

Holidays and Other Legislation Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Holidays and Other Legislation Amendment Bill 2019 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to provide for Christmas Eve (24 December) to be observed as a part-day public holiday from 6pm to 12 midnight.

On 4 August 2019 the Premier and Minister for Trade and the Minister for Education and Minister for Industrial Relations announced that the Queensland Government will consult with stakeholders on a proposal to declare a part-day public holiday on Christmas Eve (24 December) from 6pm.

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. Declaring a public holiday from 6pm will also ensure that workers have the right to reasonably refuse to work, or be fairly compensated should they work, after 6pm on Christmas Eve.

Achievement of policy objectives

The Bill will achieve its objective by amending the *Holidays Act 1983* and making other consequential legislative amendments to provide for Christmas Eve (24 December) to be observed as a part-day public holiday from 6pm. The policy objective of the amendment is to enliven industrial relations rights and protections for workers. This means workers are entitled to refuse to work in reasonable circumstances, or to the payment of public holiday penalty rates where work is performed on Christmas Eve after 6pm. 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.

The effect of a declaration of a part-day public holiday on Christmas Eve will activate the public holiday provisions of the *Fair Work Act 2009 (Cwlth)* (FW Act), the *Industrial Relations Act 2016 (Qld)* (IR Act) and industrial instruments for all employees in the national workplace relations system and the Queensland industrial relations system.

Alternative ways of achieving policy objectives

In Queensland, a day or part-day only becomes a public holiday by declaring that it is to be observed as such in the *Holidays Act 1983*. Amendment of the *Holidays Act 1983* is the only method by which a public holiday can be declared and observed consistently across the whole of the Queensland workforce.

The Consultation Regulatory Impact Statement (RIS) released to gather stakeholder feedback on the proposal to declare a part-day public holiday on Christmas Eve, also provided an alternative option for workers to have time off to observe Christmas Eve for personal, social, religious and cultural reasons. This option proposed that industrial laws be amended to provide that any employment on Christmas Eve was to be voluntary. This would achieve an objective of employees having the right to refuse work so that they can attend Christmas season festivities and observances. However, Queensland's industrial relations jurisdiction extends only to the State's public sector (i.e. state public sector and local government) so an amendment to the *Industrial Relations Act 2016* to provide for voluntary employment would be limited in its effect to only that sector of the Queensland workforce. Any action taken by the Queensland Industrial Relations Commission to insert voluntary work provisions in all awards would be similarly limited. Therefore, employees in the private sector and the Commonwealth public sector working in Queensland are within the federal industrial relations jurisdiction and cannot be made subject to a state industrial law mandating voluntary employment on a public holiday. Because of the limited scope of the effect of an amendment of a state industrial law to provide for voluntary employment on a public holiday, this was not a viable alternative option to achieve the Government's policy objective.

Estimated cost for government implementation

Should Christmas Eve be declared a public holiday from 6pm, 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. These cost estimates were published in the Consultation Regulatory Impact Statement (RIS) and were based on survey figures for employment on Christmas Day for the whole of the Queensland workforce, including the public sector.

Through the consultation process public sector agencies (government departments and government owned corporations) have reported a combined cost estimate of at least \$3.7 million in 2019.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

A Consultation RIS was publicly announced jointly by the Premier and Minister for Trade and the Minister for Education and Minister for Industrial Relations and released on 4 August 2019. The Consultation RIS sought comments from workers, business, the community and all stakeholders on a proposal to declare Christmas Eve (24 December) as a part-day public holiday from 6pm to 12 midnight commencing in 2019. The Consultation RIS was open for 28 days and closed on Monday 2 September 2019. In April 2019 Cabinet approved further

investigation of a proposal to amend the Holidays Act 1983; and the public release of a Consultation Regulatory Impact Statement (Consultation RIS) seeking stakeholder comment on the proposal.

A total of 1779 submissions were received in response to the Consultation RIS. 1271 submissions (71.4%) are in support of the proposal. Those submissions observe that the personal, social, religious and cultural significance of Christmas celebrations commence on Christmas Eve and so recognise the importance of the evening to spend time with family and friends and prepare for Christmas Day. The submissions also express support for the improved protections and wages for workers that come with a public holiday and note the importance placed upon the payment of a penalty rate to compensate those who are required to work after 6pm on Christmas Eve.

In addition to its own submission the Shop, Distributive and Allied Employees Association (SDA) provided 1149 submissions from its members to the Consultation RIS. The SDA also provided an additional 1704 signatures and names in support of the proposal that were collected prior to the release of the Consultation RIS. Submissions in support of the proposal were received from the Rail, Tram and Bus Union, the Queensland Nurses and Midwives Union, the Australian Workers Union and the Queensland Council of Unions as well as individual workers and community members.

508 submissions were received opposing the proposal (28.6%). 422 of these submissions were provided through the Chamber of Commerce and Industry Queensland (CCIQ). Only 2 of the CCIQ submissions supported the proposal. Opposing submissions cited the negative impact on businesses having to pay penalty rates; the likelihood that businesses will close rather than trade; payroll complexity for smaller businesses, and community disruption. These submissions were received predominantly from business organisations and their members including the CCIQ, Australian Industry Group, National Retail Association, Queensland Hotels Association, Clubs Queensland, Master Grocers Australia, Baking Association of Australia, and the Restaurant and Catering Industry Association. The Queensland Tourism Industry Council also opposed the proposal.

Unless confidential, all stakeholder submissions have been published at <https://www.oir.qld.gov.au/industrial-relations/proposed-christmas-eve-part-day-public-holiday/submissions>.

Consistency with legislation of other jurisdictions

In other Australian jurisdictions, South Australia (since 2012) and the Northern Territory (since 2016) observe Christmas Eve as a part-day public holiday from 7pm to 12 midnight (both also observe a similar part-day public holiday on New Year's Eve).

Notes on provisions

Part 1

Clause 1 provides that this Act may be cited as the *Holidays and Other Legislation Amendment Act 2019*.

Part 2

Clause 2 provides that Part 2 amends the *Holidays Act 1983*.

Clause 3 inserts new sections 2(3) and 2(4) into the *Holidays Act 1983*.

New section 2(3) provides for a part-day public holiday to be observed on 24 December (Christmas Eve) from 6pm to 12 midnight.

New section 2(4) provides that the new part-day public holiday applies only for working out a person's entitlements under the listed legislation, industrial instruments or federal industrial instruments within the meaning of any of the listed legislation.

Part 3

Clause 4 provides that Part 3 amends the *Industrial Relations Act 2016*.

Clause 5 provides for an amendment to section 332 of the *Industrial Relations Act 2016* to provide that employees stood down or dismissed in December and re-employed in January are entitled to be paid for Christmas Eve (from 6pm to 12 midnight) in addition to the existing entitlements to be paid for Christmas Day, Boxing Day and New Years' Day.

Clause 6 amends the definition of *public holiday* in schedule 5 (Dictionary) of the *Industrial Relations Act 2016* to include the part-day public holiday to be observed on 24 December (Christmas Eve) from 6pm to 12 midnight for working out a person's entitlements under the *Industrial Relations Act 2016* or an industrial instrument.

Part 4

Division 1

Clause 7 provides that this division amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Clause 8 inserts a definition of *public holiday*, which includes the part-day public holiday under the *Holidays Act 1983*, section 2(3), into the schedule (Dictionary) of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Division 2

Clause 9 provides that this division amends the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

Clause 10 inserts a definition of *public holiday*, which includes the part-day public holiday under the *Holidays Act 1983*, section 2(3), into the schedule 2 (Dictionary) of the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.