision Regulatory Impact Statement* (Decision RIS).<sup>4</sup>

The Consultation RIS was open for consultation for 28 days, closing on 2 September 2019. A total of 1,779 submissions were received.<sup>5</sup> The majority of submissions (71 per cent) supported the proposal to declare Christmas a part-day public holiday from 6.00pm to midnight, and 29 per cent opposed the proposal. Of the 1,271 submissions that supported, 1,149 were provided by the Shop, Distributive and Allied Employees' Association (SDA) from its members. Of the 508 submissions that opposed, 422 were provided by the Chamber of Commerce and Industry Queensland (CCIQ).<sup>6</sup>

Some submitters to the Bill expressed concern over the lack of prior consultation with industry,<sup>7</sup> while others stated there was insufficient statistical information to inform the proposed changes.<sup>8</sup> Some submitters expressed concern over the department's consultation process, noting that many submissions to the Consultation RIS were single line comments.<sup>9</sup> The OIR advised:

*The Department rejects any assertions that cast doubt over the integrity of the submission-making process. All submissions, regardless of their length or whether they supported or opposed the proposal, were made legitimately and should be considered respectfully.*

*The Queensland Productivity Commission assessed both the Consultation RIS and the subsequent Decision RIS and considered both adequately presented the proposal and the results of consultation, including consideration of the response to stakeholder feedback and a discussion of the impacts of legislating a part-day public holiday on Christmas Eve.<sup>10</sup>*

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<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> Education, Employment and Small Business Committee, <https://www.parliament.qld.gov.au/work-of-committees/committees/EESBC>.

<sup>5</sup> Explanatory notes, p 3.

<sup>6</sup> Explanatory notes, p 3.

<sup>7</sup> Submission 3, p 2.

<sup>8</sup> Submission 11, p 6; submission 12, p 3.

<sup>9</sup> Submission 4, p 2; submission 5, p 2.

<sup>10</sup> Office of Industrial Relations, Department of Education (OIR), correspondence dated 23 October 2019, attachment, p 5.

The OIR further advised the committee of a key theme to emerge from the consultation process:

*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.*<sup>11</sup>

### **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the Office of Industrial Relations, the committee recommends that the Bill be passed.

<p><b>Recommendation 1</b></p>
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<p>The committee recommends the Holidays and Other Legislation Amendment Bill 2019 be passed.</p>
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<sup>11</sup> Public briefing transcript, Brisbane, 14 October 2019, p 3.

## 2 Examination of the Bill

### 2.1 Background

#### 2.1.1 Public holidays in Queensland and other jurisdictions

Queensland has 12 public holidays in 2019. The Australian Capital Territory, Victoria, South Australia and the Northern Territory have 13 public holidays. New South Wales and Tasmania have 11 public holidays in 2019, and Western Australia has 10. In South Australia and Northern Territory, two of the 13 public holidays are part-day holidays, on Christmas Eve and New Year's Eve, from 7.00pm to midnight.<sup>12</sup> According to the OIR, the Christmas Eve part-day holiday in South Australia was introduced in 2012 as part of an agreement between the peak employer and union bodies around extended trading hours.<sup>13</sup>

A comparison of public holidays observed in Queensland and other jurisdictions in 2019 is provided at **Appendix E**.

#### 2.1.2 Review of Queensland trading hours legislation

The proposal to commence the part-day public holiday from 6.00pm emerged from the findings of the review of trading hours by the Hon. John Mickel, *A Review of Queensland's Trading (Allowable Hours) Act 1990* (the Review), published in December 2016.<sup>14</sup>

The Review recommended changes to trading hours on Sundays in the lead up to Christmas for the whole of Queensland, and until midnight on all days in the period from 18 to 23 December each year. It also proposed that all non-exempt shops be closed from 6.00pm on Christmas Eve.<sup>15</sup> The Review considered that 6.00pm represented an appropriate dividing line between the finishing time for most day work and the starting time of night shift work.<sup>16</sup>

*It is considered that the 6pm closing time is a reasonable compromise which allows most workers to go home at a reasonable hour, balancing costs for all industries if a public holiday was to be declared from 6pm.*<sup>17</sup>

The Bill's proposal to start the part-day public holiday at 6.00pm aligns with amendments made to trading hours legislation in 2017, requiring all large retail shops to close at 6.00pm on Christmas Eve.<sup>18</sup> The OIR emphasised that the proposed part-day public holiday on Christmas Eve does not intend to conflict with the state government's take-up of the outcomes and recommendations from the Review, or the subsequent amendment to the *Trading (Allowable Hours) Act 1990* (TAH Act), and stated:

*To be clear, there will be no change to trading hours in Queensland under the TAH Act as a result of a Christmas Eve part-day public holiday being introduced.*<sup>19</sup>

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<sup>12</sup> *Christmas Eve Part-Day Public Holiday 6pm to 12 midnight: Decision Regulatory Impact Statement* (Decision RIS), pp 8-9.

<sup>13</sup> OIR, correspondence received 30 September 2019, attachment, p 4.

<sup>14</sup> Queensland Government, *A Review of Queensland's Trading (Allowable Hours) Act 1990: A report by John Mickel, Chair – Trading Hours Review Reference Group*, December 2016.

<sup>15</sup> Queensland Government, *A Review of Queensland's Trading (Allowable Hours) Act 1990: A report by John Mickel, Chair – Trading Hours Review Reference Group*, pp 27-28.

<sup>16</sup> Queensland Government, *A Review of Queensland's Trading (Allowable Hours) Act 1990: A report by John Mickel, Chair – Trading Hours Review Reference Group*, p 28; *Consultation Regulatory Impact Statement: Investigation into Proposed Christmas Eve Part-Day Public Holiday 2019* (Consultation RIS), p 17.

<sup>17</sup> Queensland Government, *A Review of Queensland's Trading (Allowable Hours) Act 1990: A report by John Mickel, Chair – Trading Hours Review Reference Group*, p 28.

<sup>18</sup> Consultation RIS, pp 16-17.

<sup>19</sup> OIR, correspondence dated 23 October 2019, attachment, p 3.

## 2.2 Proposed amendments

The Bill proposes to amend the Holidays Act, the *Industrial Relations Act 2016*, and provides for consequential amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

### 2.2.1 Amendment of the *Holidays Act 1983*

The Holidays Act sets out the public holidays that apply in Queensland, provides for the substitution of the day of a public holiday by the Minister by Gazette notice, and for gazettal of special holidays in all or part of the state in specified circumstances. The Holidays Act also clarifies that references to a public holiday in an industrial instrument under the *Industrial Relations Act 2016* are taken to mean the day those holidays are to be observed under the Act.<sup>20</sup>

The Bill proposes to amend the Holidays Act to create a part-day public holiday from 6.00pm to midnight on Christmas Eve (24 December). The amendments are proposed to commence on assent to the proposed amendment Act.

The Bill also proposes to insert new provisions into existing section 2 of the Holidays Act to provide that the part-day public holiday on Christmas Eve applies only for discerning a person's entitlements under:

- (a) *the Industrial Relations Act 2016 or an industrial instrument within the meaning of that Act;*  
or
- (b) *the Fair Work Act 2009 (Cth) or a federal industrial instrument; or*
- (c) *the Building and Construction Industry (Portable Long Service Leave) Act 1991; or*
- (d) *the Contract Cleaning Industry (Portable Long Service Leave) Act 2005.*<sup>21</sup>

The explanatory notes state that, if passed, the impact of the proposed amendments will be that workers gain an entitlement to refuse to work in reasonable circumstances, or receive payment of public holiday penalty rates where work is performed after 6.00pm on Christmas Eve. The explanatory notes state:

*It is not intended that the amendment displace or otherwise impact on Christmas Eve (24 December) being a 'business day' for any other purpose and so the amendment applies only for working out a person's entitlements under certain prescribed Acts or industrial instruments within the meaning of those Acts.*<sup>22</sup>

The current legislative arrangements around requests to work and refusal to work on a public holiday are set out in the *Industrial Relations Act 2016* and the *Fair Work Act 2009 (Cth)*. Extracts from those Acts are provided at **Appendix D**.

Pursuant to employers operating under federal law, the OIR advised the committee:

*... 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.*<sup>23</sup>

<sup>20</sup> Holidays and Other Legislation Amendment Bill 2019 (Bill), cl 6.

<sup>21</sup> Bill, cl 3.

<sup>22</sup> Explanatory notes, p 1.

<sup>23</sup> Public briefing transcript, Brisbane, 14 October 2019, p 3.

### **2.2.2 Amendment of the *Industrial Relations Act 2016***

Clause 5 of the Bill proposes an amendment to existing section 332 of the *Industrial Relations Act 2016*, to provide that employees who are stood down or dismissed in December and re-employed in January are entitled to be paid for the proposed part-day public holiday, in addition to the existing entitlement to be paid for the Christmas Day, Boxing Day and New Year's Day public holidays. An amendment to the definition of 'public holiday' in the *Industrial Relations Act 2016* adds the proposed part-day public holiday for this purpose.

### **2.2.3 Other amendments**

Clauses 7 to 10 of the Bill add the proposed Christmas Eve part-day public holiday to the definitions of 'public holiday' in both the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

## **2.3 Reasons for a public holiday on Christmas Eve**

The Decision RIS outlines the government's rationale for a part-day public holiday on Christmas Eve, including:

*The Christmas period, including Christmas Eve, has personal, social, religious and cultural significance for many in the community, as well as being an important time for businesses in Queensland and for the provision of public services such as health and emergency services. When considering the issue of a part-day public holiday on Christmas Eve, the needs of business and the ongoing imperative to deliver critical public services must be weighed against workers' legitimate wishes and expectations to participate in Christmas Eve events and have social time with their family and maintain a reasonable work life balance.*

*The declaration of a part-day public holiday on Christmas Eve is a way to strike that balance, giving workers the right to elect to work or not work at that time, taking into account a test of reasonableness set out in the relevant state and federal industrial laws.<sup>24</sup>*

The benefits to employees are stated in the Decision RIS to include:

*...a protection for those affected employees that is not currently available to them, giving them the opportunity to have Christmas Eve off work. ... In effect, this would bring them into line with most other workers in the community who are not in the position of being asked to work on Christmas Eve after 6pm.<sup>25</sup>*

The Decision RIS stated that the declaration of a part-day public holiday on Christmas Eve had the intention of supporting:

*... greater compensation for workers who continue to work those unsociable hours on Christmas Eve, and who are sacrificing important time with family and missing out on religious and social events to mark the night before Christmas.<sup>26</sup>*

### **2.3.1 Cultural and religious significance of Christmas Eve**

Some submitters supported the part-day public holiday proposal as it recognises the religious, cultural and familial significance of Christmas Eve for many people.<sup>27</sup> The Queensland Nurses & Midwives' Union (QNMU) noted the Australian Council of Trade Unions' statement to the 2012 Fair Work Australia Modern Award Review in their submission:

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<sup>24</sup> Decision RIS, p 10.

<sup>25</sup> Decision RIS, p 10

<sup>26</sup> Decision RIS, p 10.

<sup>27</sup> See for example, submissions 2, 7 and 9.

*..public holidays provide recognition of days of special significance (religious or otherwise) in the life of the wider community and a unique opportunity for people to participate in communal celebrations.*<sup>28</sup>

According to OIR advice, submissions to the Consultation RIS included submissions of support from religious leaders. The OIR reported that Mr Dennis Scanlon, Parish Priest, Queen of Apostles Parish at Stafford, supported the proposal as it will ‘benefit the community by allowing people to ‘celebrate family Christmas service which happens early on Christmas Eve’. Mr Scanlon submitted that the proposal will also allow people to celebrate a later Christmas service, ‘especially with young adults who would normally have to work on Christmas Eve’, give families time to travel to worship with extended family, and help Christmas be ‘a more family friendly celebration beginning on Christmas Eve’.<sup>29</sup>

The OIR noted the submission of President Habib Jamal of the Islamic Council of Queensland, who stated that the community will benefit by allowing people to participate in religious services on Christmas Eve, take part in family activities, especially for faith groups who celebrate on Christmas Eve, and travel long distances for family events on Christmas Day.<sup>30</sup>

According to the SDA, Christmas Eve is also significant to people who are not religious because ‘it is an important time for family and friends to celebrate the festive season and have some well-deserved rest from the extremely frantic working period in the lead up to Christmas’.<sup>31</sup>

In contrast, the Queensland Hotels Association (QHA) submitted that there was ample opportunity for religious observance over the Christmas period with both Christmas Day and Boxing Day declared as public holidays. The QHA also questioned the justification of setting a part-day public holiday on the grounds of cultural observance, when Australian Bureau of Statistics’ Census data from 2011 indicated the Australian population was clearly multi-faith.<sup>32</sup>

## **2.4 Sectors affected by the proposed part-day Christmas Eve public holiday**

### **2.4.1 Public sector**

The state and local government sectors expected to be affected by the proposed half-day public holiday include public hospital and health services, police, fire, ambulance and corrective services, public transport and energy and electricity supply services.<sup>33</sup>

### **2.4.2 Private sector**

According to the Consultation RIS, private sector industries most likely to be affected by the proposed part-day Christmas Eve public holiday include:

- private hospitals and aged and disability care facilities
- accommodation services
- continuous manufacturing processes
- private transport including freight and airport services
- small and independent retailers
- takeaway and fast food outlets

<sup>28</sup> Submission 2, p 3.

<sup>29</sup> OIR, correspondence dated 23 October 2019, attachment, p 4.

<sup>30</sup> OIR, correspondence dated 23 October 2019, attachment, p 4.

<sup>31</sup> Submission 9, p 2.

<sup>32</sup> Submission 8, p 4.

<sup>33</sup> Consultation RIS, p 13.

- restaurants and clubs
- licensed premises, and
- petrol stations.<sup>34</sup>

Large retail shops are required to close from 6.00pm on Christmas Eve under the trading hours laws. Consequently, the effect on large retailers would be in relation to any staff employed to stock and prepare stores for trading on Boxing Day.<sup>35</sup>

The Consultation RIS stated that the hospitality and small to medium sized retail businesses were likely to be most affected by the proposed part-day public holiday; it estimated those businesses made up only three to four per cent of all Queensland businesses.<sup>36</sup>

## 2.5 Estimated cost of implementation

According to the explanatory notes to the Bill, the additional annual wages costs to the Queensland Government for the state's public sector are estimated to be within a range of \$9.4 million to \$21.1 million.<sup>37</sup> The additional annual wages costs to the Queensland private sector are estimated in the range of \$31.9 million to \$115.8 million.<sup>38</sup>

These cost estimates were published in the Consultation RIS and were based on survey figures for employment on Christmas Day (low range amount) and Boxing Day (high range amount) for the whole of the Queensland workforce, including the public sector.<sup>39</sup> The OIR advised:

*The Queensland Government is confident that the lower end cost estimate of \$31.9 million across the economy, based on Christmas Day employment patterns, is a better indicator of the likely cost impact than the higher end estimate, which is based on Boxing Day employment numbers. Boxing Day is a greater trading and employment day (especially in the retail industry) than Christmas Day.*<sup>40</sup>

The OIR drew upon the experience of South Australia, where a review conducted the year after the part-day public holiday was introduced revealed that the actual costs to be significantly lower than the estimates calculated when the holiday was first proposed. The OIR informed the committee that, even considering South Australia is a smaller state by comparison to Queensland, the Queensland Government's low range estimate is 'conservative'.<sup>41</sup>

The OIR conceded that the calculation of positive (qualitative) economic impacts on the community from observing a part-day public holiday on Christmas Eve was difficult to assess given that the public holiday has not occurred before in Queensland and the trading/employment intentions of employers are therefore largely unknown. However, the OIR expected additional benefits to the economy through increased demand generated by increasing workers' disposable income.<sup>42</sup>

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<sup>34</sup> Consultation RIS, p 13.

<sup>35</sup> Consultation RIS, p 13.

<sup>36</sup> Consultation RIS, p 13.

<sup>37</sup> Explanatory notes, p 2.

<sup>38</sup> OIR, correspondence received 30 September 2019, attachment, p 2.

<sup>39</sup> OIR, correspondence received 30 September 2019, attachment, p 2.

<sup>40</sup> OIR, correspondence received 30 September 2019, attachment, p 2.

<sup>41</sup> Mr Tony James, Executive Director, Industrial Relations, OIR, public briefing transcript, Brisbane, 14 October 2019, p 2.

<sup>42</sup> OIR, correspondence received 30 September 2019, attachment, p 2.

## 2.6 Support for proposed part-day Christmas Eve public holiday

The majority of submissions to the Consultation RIS, or 71 per cent, supported the proposed part-day public holiday on Christmas Eve.<sup>43</sup> The views put to the committee by employees and their representative organisations in support of the proposed Christmas Eve public holiday are summarised below. All of the stakeholders who made submissions to the committee had previously made submissions to government in response to the Consultation RIS. The Decision RIS summarises the submissions to government in support of the proposal.<sup>44</sup>

The proposed part-day public holiday on Christmas Eve as set out in the Bill was supported in submissions to the committee from the QNMU, United Voice, the SDA and the Queensland Council of Unions.<sup>45</sup>

### 2.6.1 Time with family and friends

The submissions of QNMU, United Voice and the SDA strongly supported the proposed public holiday to provide all workers with time off to spend with family and friends.<sup>46</sup> United Voice stated:

*Irrespective of your calling in life, Christmas Eve is special and unique. For many of our members, it is a night they prefer to spend at home, with family and friends, out at religious services or other community events, or travelling to be with loved ones on Christmas Day. Often our members in pubs, clubs, aged care facilities, hospitals and our paramedics do not enjoy the sanctity, joy and quality time that Christmas Eve offers to so many.*

*Declaring a public holiday will recognise that the personal, social, religious and cultural significance of Christmas celebrations commence on Christmas Eve and so recognise the importance of that evening to spend time with family and friends and prepare for Christmas Day.*<sup>47</sup>

The SDA noted that employees in the retail industry ‘are the same as other employees in other industries’, and that they deserve to ‘have a work life balance and be able to spend time with their loved ones on significant days of the year like everyone else’.<sup>48</sup>

Members of the SDA provided evidence to the committee at the public hearing in relation to the proposed part-day public holiday and its contribution to achieving a work life balance. Ms Larissa Baker attested that: ‘Christmas Eve is very important because it enables me to spend time with my family. We often have a dinner before Christmas Day. Therefore, it allows me to be able to do that without feeling the pressure of needing to go into work’.<sup>49</sup>

Mr Luke Ahern stated:

*I have been working in the distribution centre for 22 years. In that 22 years I think I have had two Christmas Eves off through the company. ... There are all of the things that I have missed out on with my kids. My kids are older now. I do not want to see all of my members and my friends go through the same things that I have missed out on throughout the years. You are staying up until three in the morning trying to put presents together and you are knackered the next day. There*

<sup>43</sup> OIR, correspondence received 30 September 2019, attachment, p 2.

<sup>44</sup> Decision RIS, pp 6-7.

<sup>45</sup> Submissions 2, 7, 9 and 14.

<sup>46</sup> Submissions 2, 7 and 9.

<sup>47</sup> Submission 7, p 2.

<sup>48</sup> Submission 9, p 3.

<sup>49</sup> Public hearing transcript, Brisbane, 25 October 2019, p 20.

*is a lot of pressure on my other half to drive to places, to help out cooking and to do things for the kids. It puts a lot of pressure on the family.*<sup>50</sup>

### **2.6.2 Right to choose not to work on Christmas Eve**

A number of stakeholders were supportive of the Bill because, by enlivening the public holiday provisions of the *Fair Work Act 2009* (Cth), the *Industrial Relations Act 2016* and industrial instruments for all employees in the national workplace relations system and the Queensland industrial relations system, eligible employees would be granted entitlement to refuse to work in reasonable circumstances.<sup>51</sup>

The SDA submitted that for retail, fast food and warehouse workers, the pre-Christmas period is particularly busy, and workers are generally not encouraged to take or apply for leave.<sup>52</sup> Mrs Maria Masterton, a member of the SDA, explained to the committee:

*Both my husband and I work shift work in the industry. Working nights is tiring work. You have to fit in sleep somewhere, so even getting things done during the day is really hard. We could have Christmas Eve off to just recover.... The monetary issue is not it. It is the option to have that night off, to not have to work.*<sup>53</sup>

Additionally workers in retail stores work extended trading hours in the Christmas period. The SDA strongly supported the introduction of a part-day holiday for Christmas Eve from 6.00pm to midnight, giving retail workers the ability to elect to work or not work. The SDA attested that allowing workers the ability to elect to work any extended hours over Christmas or New Year is warranted when viewing and considering the extent of the demands of the pre-Christmas period. The SDA further submitted that most Enterprise Agreements ensure work on a public holiday is voluntary and that the General Retail Industry Award 2010 Modern Award provides a strong measure of voluntarism.<sup>54</sup>

The QNMU was supportive of the right to reasonably refuse to work under the proposed Bill on Christmas Eve, stating that it provided members of their union with ‘the opportunity to have time off to spend with family and friends and engage in activities that only occur for them on Christmas Eve’.<sup>55</sup>

### **2.6.3 Payment of penalty rates**

The QCU and QNMU submitted that if their members were compelled to work during the Christmas period, they should be compensated well for ‘having to miss out on family and community time’.<sup>56</sup> For those who work in health and emergency services and have to attend work it is, according to QCU, ‘only fair’ that they are recompensed with the payment of public holiday penalty rates where work is performed.<sup>57</sup>

The QNMU noted that the provisions of the Bill would provide some compensation for those nurses and midwives who work after 6.00pm on Christmas Eve, as they will receive penalty rates.<sup>58</sup> The QNMU stated:

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<sup>50</sup> Public hearing transcript, Brisbane, 25 October 2019, p 19.

<sup>51</sup> Submissions 2 and 9.

<sup>52</sup> Submission 9, p 4.

<sup>53</sup> Public hearing transcript, Brisbane, 25 October 2019, p 18.

<sup>54</sup> Submission 9, p 4.

<sup>55</sup> Submission 2, p 3.

<sup>56</sup> Submission 14, p 2.

<sup>57</sup> Submission 14, p 2.

<sup>58</sup> Submission 2, p 3.

*Nurses and midwives are essential in providing healthcare around-the-clock in health and aged care environments. For many, the work they perform is shift work and includes working public holidays and days such as a Christmas Eve. The recognition of the part-day public holiday on Christmas Eve goes some way to compensate these essential services.*<sup>59</sup>

## **2.7 Opposition to proposed part-day public holiday on Christmas Eve**

Submissions and evidence provided to the committee by employers, their representative organisations and others who do not support the proposed public holiday are summarised below. Most of the stakeholders who made submissions to the committee had previously made submissions to government in response to the Consultation RIS. The Decision RIS summarises the submissions to government from those who do not support the proposed public holiday.<sup>60</sup>

The submissions to the Bill that expressed opposition to the proposed public holiday were from Clubs Queensland, the National Retail Association (NRA), Retail Drinks Australia (RDA), Hotel & Tourism Management Pty Ltd (Hotel & Tourism Management), QHA, Australian Retailers Association (ARA), Restaurant & Catering Industry Australia, the Chamber of Commerce and Industry Queensland (CCIQ) and the Queensland Tourism Industry Council.<sup>61</sup>

The Local Government Association of Queensland (LGAQ) concurred with the Consultation RIS that the overall additional cost to local government of the proposed Bill 'would not be overly exorbitant on its own'.<sup>62</sup> Nonetheless, the LGAQ stated:

*... declaring an additional public holiday will still have an effect of imposing an additional cost to some councils and must be assessed in the context of the cumulative effect of a number of additional costs for councils in any year. While the nature of the additional costs might vary between councils, all councils are already subjected to cost increases relating to service provision, general labour market pressures, general wage increases and infrastructure construction and maintenance costs. This places pressure on council's budgets and invariably need to be passed onto rate payers.*<sup>63</sup>

The LGAQ reported that some local councils had expressed concern over the likely impact on small businesses in their communities, and concluded in its submission that, 'the case for the granting of an additional part-day public holiday has not yet been made'.<sup>64</sup>

### **2.7.1 Expected negative impact on business**

Many submitters opposing the Bill expressed concern over the cost burden to the private sector of paying penalty rates to workers.<sup>65</sup> The Australian Retailers Association submitted that, 'every business in Queensland which hires staff under the General Retail Industry Award and wishes to trade after 6pm will be adversely impacted by this change'.<sup>66</sup> Reporting concerns of the hospitality industry, Restaurant & Catering Australia stated that the proposed changes would dramatically increase the cost of opening a restaurant on Christmas Eve.<sup>67</sup>

<sup>59</sup> Submission 2, p 3.

<sup>60</sup> Decision RIS, pp 6-7.

<sup>61</sup> Submissions 1, 3, 4, 5, 8, 10, 11, 12, 13 and 14.

<sup>62</sup> Submission 6, p 2.

<sup>63</sup> Submission 6, p 2.

<sup>64</sup> Submission 6, p 3.

<sup>65</sup> Submissions 1, 3, 4, 5, 8, 11 and 13.

<sup>66</sup> Submission 10, p 3.

<sup>67</sup> Submission 11, p 3.

The NRA, RDA, Hotel & Tourism Management, the QHA and ARA submitted that a part-day public holiday would create a financial impost on their respective industry.<sup>68</sup> For example, Restaurant & Catering Australia contended that ‘the higher wages cost borne disproportionately by the industry’ through penalty rates would ‘unfairly penalise small business who might seek to open their door’.<sup>69</sup> Queensland Tourism and Industry Council submitted that the proposed holiday would place an undue burden on small business.<sup>70</sup> Mr Bernie Hogan of the QHA submitted that the proposed public holiday should be considered in the context of the festive season:

*This period is when businesses already face three public holidays: Christmas Day, Boxing Day and New Year’s Day. The proposal that an additional \$137 million in wages costs for six hours of trade, or approximately \$20 million an hour, is somehow insignificant shows a disconnect, particularly for this industry, which is a major employer in Queensland.*<sup>71</sup>

For community clubs, Clubs Queensland expressed concern that penalty rates would be at 250 per cent of the base rate of pay, rather than the 225 per cent that applies to retail and other hospitality industries; adding that their estimated overall cost to the community clubs industry would be in excess of \$750,000. Clubs Queensland called for an exemption to the application of penalty rates due to the fact that their community clubs would have to pay a higher penalty rate to their workers.<sup>72</sup>

In response to Clubs Queensland’s call for an exemption the OIR advised:

*The request of Clubs Queensland is noted. However, as with any public holiday, the Christmas Eve part-day public holiday will apply to all workers and industries across Queensland. The modern award conditions of work (including penalty rates) are regulated by the federal Fair Work Commission.*<sup>73</sup>

Concerning the potential costs to the private sector, the OIR advised the committee:

*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.*<sup>74</sup>

### **2.7.2 Christmas Eve closure and potential loss to employees and the community**

The additional costs from penalty rates was considered by a number of submitters to be a disincentive to businesses opening for trade during hours they would otherwise usually operate.<sup>75</sup> Queensland Tourism Industry Council stated that additional wage costs will, for many small businesses, either mean ‘trading at a loss or closing early’.<sup>76</sup>

The CCIQ conducted a survey of Queensland businesses and submitted that 48 per cent of small businesses that responded to the survey indicated they would close on Christmas Eve if it was made a

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<sup>68</sup> Submission 3, p 2; submission 4, p 2; submission 5, p 1; submission 8, p 2; submission 10, p 3.

<sup>69</sup> Submission 11, p 1.

<sup>70</sup> Submission 13, p 1.

<sup>71</sup> Public hearing transcript, Brisbane, 25 October 2019, p 2.

<sup>72</sup> Submission 1, p 2.

<sup>73</sup> OIR, correspondence dated 23 October 2019, attachment, p 3.

<sup>74</sup> Mr Tony James, public briefing, 14 October 2019, p 2.

<sup>75</sup> Submissions 1, 3, 4, 5, 6, 10, 11 and 12.

<sup>76</sup> Submission 13, p 2.

part-day public holiday.<sup>77</sup> CCIQ further submitted that 26 per cent of small businesses surveyed indicated they would send staff home and work themselves on Christmas Eve.<sup>78</sup>

Clubs Queensland advised that most community clubs would trade at a loss if they were to open on a Christmas Eve public holiday, and many community clubs would therefore consider closing at 6.00pm. As a result, those employees who would ordinarily have worked that evening would lose shifts, and income, as a result of their club closing early.<sup>79</sup>

The OIR noted the concerns from submitters that workers would lose shifts and income due to their workplace closing early. The OIR advised:

*While workers who accept work on Christmas Eve will receive the benefit of increased penalty rates, there is the possibility some casual and part-time workers may lose income because of a loss of working hours should their employer decide not to open as a consequence of the declaration of the part-day public holiday and the consequent increased wages costs. However, workers in that situation would have the compensation of having Christmas Eve free to enjoy with family and friends.<sup>80</sup>*

The NRA attested that for businesses that choose to remain open, many would pass on the additional costs to customers, via increased prices.<sup>81</sup> Mr Wes Lambert of Restaurant & Catering Australia estimated that nearly two-thirds of businesses that choose to remain open during the proposed public holiday hours will pass on a surcharge of between 10 per cent and 15 per cent to their customers.<sup>82</sup> Mr Lambert added that a surcharge is, 'a frustration to all customers'.<sup>83</sup> Mr Hogan of QHA attested that a surcharge imposed after 6.00pm was 'not a great look'.<sup>84</sup>

Hotel & Tourism Management, LGAQ, QHA, ARA and the Queensland Tourism Industry Council cautioned the committee in their submissions that the consequences of legislating for a part-day public holiday on Christmas Eve would result in less services available to the community, especial in regional areas of Queensland.<sup>85</sup> The QHA stated:

*The final loser in this situation is the broader Queensland community, particularly tourism. If a company cannot afford to open as it would obviously make a loss, a savvy business owner will simply close the doors on that day at 6 pm. Public holiday surcharges are not acceptable to most consumers. They cannot cover the additional costs anyway in the surcharge. The bill creates that perfect storm to kill off small business: increase costs and reduce your customers.<sup>86</sup>*

Conversely, Mr Michael Clifford of the QCU noted that, 'When penalty rates were cut over the last three years we were told that if we could cut penalty rates we would create a whole lot more jobs. In fact, that has not been the case at all'. Mr Clifford added that, 'job creation in those sectors that have had penalty rate cuts has actually been less than job creation in those sectors that have not had penalty rate cuts'.<sup>87</sup> He submitted that it was difficult to accept the argument that increased penalty rates

<sup>77</sup> Submission 12, p 3.

<sup>78</sup> Submission 12, p 3.

<sup>79</sup> Submission 1, p 2.

<sup>80</sup> OIR, correspondence dated 23 October 2019, attachment, p 3.

<sup>81</sup> Submission 3, p 3.

<sup>82</sup> Public hearing transcript, Brisbane, 25 October 2019, p 3.

<sup>83</sup> Public hearing transcript, Brisbane, 25 October 2019, p 4.

<sup>84</sup> Public hearing transcript, Brisbane, 25 October 2019, p 9.

<sup>85</sup> Submissions 5, 6, 8, 10 and 13.

<sup>86</sup> Public hearing transcript, Brisbane, 25 October 2019, p 2.

<sup>87</sup> Public hearing transcript, Brisbane, 25 October 2019, p 23.

would lead to job losses, when the reverse argument ‘has not eventuated at all’.<sup>88</sup> Mr Clifford noted that since 2017, penalty rates had been cut for workers on Sundays and public holidays under the Fast Food Industry Award, the General Retail Industry Award, the Hospitality Industry Award, the Pharmacy Industry Award and the Restaurant Industry Award, and stated: ‘the concerns about increased costs certainly are mitigated in light of that’.<sup>89</sup> The QCU provided the following data to the committee from a recent publication by The Australia Institute, Centre of Future Work:<sup>90</sup>

Penalty Rate Cuts and Job-Creation			
Sector	Job-Creation: May/17 – Feb/19	Percent Growth	Rank (of 19 sectors)
<b>Total Economy</b>	540,400	4.42%	
<b>Retail</b>	100	0.01%	17 <sup>th</sup>
<b>Accommodation &amp; Food/Beverage</b>	25,200	2.85%	13 <sup>th</sup>
<b>Sectors with No Change in Penalty Rates</b>	515,100	5.12%	
<b>Sectors with Reduced Penalty Rates</b>	25,300	1.17%	

*Source: Centre for Future Work from ABS Catalogue 6291.0.55.003, Table 4. futurework.org.au*

### 2.7.3 The commencement of the Christmas Eve holiday

#### 2.7.3.1 *Proposed commencement date*

A number of submissions to the Bill noted that if the legislation came into effect immediately, and in time for Christmas Eve 2019, it would give businesses approximately four weeks to prepare. The QHA advised that rosters in their industry are typically completed at least four to six weeks in advance of a busy trading period.<sup>91</sup> The NRA, RDA and Hotel & Tourism Management suggested that, if the legislation proceeds, it should not take effect until Christmas Eve 2020.<sup>92</sup>

#### 2.7.3.2 *Proposed commencement time*

Restaurant & Catering Australia expressed concern that Queensland will be inconsistent with South Australia and the Northern Territory by commencing the part-day public holiday at 6.00pm, rather than 7.00pm as is the case in the other jurisdictions. The submission stated:

*... if the proposed Christmas Eve Part-Day Public Holiday does proceed, R&CA strongly recommends that the Bill be amended to set commencement from 7pm rather than 6pm, bringing QLD into line with other state jurisdictions.*<sup>93</sup>

Addressing Restaurant & Catering Australia’s concern, the OIR advised:

*The Government’s preferred option is to start the part-day public holiday at 6pm on Christmas Eve (24 December). This will align with the closing time of large retail (non-exempt) shops in Queensland. During the consultation process, several submissions from workers argued for a*

<sup>88</sup> Public hearing transcript, Brisbane, 25 October 2019, p 22.

<sup>89</sup> Public hearing transcript, Brisbane, 25 October 2019, p 17.

<sup>90</sup> Queensland Council of Unions, correspondence dated 25 October 2019, p 1, citing a report from the Australia Institute, April 2019.

<sup>91</sup> Submission 8, p 3.

<sup>92</sup> Submission 3, p 3, submission 4, p 4 and submission 5, p 3.

<sup>93</sup> Submission 11, p 6.

*commencement time prior to 6pm in order to gain more family time prior at Christmas Eve. Non-exempt shops are to be closed from 6pm on Christmas Eve (24 December).*<sup>94</sup>

Mr Dan Nipperess of Clubs Queensland raised a concern that the 6.00pm start time for the proposed part-day holiday would not align with the federal system. He stated:

*If this part-day public holiday is legislated from 6 pm, it will be inconsistent with how the part-day public holiday is treated under the federal modern award system, which provides for a part-day public holiday that commences at 7 pm. The inconsistency creates interpretation issues, not just with respect to the payment of penalty rates but also the treatment of payments to employees who have an RDO that falls on the part-day public holiday or who exercise the right not to work the public holiday. These issues are complex and, with the short time frame available for those employers to understand what their obligations are, simply not enough time has been allowed for them to take advice in relation to these issues.*<sup>95</sup>

## 2.7.4 Other issues

### 2.7.4.1 South Australia as a comparator

The Consultation RIS and Decision RIS drew upon a review of the changes to the *Holidays Act 1910 (SA)* commissioned by SafeWork SA from the South Australian Centre for Economic Studies at Adelaide and Flinders Universities and published in 2013,<sup>96</sup> the year after the Christmas Eve public holiday was introduced. The Consultation RIS noted in the South Australian review:

- 78 per cent of respondents strongly agreed that those working on a part-day public holiday should be paid penalty rates and 74 per cent strongly agreed that they should have the right to refuse to work if asked to do so by their employer, and
- total estimated additional staff costs incurred by the South Australian Government as a result of the part-day public holidays were just under \$710,000, significantly less than originally forecast.<sup>97</sup>

The Consultation RIS and Decision RIS reported that the study found total estimated costs to the South Australian public sector to be ‘significantly less than originally forecast’ and the initial cost estimates to the private sector to be not ‘as great as anticipated’.<sup>98</sup>

Concerns were raised by some submitters that the use of a South Australian study conducted in 2013 was not relevant to Queensland in 2019.<sup>99</sup> In response to written submissions on this issue, the OIR stated:

*The experience in South Australia (SA) was that the actual costs of the new public holiday on Christmas Eve (and in SA’s case, New Year’s Eve as well) were significantly lower than the estimates calculated when the holiday was first proposed. ... [the SA Review] found there was strong evidence that Christmas Eve held a special status in the community commensurate with*

<sup>94</sup> OIR, correspondence dated 23 October 2019, attachment, p 5.

<sup>95</sup> Public hearing transcript, Brisbane, 25 October 2019, p 5.

<sup>96</sup> SafeWork SA, *Review of the changes to Holidays Act 1910: Final Report*, March 2013, SA Centre for Economic Studies, Adelaide and Flinders Universities, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.732.2761&rep=rep1&type=pdf>.

<sup>97</sup> SafeWork SA, *Review of the changes to Holidays Act 1910: Final Report*, March 2013, SA Centre for Economic Studies, Adelaide and Flinders Universities, pp iv, v.

<sup>98</sup> Consultation RIS, pp 11 and 21.

<sup>99</sup> Public hearing transcript, Brisbane, 25 October 2019, pp 2 and 10.

*it being recognised as a public holiday, and there was strong community support for the improved protections and entitlements for workers that come with a public holiday.*<sup>100</sup>

Mr Bernie Hogan of QHA submitted that the Christmas Eve public holiday in South Australia ‘turned Adelaide into a ghost town’.<sup>101</sup> However, the South Australian review found that Christmas Eve was regarded by South Australian residents as holding special significance by 44 per cent of surveyed respondents, and concluded that the Christmas Eve part-day public holiday was important to ‘a substantial number of South Australians’, with any costs to consumers from closures ‘to be small’.<sup>102</sup>

#### 2.7.4.2 The impact of the proposed public holiday on private sector aged care facilities

The QNMU expressed concern that employers in the private aged care sector may minimally staff aged care residential facilities on Christmas Eve so as not to have to pay penalty rates, which may impact on residents’ care and safety.<sup>103</sup>

The OIR advised:

*Employers are legally obliged to ensure all work performed by employees on the part-day public holiday attracts the appropriate penalty rate under the relevant award or agreement.*

*Staffing decisions are generally a matter for the business owner. Commonwealth legislation establishes processes for the regulation of care delivered to all aged care residents and to ensure providers deliver appropriate care which meets expected standards. The Australian Government Department of Health is responsible for the regulation and compliance of aged care services under the Aged Care Act 1997 (Cwth). The Aged Care Quality and Safety Commission, an independent statutory agency, investigates complaints about aged care services.*<sup>104</sup>

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<sup>100</sup> OIR, correspondence dated 23 October 2019, attachment, p 1.

<sup>101</sup> Public hearing transcript, Brisbane, 25 October 2019, p 2.

<sup>102</sup> Consultation RIS, p 12; SafeWork SA, *Review of the changes to Holidays Act 1910: Final Report*, March 2013, SA Centre for Economic Studies, Adelaide and Flinders Universities, pp v, 18.

<sup>103</sup> Submission 2.

<sup>104</sup> OIR, correspondence dated 25 October 2019, p 1.

### **3 Compliance with the *Legislative Standards Act 1992***

#### **3.1 Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ 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 has examined the application of the fundamental legislative principles to the Bill. The committee considers there are no issues regarding fundamental legislative principles.

#### **3.2 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.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Clubs Queensland
002	Queensland Nurses and Midwives' Union
003	National Retail Association
004	Retail Drinks Australia
005	Hotel & Tourism Management Pty Ltd
006	Local Government Association of Queensland
007	United Voice Queensland
008	Queensland Hotels Association
009	Shop, Distributive & Allied Employees' Association Queensland Branch
010	Australian Retailers Association
011	Restaurant & Catering Australia
012	The Chamber of Commerce & Industry Queensland
013	Queensland Tourism Industry Council
014	Queensland Council of Unions

## **Appendix B – Officials at public departmental briefing**

### **Office of Industrial Relations (Department of Education)**

- Tony James, Executive Director
- Tony Schostakowski, Director, Regulation and Compliance
- Mark Hopgood, Principal Industrial Policy Officer

## Appendix C – Witnesses at public hearing

### **Restaurant & Catering Australia**

- Wes Lambert, Chief Executive Officer

### **Queensland Hotels Association**

- Bernie Hogan, Chief Executive

### **Clubs Queensland**

- Dan Nipperess, Workplace Relations & Compliance Manager
- Laura Bos, Communications & Government Relations Manager
- Doug Flockhart, Chief Executive Officer

### **Australian Retailers Association**

- Russell Zimmerman, Executive Director
- Yale Stephens, Head of Public Affairs and Brand

### **Chamber of Commerce & Industry**

- Gus Mandigora, Senior Policy Advisor

### **Shop, Distributive and Allied Employees' Association (SDA) – Queensland Branch**

- Chris Gazenbeek, Branch Secretary
- Members of the SDA Queensland Branch:
- Luke Ahern
  - Brett Singleton
  - Paul Strathdee
  - Maria Masterton
  - Larissa Baker

### **Queensland Council of Unions**

- Michael Clifford, A/General Secretary
- John Martin, Policy & Research Officer

## Appendix D – Extracts from current legislation

Presented below are extracts from the *Industrial Relations Act 2016* and the *Fair Work Act (Cth)* relevant to workers' reasonable requests to work on a public holiday and reasonable refusal to work.

### **Industrial Relations Act 2016**

#### **116 Entitlement to be absent on public holiday**

(1) *An employee is entitled to be absent from the employee's employment on a day, or part of a day, that is a public holiday in the place where the employee is based for work purposes.*

(2) *However, the employee's employer may ask the employee to work on a public holiday if the request is reasonable.*

(3) *If the employer asks the employee to work on a public holiday, the employee may refuse the request if—*

(a) *the request is unreasonable; or*

(b) *the refusal is reasonable.*

(4) *In deciding whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account—*

(a) *the nature of the employer's calling or business, including its operational requirement;*

(b) *the nature of the work performed by the employee;*

(c) *the employee's personal circumstances, including family responsibilities;*

(d) *whether the employee could reasonably expect that the employer might ask the employee to work on the public holiday;*

(e) *whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;*

(f) *the type of employment of the employee, including, for example, whether the employment is full-time, part-time or casual, or involves shift work;*

(g) *the period of notice given by the employer before the public holiday in making the request;*

(h) *for a refusal of a request—the period of notice given by the employee before the public holiday in refusing the request;*

(i) *any other relevant matter.*

### **Fair Work Act 2009 (Cth)**

#### **114 Entitlement to be absent from employment on public holiday**

(1) *An employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.*

*Reasonable requests to work on public holidays*

(2) *However, an employer may request an employee to work on a public holiday if the request is reasonable.*

(3) *If an employer requests an employee to work on a public holiday, the employee may refuse the request if:*

(a) *the request is not reasonable; or*

(b) *the refusal is reasonable.*

(4) *In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:*

- (a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;*
- (b) the employee's personal circumstances, including family responsibilities;*
- (c) whether the employee could reasonably expect that the employer might request work on the public holiday;*
- (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;*
- (e) the type of employment of the employee (for example, whether full-time, part-time, casual or shift work);*
- (f) the amount of notice in advance of the public holiday given by the employer when making the request;*
- (g) in relation to the refusal of a request--the amount of notice in advance of the public holiday given by the employee when refusing the request;*
- (h) any other relevant matter.*

## Appendix E – Comparison of 2019 public holidays in Australian jurisdictions

Holiday 2019	Qld	NSW	ACT	Vic	Tas	SA	WA	NT
1 January New year's day	✓	✓	✓	✓	✓	✓	✓	✓
28 January – Australia Day	✓	✓	✓	✓	✓	✓	✓	✓
Royal Hobart Regatta / Recreation Day					11/2 4/11 *			
Canberra Day			11/3					
Labour Day / Eight Hours Day / March public holiday				11/3	11/3	11/3		
19 April – Good Friday	✓	✓	✓	✓	✓	✓	✓	✓
20 April – day after Good Friday / Saturday before Easter Sunday	✓	✓	✓	✓		✓		✓
21 April – Easter Sunday	✓	✓	✓	✓				
22 April – Easter Monday	✓	✓	✓	✓	✓	✓	✓	✓
Easter Tuesday					24/3#			
25 April – Anzac Day	✓	✓	✓	✓	✓	✓	✓	✓
Labour Day	6/5							6/5
Reconciliation Day			27/5					
Western Australia Day							3/6	
Queen's Birthday		10/6	10/6	10/6	10/6	10/6		10/6
Picnic Day								5/8
Royal Show, Queensland	14/8							
Day before AFL grand final				27/9				
Queen's Birthday							30/9	
Labour Day		7/10	7/10			7/10		
Queen's Birthday	7/10							
Melbourne Cup				5/11				
Christmas Eve						7pm - midnight		7pm - midnight
Christmas Day	✓	✓	✓	✓	✓	✓	✓	✓
26 December-Boxing Day	✓	✓	✓	✓	✓	✓	✓	✓
31 December - New Year's Eve						7pm - midnight		7pm - midnight

Source: Tables 1 and 2, *Christmas Eve Part-Day Public Holiday 6pm to 12 midnight: Decision Regulatory Impact Statement, September 2019*, pp 8 – 9.

**Notes:**

\* Date differs between areas of Tasmania

# Restricted holiday, public service entities.

**Dissenting Report**

## **Holidays and Other Legislation Amendment Bill 2019**

### **Non Government members Dissenting Report**

The LNP would only offer support for this legislation if the Palaszczuk Labor Government can guarantee that it won't cost jobs or increase prices for consumers.

The government failed to guarantee that these changes will not cost jobs and force small businesses to close. Accordingly these proposed changes should not be supported.

These changes seem to be driven by the union bosses and once again illustrate that they call the shots on government policy under Labor, regardless of any evidence or justification. As the Australian Retailers Association (ARA) stated in the public hearing, "the case for this proposal is flawed at best and baseless at worst."

It is once again another example of the Palaszczuk Labor Government being pro-union but anti-worker.

These laws are being debated at a time when Queensland has the highest unemployment rate in the nation and a record number of Queenslanders on the unemployment queue.

As the Queensland Hotels Association (QHA) said in the public hearing:

"With regard to the decision, it is completely out of touch with the hospitality industry in Queensland and is one that will negatively impact on regional Queensland, small businesses and the Queensland tourism industry."

A blanket 'one size fits all approach' throughout Queensland shows how hopelessly out of touch the Palaszczuk Labor Government is and just how beholden they are to their union masters. These changes will cost regional jobs and impact tourism hotspots at their busiest time of the year.

#### **These changes will cost jobs.**

The QHA also noted that:

"The RIS states that there is no statistical information on the intention of employers to employ workers or open their businesses on a Christmas Eve public holiday. In the absence of that collected data, as the industry body representing over 88 per cent of the general licence holders in Queensland we polled our members. I can tell you that 100 per cent told us that their intention will be to reduce staff hours, close and negatively impact the workers of Queensland by reducing their shifts." (emphasis added)

It will turn Queensland into a ghost town on Christmas eve, like it has done in Adelaide. More progressive states like New South Wales and Victoria don't have these changes and this additional part-day public holiday will put Queensland out of step with our southern counterparts, particularly in places like the Gold Coast – that shares a border with New South Wales.

Clubs Queensland backed the assertion that these changes will cost jobs:

"The real effect, however, in these clubs and other forms of hospitality is that many clubs will simply choose to close their doors so they do not incur a loss. This negatively impacts staff by way of a reduction in overall shifts and it also affects the loyal clients. This also applies to tourists in some areas. Businesses will also choose to roster skeleton staff."

## **These changes will increase prices for consumers.**

The QHA stated that:

“Public holiday surcharges are not acceptable to most consumers. They cannot cover the additional costs anyway in the surcharge. The bill creates that perfect storm to kill off small business: increase costs and reduce your customers.”

The National Retail Association (NRA) backed up this view. They stated in their submission to the Committee that if this legislation was passed retailers would pass on the added costs to Queensland via increased prices.

## **Poor consultation and rushed implementation.**

Businesses have complained of the short timeframe in adjusting to these changes, set to pass in the last sitting week by 28 November. That is less than one month before the new laws will commence on 24 December.

They are being rushed in by a desperate Premier ahead of a looming state election next year – trying to lock in more union donations and the support of union bosses.

As the ARA stated, “Just because one government legislates a bad policy does not mean everyone should clamour to make the same mistake. Seven years down the track, Queensland is the only state government that has attempted to emulate South Australia. Governments of both political persuasions in every other state have declined to do so. That speaks volumes and once again inevitably turns the spotlight onto the 2020 election.”

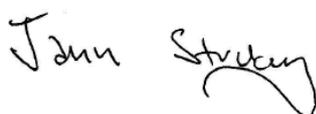
The Queensland Tourism Industry Council also raised the issue of poor consultation - “... businesses have planned and budgeted based on existing legislation. Changes this late in the year will impact the bottom line of businesses, will put undue strain on businesses and their employees. All of which may make for a very unhappy Christmas for many.”

Where is minister Kate Jones at a time when the tourism industry needs her help? She is conveniently missing in action.

The NRA also noted that when this issue was considered by the Mickel Review into trading hours, a compromised position was to have a 6pm closing time, rather than declaring a part-day public holiday. This was adopted in legislative changes passed in the previous Parliament, impacting non-exempt shops (large retailers) – and reduced extended trading in Westfield Chermside and Westfield Garden City which previously opened until midnight on Christmas Eve. These changes contradict a recommendation from the government’s own review.

Legislating for a part-day public holiday on Christmas Eve will directly impact Queensland small businesses, particularly in the tourism and hospitality industries.

Jann Stuckey MP  
Member for Currumbin



Simone Wilson MP  
Member for Pumicestone



