

Holidays and Other Legislation Amendment Bill 2012

Explanatory Notes

Policy Objectives

Public holidays in Queensland are regulated by the *Holidays Act 1983* (the Act). The significance of public holidays is that on such days workers are entitled to a paid day off or, if they work, payment of the public holiday penalty rates prescribed by the relevant award or agreement.

In 2011, the previous Queensland Government conducted a review of the Act. Community comments obtained through the review's consultation process indicated there was majority support to move a public holiday to the second half of the year.

As a consequence of the 2011 review, one of the amendments made to the Act was to move the date of observance of the Birthday of the Sovereign (Queen's Birthday) public holiday from the second Monday in June to the first Monday in October.

To more evenly distribute public holidays throughout the year it is considered that the Queen's Birthday public holiday should be returned to its original date of observance and the Labour Day public holiday should be moved to the second half of the year.

Therefore, the objective of the *Holidays Amendment Bill 2012* (the Bill) is from 2013 to return the Queen's Birthday public holiday to its original date on the second Monday in June and relocate the Labour Day public holiday from May to the first Monday in October (for 2012, this is the date of the Queen's Birthday public holiday).

Reasons for the Bill

Although the Queen's Birthday public holiday was the holiday moved by the 2011 amendments, a considerable proportion of comments were received at the time of the 2011 review and subsequently advocating the movement of Labour Day rather than the Queen's Birthday.

Moving the Queen's Birthday public holiday back to its original date of observance in June will 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 in 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.

Moving the Labour Day public holiday from the first Monday in May will break up a concentration of public holidays that occur in the April-May period (Anzac Day, three Easter public holidays, Labour Day) and more evenly distribute public holidays throughout the year. The amendments to the Act in 2011 which relocated the Queen's Birthday public holiday to October has done little to alleviate that concentration of public holidays or diminish disruptions to production and services for business and industry resulting from the concentration of public holidays/long weekends falling in quick succession in the first half of the year.

Achievement of the Objectives

The dates of observance of each public holiday are prescribed in a schedule to the Act. To achieve the policy objectives, the following amendments to the Act are contained in the Bill:

- movement of the date of observance of the Queen's Birthday public holiday to the second Monday in June, and
- movement of the date of observance of the Labour Day public holiday to the first Monday in October.

The Bill also includes amendments to ensure that the list of public holidays provided for in the *Industrial Relations Act 1999* and industrial instruments (awards and agreements) made under that act, which continue to apply to Queensland public sector and local government employees, will reflect the new dates of observance of the Queen's Birthday and Labour Day public holidays. Industrial relations obligations and entitlements applicable on those public holidays will therefore apply only on the new dates of observance. These amendments:

- specify that a reference to Labour Day or a public holiday for Labour Day in an award or agreement under the *Industrial Relations Act 1999* means the day observed as the public holiday for that day under the

Holidays Act 1983 (similar arrangements already apply in relation to the Queen's Birthday public holiday), and

- amend the definition of “*public holiday*” in the *Industrial Relations Act 1999* to reflect the amended dates of observance of the Queen's Birthday and Labour Day public holidays.

Alternative Ways of Achieving Objectives

In the case of movement of the Queen's Birthday and Labour Day public holidays there is a power in the Act for the movement to be implemented by a Ministerial declaration of a substitute day (i.e. the prescribed date in the Act ceases to be a public holiday but a public holiday is observed on a declared date).

However if the movements are to be made on a permanent basis, it is considered that the new dates of the public holidays should be prescribed in the Act to provide ongoing certainty for business and the community.

To implement permanent changes to the date of observance of public holidays it is appropriate that amendments are made to the Act.

Estimated Cost for Government Implementation

There are no specific costs associated with the implementation of the proposed legislative amendments. The amendments will not result in any additional public holidays so there should be no general rise in wages costs for employers from the obligation to provide penalty rates or paid days off on an increased number of days in the year.

Consistency with Fundamental Legislative Principles

Moving the Labour Day public holiday may impact on the rights and liberties of individuals by causing disruption to activities and events already scheduled for the current date of observance for that public holiday. These concerns should be alleviated if the recommended amendments are made as soon as possible so as to provide to the community the maximum prior notice of the changed arrangements.

Consultation

There has been no community consultation on the Bill. It is clear from earlier consultation in the preparation of the 2011 amendments that there is

community and business support for the movement of the Labour Day rather than the Queen's Birthday public holiday to the second half of the year.

Consistency with Legislation of the Commonwealth or another State

All states, except for Western Australia, observe the Queen's Birthday public holiday on the second Monday in June.

The Labour Day public holiday is observed across different months in other States and Territories, although New South Wales, South Australia and the Australian Capital Territory observe the Labour Day public holiday on the first Monday in October.

The Commonwealth *Fair Work Act 2009*, which applies to Queensland private sector employers and employees, does not prescribe the dates to be observed as public holidays for Labour Day or Queen's Birthday public holidays but recognises as a public holiday any day or part-day prescribed as a public holiday under a law of a State or Territory. Appointment of a day as a public holiday under the *Holidays Act 1983* activates public holiday entitlements and obligations under awards, agreements and relevant legislation on those days.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides for a name by which the act may be cited - the Holidays and Other Legislation Amendment Act 2012.

Commencement

Clause 2 provides for the act to commence on assent or 2 October 2012, whichever date is later. This ensures that the amendments will not take

effect before the 2012 date of observance of the Birthday of the Sovereign public holiday on 1 October 2012. The new dates of observance of public holidays as amended by this Bill will apply from 2013.

Part 2 Amendment of Holidays Act 1983

Act amended

Clause 3 provides that this part amends the *Holidays Act 1983*.

Amendment of s 3A (References to public holidays in industrial instruments under the *Industrial Relations Act 1999*)

Clause 4 amends section 3A to clarify that a reference to a public holiday for Labour Day or to Labour Day in an industrial instrument (award or agreement) under the *Industrial Relations Act 1999* means the day observed as the public holiday for that day under the *Holidays Act 1983*. This is necessary so as to modify the definitions and dates of public holidays contained in those awards and agreements and activate the public holiday entitlements and obligations only on that day.

Amendment of schedule (Public holidays)

Clause 5 provides for the date of observance for the Birthday of the Sovereign (Queen's Birthday) to be the second Monday in June and the date of observance for Labour Day to be the first Monday in October.

Part 3 Amendment of Industrial Relations Act 1999

Act amended

Clause 6 provides that this part amends the *Industrial Relations Act 1999*.

Amendment of sch 5 (Dictionary)

Clause 7 amends the dates of observance for “Birthday of the Sovereign” (Queen’s Birthday) to be the second Monday in June and for “Labour Day” to be the first Monday in October in the definition of “*public holiday*”. This is necessary so that public holiday entitlements and obligations under the *Industrial Relations Act 1999* will apply only on the new dates of observance for those public holidays.

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