

Christmas Eve Part-Day  
Public Holiday 6pm to 12 midnight  
Decision Regulatory Impact Statement

September 2019

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## Executive Summary

Public holidays in Queensland are regulated by the *Holidays Act 1983*. Public holidays have traditionally covered those days where there is a broad expectation amongst members of the community that Queenslanders should have the opportunity to spend the day with family and friends or to commemorate an important occasion.

On 4 August 2019, the Queensland Government announced a proposal to declare a part-day public holiday on Christmas Eve (24 December) from 6pm to midnight, seeking feedback from stakeholders and the general public on the proposal. A joint media statement was released by the Premier and the Minister for Education and Minister for Industrial Relations on the proposal (<http://statements.qld.gov.au/Statement/2019/8/4/palaszczuk-government-wants-christmas-eve-made-a-public-holiday>) and a Consultation Regulatory Impact Statement (RIS) was released for public comment (<https://www.oir.qld.gov.au/industrial-relations/proposed-christmas-eve-part-day-public-holiday>). The Consultation RIS closed on 2 September 2019.

The declaration of a part-day public holiday means that workers will receive public holiday entitlements prescribed in the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) and the Queensland Employments Standards (QES) in the *Industrial Relations Act 2016*. The NES apply to workers and employers in the private sector, while the QES apply to state and local government employees and their employers. Both the NES and the QES allow an employee to refuse to work on a public holiday if the request is to work is unreasonable or the refusal to work is reasonable. Work performed on a public holiday will be paid at the public holiday penalty rate which is prescribed in the applicable award or enterprise agreement. Except for public holidays, there are no other occasions that provide a statutory right for a worker to refuse to work in reasonable circumstances.

Many Queensland workers are already in the position of not having to work on Christmas Eve after 6pm. This includes workers in most administrative jobs and those not in 24-hour continuous service industries. In addition, large retail shops are required to close by 6pm on Christmas Eve.

However, there are a number of workers in industries and workplaces which choose to, or are required by circumstances, to remain open on Christmas Eve, and which would be affected by the declaration of a part-day public holiday on Christmas Eve. In the private sector, this would include private hospitals and aged/disability care facilities, accommodation services, continuous manufacturing processes, private transport including freight and airport services, small and independent retail shops, takeaway/fast food outlets, petrol stations, licensed premises, restaurants and clubs, and work undertaken in large retail shops that may occur after closing time of 6pm. In the State and local government public sector, this includes public hospital and health services; emergency services i.e. police, fire and ambulance; corrective services (e.g. prisons and youth detention); public transport such as Queensland Rail; and energy and electricity supply.

An estimate of annual increased wages costs for Queensland's private sector of between \$31.9 million and \$115.8 million, and for the public sector of \$9.4 million to \$21.1 million was published in the Consultation RIS (**Attachment A**). The consultation process did not yield further advice to reassess costs for the private sector, however it is considered that the lower end cost estimate based on Christmas Day data is a better indicator of the likely cost impact of a Christmas Eve part public holiday than the higher end estimate which is based on Boxing Day employment patterns. Further advice from public sector agencies reported a combined public sector cost impact of at least \$3.7 million (in 2019), lower than estimated in the Consultation RIS.

In other Australian jurisdictions, both 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). In South Australia, the Christmas Eve public holiday was introduced as part of an agreement between the peak employer and union bodies around extended trading hours. A 2013 review of those arrangements in South Australia (SA review)<sup>1</sup> found there was strong evidence that Christmas Eve held a special status in the community commensurate with 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. The experience in South Australia was that the actual costs of the new public holiday on Christmas Eve (and in their case, New Year's Eve as well) were significantly lower than the estimates calculated when the holiday was first proposed.

A total of 1779 submissions were received in response to the Consultation RIS. All submissions were posted on the Office of Industrial Relations website, unless the submitter requested confidentiality. The submissions indicate there is considerable community support (1271 submissions in support or 71.4% of all submissions made) for the improved protections and wages for workers that come with a public holiday, as well as recognising the importance of the evening to spend time with family and friends and prepare for Christmas Day. These submissions are predominantly from workers, unions and community groups.

There are also submissions opposing the declaration of an additional part-day public holiday (508 or 28.6%). Submissions against the proposal come predominantly from business owners and groups and raised objections that the requirement to pay public holiday penalty rates will be a significant impediment to business to the extent that many businesses will close from 6pm on Christmas Eve. Submissions to the proposal questioned the government's estimates of costs to industry and issues such as the right to refuse work. The Office of Industrial Relations has not been persuaded by these submissions to update the preliminary estimates as published in the consultation RIS.

Some stakeholders considered the proposal would have a larger impact on regional and remote areas, compared to other areas, and disproportionately impact small business. When the impacts on small business are taken together with their geographical location, it is reasonable to conclude that small regional businesses will be the most likely to close as a result of the part-day public holiday.

When considering the issue of a part-day public holiday on Christmas Eve, business needs must be weighed against workers' personal needs and the community's expectations for how the occasion should be observed.

In this regard it is important to note the discussion on costs and benefits from the Regulatory Impact Statement on proposed new public holidays in Victoria<sup>2</sup> conducted in 2015. Key issues raised in the discussion from the Victorian RIS include conclusions that the proposal is likely to result in reduced economic activity as well as additional leisure and social time, noting that estimating benefits and costs of proposed public holidays is difficult.

While it is difficult to quantify the positive qualitative economic impacts on the community from observing a part-day public holiday on Christmas Eve, it is reasonable to assume there are benefits to personal wellbeing and work/life balance by allowing workers to reasonably refuse to work and so enjoy relaxation, social interaction and observance of cultural and religious events with family and friends.

While not directly comparable to Queensland's Christmas Eve part-day public holiday proposal, the Victorian RIS analysis noted that while the costs of new public holidays may outweigh the benefits, they also have the potential for wider benefits accruing to families and the broader community.

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<sup>1</sup> South Australian Centre for Economic Studies, Review of Changes to Holidays Act 1910, March 2013.

<sup>2</sup> Regulatory Impact Statement on proposed new public holidays in Victoria, Department of Economic Development, Jobs, Transport and Resources, July 2015.

A part-day public holiday on Christmas Eve would provide appropriate recognition of the personal, social, religious and cultural significance of the night before Christmas. For example, some ethnic groups celebrate Christmas Eve as an important religious/cultural holiday in its own right with primary or an extended observance of Christmas taking place on Christmas Eve rather than on Christmas Day. Others undertake a significant proportion of their preparation for Christmas Day meals on Christmas Eve. The gathering together of extended families and friends on Christmas Eve is also a common event. Christmas Eve is also a day in which many people travel to be with family or friends on Christmas Day.

In light of all these factors and the supporting submissions to the RIS, it is considered fair and reasonable to declare Christmas Eve a part day public holiday from 6pm to midnight. The declaration will enable Queensland workers a reasonable opportunity to decline to work after 6pm on that day, or, if they do work, to be fairly compensated by receiving a public holiday penalty rate.

The Queensland Government proposes to amend the *Holidays Act 1993* to declare Christmas Eve (24 December) a part day public holiday from 6pm to midnight commencing in 2019. Consequential amendments to other Acts to recognise the newly declared public holiday will also be made.

A summary of the costs and benefits of the proposal are shown below.

### Summary of the benefits and costs impacts of proposal

<b>Benefits</b>
Positive social and cultural impact on community - a part-day public holiday on Christmas Eve provides a valuable respite and gives workers an increased opportunity to have time off to observe Christmas Eve events of personal, social, religious and cultural significance. For example, some ethnic groups celebrate Christmas Eve as an important religious/cultural holiday in its own right with primary or an extended observance of Christmas taking place on Christmas Eve rather than on Christmas Day. Others undertake a significant proportion of their preparation for Christmas Day meals on Christmas Eve. The gathering together of extended families and friends on Christmas Eve is also a common event. Christmas Eve is also a day in which many people travel to be with family or friends on Christmas Day. These opportunities may be lost to workers who do not have the right to reasonably refuse to work on Christmas Eve because it is not a public holiday.
Increased wages through penalty rates - workers who choose to work on the part-day public holiday would receive the benefits of penalty rates as per the applicable award or enterprise agreement. Under most awards, this is usually 150% of the base wage, e.g. workers are paid at 2.5 times their normal rate. Casual employees usually receive their casual loading and penalty rates.
Increased consumer spending - increase in wages through penalty rates may encourage increased consumer demand through a temporary increase in disposable income (i.e. for spending at post-Christmas sales).
Right to refuse to work unsociable hours - opportunity to decline work for some workers who could potentially be asked to work during the part-day public holiday. These protections are required as the <i>Fair Work Act</i> and <i>Industrial Relations Act</i> provide specific coverage for absence on public holidays and the right to refuse to work.
<b>Costs</b>
Wages costs – increased costs for employers who employ staff during the part-day public holiday and consequently reduced profits. The Consultation RIS included preliminary estimates of additional wage costs to Queensland industry per annum for Queensland’s private sector of between \$31.9 million and \$115.8 million, and for the public sector of \$9.4 million to \$21.1 million ( <b>Attachment A</b> ) The consultation process did not yield further advice to reassess costs for the private sector, however it is considered that the lower end cost estimate based on Christmas Day data is a better indicator of the likely cost impact of a Christmas Eve part public holiday than the higher end estimate which is based on Boxing Day employment patterns. Further advice from public sector agencies reported a

combined public sector cost impact of at least \$3.7 million (in 2019), lower than estimated in the Consultation RIS.

Loss of income and hours of work – potential for reduced opportunity for hours of work and loss of income if business owners decide to not open on Christmas Eve as a consequence of it being declared a part-day public holiday.

Increased costs for consumers - increased consumer costs if businesses increase prices during the part-day public holiday due to penalty rates. Restaurant businesses may introduce surcharges on public holidays to reflect the increased costs of doing business and providing services to customers. The surcharges may be as high as 10-15%. There may be a loss of consumer choice due to potential business closure. Regional and remote areas of Queensland are more likely to be impacted.

Lost economic activity – an additional part-day public holiday will result in a cost to Queensland's economic output in the form of foregone production. Employers that do not operate on a public holiday (but would otherwise have operated) would produce less output. Increased labour costs due to additional penalty rates can result in some businesses closing in order to avoid making a financial loss.

Costs to the State Government – direct wages penalty costs from the public sector workforce rostered to work on Christmas Eve between 6pm and 12 midnight as part of their normal operations e.g. public hospital and health services, emergency services, public transport and energy and electricity supply industries. The preliminary estimate for the public sector per annum was in the range of \$9.4 million to \$21.1 million. Following further advice from agencies directly affected, the actual estimated cost for the public sector is at least \$3.7 million per annum, much less than the preliminary estimate.

Risk of inadequate time for business to prepare for the implementation, due to budgeting, forward planning and committed bookings and rostering of staff.

## 1: Purpose of the Decision RIS

### 1.1 Purpose of the Decision RIS

The purpose of the Decision RIS is to assess stakeholder feedback from the Consultation RIS by workers, unions, business organisations, the community and individuals on the impacts of the government's proposal to declare Christmas Eve (24 December) a part-day public holiday and provide Government's response to their feedback.

### 1.2 Consultation

During August 2019, the Queensland Government undertook consultation with workers, businesses, their representative organisations and the community as part of its investigation into the proposal to declare a part-day public holiday on Christmas Eve from 6pm to midnight. The consultation process was underpinned by a Consultation RIS that sought stakeholder submissions on the proposal for the public holiday. The Minister for Education and Minister for Industrial Relations also met with the following business groups to discuss the proposal:

Chamber of Commerce and Industry Queensland  
Australian Industry Group  
Queensland Hotels Association  
Restaurant and Catering Industry Association of Australia  
National Retail Association  
Clubs Queensland  
Baking Association of Australia  
Master Grocers Australia  
IGA North Lakes  
Foodworks  
Whites Group IGA  
IGA Cairns

The Office of Industrial Relations also undertook consultation with Queensland government agencies and government owned corporations to seek feedback on the estimated increased wages costs and other impacts of a Christmas Eve part-day public holiday from 6pm to 12 midnight.

A total of 1779 submissions were received from workers and businesses, unions and employer groups, and community groups, as well as individuals. All formal written submissions were posted on the Office of Industrial Relations website, unless the submitter requested confidentiality. Submissions to the Regulatory Impact Statement can be found at <https://www.oir.qld.gov.au/industrial-relations/proposed-christmas-eve-part-day-public-holiday>.

A prominent theme in the feedback related to the substantial benefits to workers with Christmas Eve being declared a public holiday from 6pm. There were 1271 submissions supporting the proposed part-day public holiday which cited the increase in wages from penalty rates; the right to reasonably decline to work at that time; and to have time to spend with family and friends.

There were 508 submissions against the proposed part-day public holiday Christmas Eve (24 December). The main arguments against the proposal included the extra cost to employers and consumers which will likely lead to early closure of some businesses with the consequent loss of employment for some workers; the risk to jobs generally as a consequence of the increased costs, and a general concern about the number of public holidays already in place in Queensland.

This decision RIS sets out stakeholder feedback to the proposal and the Government's response.

## 2: Background

### 2.1 Effect of public holidays

The declaration of a particular day as a public holiday (or part-day public holiday) has two major effects upon workers and business operators.

Firstly, the declaration of a part-day public holiday enlivens the relevant provisions of state and federal industrial relations laws which provide an employee is entitled to be absent from work on that part-day and having the right to refuse to work under reasonable circumstances. The matters to be considered in whether a refusal to work is reasonable in accordance with state and federal legislation is outlined in **Attachment B**.

Secondly, for those employees who work on the relevant part-day, the work will attract public holiday penalty rate entitlements provided under Commonwealth or State industrial laws and industrial instruments.

### 2.2 Observance of public holidays

The *Holidays Act 1983* provides for public holidays in Queensland. Employees (except in the case of certain essential workers, such as emergency services personnel) cannot be required to work on a public holiday. Employees who do choose to work are compensated by penalty rates, and in some cases additional days of annual leave in-lieu.

### 2.3 Compensation for working public holidays

Declaring a part-day public holiday will give rise to penalty rate entitlements of up to 250% under awards and agreements in both the state and federal industrial relations jurisdictions for employees required to work on the public holiday; and in some cases, may provide the employee with additional days of annual leave in-lieu of the full penalty payment. The existing compensating factors currently provided in awards and agreements (both federal and state) do not provide extra penalties unless the day is declared a part-day public holiday.

## 2.4 Requirements to work on a public holiday

Both the *Industrial Relations Act 2016* (Qld) and the *Fair Work Act 2009* (Cwlth) provide an employee is entitled to be absent from work on a public holiday. An employer may request an employee to work on a public holiday if the request is reasonable, but an employee may refuse the request if it is not reasonable or if the refusal is reasonable subject to a number of matters that must be taken into account. There are no other specific provisions in the NES or QES that currently allow refusal to work in reasonable circumstances, apart from the public holiday provisions.

It is generally considered, through advance planning of staff rosters by a business owner along with the willingness of many employees to work in return for higher wages, most employers may be able to fulfil their staffing requirements. The advanced planning of staff rosters or voluntary actions by an employee to work does not, however, provide the adequate and uniform protections available to all workers where this does not occur.

## 2.5 Benefits and costs impacts

Public holidays generate a range of impacts on the Queensland community and economy. These include increased wages for employees, increased labour costs for employers, additional leisure time, increased tourism, and reduced economic activity.

## 2.6 Public holidays in Queensland 2019

The public holidays in Queensland for 2019 are illustrated in **Table 1**. Queensland has 12 public holidays in 2019. The most recent change to public holidays in Queensland was the declaration of Easter Sunday as a public holiday which took effect from 1 December 2016. This brought Queensland into line with New South Wales, Victoria and the Australian Capital Territory where Easter Sunday is a public holiday. Declaring Easter Sunday as a public holiday recognises its religious and cultural significance and ensures workers that are required to work that day are treated the same as they would be if they worked the Good Friday, Easter Saturday and Easter Monday public holidays.

**Table 1 – Public Holidays in Queensland**

<b>Holiday</b>	<b>2019</b>
<b>New Year's Day</b>	Tuesday 1 January
<b>Australia Day</b>	Monday 28 January
<b>Good Friday</b>	Friday 19 April
<b>The day after Good Friday</b>	Saturday 20 April
<b>Easter Sunday</b>	Sunday 21 April
<b>Easter Monday</b>	Monday 22 April
<b>Anzac Day</b>	Thursday 25 April
<b>Labour Day</b>	Monday 6 May
<b>Royal Queensland Show (Brisbane area only) and other days for local show holidays</b>	Wednesday 14 August
<b>Queen's Birthday</b>	Monday 7 October
<b>Christmas Day</b>	Wednesday 25 December
<b>Boxing Day</b>	Thursday 26 December

## 2.7 Public holidays in other jurisdictions

The range of public holidays observed in the various jurisdictions is illustrated in **Table 2**. It is important to note this table is for 2019 and the number of public holidays observed varies year to year in most jurisdictions based on whether holidays fall on a weekend and whether the relevant jurisdiction chooses to declare an alternative day or an additional public holiday in those cases.

Overall, Queensland has 12 public holidays in 2019. The Australian Capital Territory and Victoria have

the greatest number of public holidays in 2019 at 13 days. South Australia and the Northern Territory also have 13 public holidays for 2019 including two-part day public holidays on Christmas Eve and New Year's Eve. Both New South Wales and Tasmania have 11 public holidays in 2019 and Western Australia has 10 public holidays in 2019.

**Table 2 – Public Holidays observed by State/Territory**

Holiday - 2019	NSW	ACT	VIC	TAS	SA	WA	NT
New Year's Day 1 January 2019	✓	✓	✓	✓	✓	✓	✓
Australia Day 28 January 2019	✓	✓	✓	✓	✓	✓	✓
Royal Hobart Regatta Day / Recreation Day (dependent upon area of State)				11/2/19 or 4/11/19			
Canberra Day		11/3/19					
Eight hours day				11/3/19			
Labour Day			11/3/19			4/3/19	
March public holiday					11/3/19		
Good Friday 19 April 2019	✓	✓	✓	✓	✓	✓	✓
The day after Good Friday/ Saturday before Easter Sunday 20 April 2019	✓	✓	✓		✓		✓
Easter Sunday 21 April 2019	✓	✓	✓				
Easter Monday 22 April 2019	✓	✓	✓	✓	✓	✓	✓
Easter Tuesday				23/4/19 Restricted holiday			
Anzac Day 25 April 2019	✓	✓	✓	✓	✓	✓	✓
Reconciliation Day		27/5/19					
Western Australia Day						3/6/19	
Queen's Birthday	10/6/19	10/6/19	10/6/19	10/6/19	10/6/19		10/6/19
Labour Day/May Day	7/10/19	7/10/19			7/10/19		6/5/19
Picnic Day							5/8/19
Queen's Birthday						30/9/19	
Friday before AFL Grand Final			27/9/19				
Melbourne Cup			5/11/19				
Christmas Eve					24/12/19 7pm - midnight		24/12/19 7pm - midnight
Christmas Day 25 December 2019	✓	✓	✓	✓	✓	✓	✓
Boxing Day/ Proclamation Day 26 December 2019	✓	✓	✓	✓	✓	✓	✓
New Year's Eve					31/12/19 7pm - midnight		31/12/19 7pm - midnight

## 3: Problem Identification

### 3.1 What is the problem?

The Christmas period is an important time for businesses in Queensland but it also has personal, social, religious and cultural significance for many in the community. Along with Christmas Day itself, Christmas Eve, the night before Christmas, is seen as a particularly special time to spend with family and friends and observe events of religious and cultural significance.

However, this is not currently recognised in the workplace in terms of legal protections and entitlements available to workers who are required to work on Christmas Eve. There is no legal protection for workers who would like the opportunity to have the evening off work, and no legal entitlements to receive additional monetary compensation if they do work. These legal protections and entitlements would only be available if a public holiday was declared.

When considering the issue of a part-day public holiday on Christmas Eve, business needs must be weighed against workers' personal needs and expectations to ensure that a reasonable work life balance is maintained. The declaration of a part-day public holiday on Christmas Eve would give workers the ability to elect to work at that time and have appropriate social time with family.

The declaration of a part-day public holiday also compensates workers appropriately for working unsocial hours, and who may sacrifice important time with family and miss social events.

### 3.2 Why should Christmas Eve be a part-day public holiday?

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.

This would provide a protection for those affected employees that is not currently available to them, giving them the opportunity to have Christmas Eve off work. For some workers it would be the first time in many years they have a reasonable opportunity to be at home with family and friends on Christmas Eve. 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.

Alternatively, the declaration of a part-day public holiday would also support 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.

It is considered appropriate to give those workers in parts of the economy that continue to operate on Christmas Eve a reasonable opportunity to have that evening off or to receive extra compensation for working at a time when so many others in the community are observing Christmas and enjoying time with family and friends.

### 3.3 Part-Day Public Holiday on Christmas Eve in South Australia and Northern Territory

South Australia and the Northern Territory 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).

In March 2013, SafeWork SA released a report commissioned from the South Australian Centre for Economic Studies at Adelaide and Flinders Universities, reviewing changes to the *Holidays Act 1910* (SA Review).<sup>3</sup> The SA Review was conducted after changes were made in 2011 introducing a part-day public holiday for Christmas Eve (and New Year's Eve).

The SA Review considered there were four possible impacts on the community from the part-day public holidays on the evenings of Christmas Eve (and New Year's Eve):

- an increased ability to enjoy a time of personal significance due to the protections afforded to public holidays;
- increased wages due to penalty rates where employees choose to work a shift they are offered;
- potentially higher costs where businesses opt to levy a surcharge to cover their additional costs;
- potentially restricted choices where employers choose not to trade on part-day public holidays in response to greater staff costs.

The SA Review gauged community attitudes to the part-day public holidays observed in South Australia and through polling, found 78% of respondents strongly agreed those working on a part-day public holiday should be paid penalty rates and 74% strongly agreed they should have the right to refuse to work if asked to do so by their employer.

The SA review also estimated total additional staff costs incurred by the SA Government as a result of the part-day public holidays were just under \$710,000 per annum, significantly less than originally forecast. Estimated total costs of the two part-day public holidays to businesses were as follows:

- Hotels \$136,000 in direct staff costs and \$43,000 in additional security costs;
- Licensed clubs, \$18,000;
- Service stations and roadhouses, \$100,000;
- Restaurants, from \$790,000 to \$1,200,000;
- Retail, \$224,000.

The SA Review assessed the importance of a part-day public holiday and whether it met the criteria for a public holiday, noting that although there is no legislative guidance on what constitutes a public holiday, there is a degree of consensus on the two broad characteristics which make a public holiday distinct;

- the day should have some special significance to a broad spectrum of the community; and
- the nature of the significance should involve some form of collective action, which is facilitated by the bulk of the community not being required to work on that day. This collective action could be the ability to come together as a family or group of friends to mark the occasion (as a significant proportion of the community do on Christmas Day) or a communal commemoration of a significant anniversary or event such as Anzac Day.

The SA review concluded, although Christmas Day (68% of respondents) and Anzac Day (59% of respondents) were significant to the greatest proportion of the community, Christmas Eve (44% of respondents) was also regarded as significant by a substantial number of South Australians. This is strong supportive evidence for the part-day public holiday having a special status in the community commensurate with it being recognised as a public holiday. No similar measurement of the Queensland community perceptions of the significance of particular public holidays has been made, but there is no reason to suggest survey results in Queensland would be substantially different to South Australia.

## 4: Options considered

The Consultation RIS posed three (3) options for consideration and comment:

### Option 1 – Status quo

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<sup>3</sup> South Australian Centre for Economic Studies, Review of Changes to Holidays Act 1910, March 2013.

This option continued the status quo and makes no change to legislation. Some workers may still be required to work, without the compensating factor of penalty rates that a public holiday would provide. Workers would face the same issues as they currently do regarding having time off on Christmas Eve. There would be no increased wage impacts to either private sector employers or the government.

## Option 2 – Legislate for voluntary employment on Christmas Eve

If industrial laws could be amended to provide that any employment on Christmas Eve was to be voluntary only, this would achieve an objective of employees having the right to refuse work so they can attend Christmas season festivities and observances. As outlined in this paper, Queensland's industrial relations jurisdiction extends only to the 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 that sector of the Queensland workforce only. Any action taken by the Queensland Industrial Relations Commission to insert voluntary work provisions in all awards would be similarly limited.

Employees in the private sector and Commonwealth public sector in Queensland are covered by 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 the preferred option.

No reliable data is available on how many employees would be likely to benefit from exercising their right to refuse to work if a part-day public holiday was observed on Christmas Eve, but given the limitations on legislating this option, this would only be applicable to Queensland state and local government public sector workers. Generally speaking, such an option would not lead to substantial increases in wages costs as an employee refusing to work would be replaced by an employee willing to work.

Private sector workers would face the same issues as they currently do regarding having time off on Christmas Eve.

## Option 3 – Legislate a part-day public holiday on Christmas Eve (24 December)

This was the preferred option.

This option is the development of legislation to make Christmas Eve (24 December) a part-day public holiday from 6pm to 12 midnight under the *Holidays Act 1983*.

The limitation of the hours for a part-day public holiday to commencement at 6pm aligns with amendments made to trading hours legislation in 2017 requiring all large retail shops to close at 6pm on Christmas Eve. Additionally, it is considered that 6pm represents an appropriate dividing line between the finishing time for most day work and night shift/work. It is considered most religious and cultural observances generally occur between 6pm to 12 midnight Christmas Eve.

The major reason for considering a part-day public holiday on Christmas Eve relates to the desire by workers to attend seasonal traditions and observances which fall on 24 December and spend time with family and friends, with the protection of industrial relations entitlements to take time off or receive adequate compensation if they do work.

State and federal industrial relations laws provide an employee is entitled to be absent from work on a public holiday. An employer may request an employee to work on a public holiday if the request is reasonable, but an employee may refuse the request if it is not reasonable or if the refusal is reasonable subject to other matters that must be taken into account. The matters to be considered are set out in

**Attachment B.** The right to refuse work is not an industrial relations entitlement under state or federal legislation for any day other than a public holiday.

As the preferred option proposes observance of a new public holiday on Christmas Eve from 6pm to 12 midnight there is no overall statistical information on the intentions of employers to employ workers or open their businesses at that time based on past experience. An estimate of annual increased wages costs for Queensland's private sector of between \$31.9 million and \$115.8 million, and for the public sector of \$9.4 million to \$21.1 million was published in the Consultation RIS. The consultation process did not yield further advice to reassess costs for the private sector, however public sector agencies reported an estimate of the combined cost impact of at least \$3.7 million (in 2019).

While this is a benefit to employees, it also represents an increased cost to employers. No data is available on the numbers of businesses that may choose not to trade on a Christmas Eve part-day public holiday or the effect this would have on overall business activity.

The calculation of positive (qualitative) economic impacts on the community from observing a part-day public holiday on Christmas Eve is also difficult to assess. However, it is reasonable to assume benefit to personal wellbeing and work/life balance by allowing workers to reasonably refuse to work and so enjoy relaxation, social interaction and observance of cultural and religious events with family and friends. For example, some ethnic groups celebrate Christmas Eve as an important religious/cultural holiday in its own right with primary or an extended observance of Christmas taking place on Christmas Eve rather than on Christmas Day. Others undertake a significant proportion of their preparation for Christmas Day meals on Christmas Eve. The gathering together of extended families and friends on Christmas Eve is also a common event. Christmas Eve is also a day in which many people travel to be with family or friends on Christmas Day. These opportunities may be lost to workers who do not have the right to reasonably refuse to work on Christmas Eve because it is not a public holiday.

There are also benefits to the economy through increased demand by increasing workers' disposable income (i.e. receiving increased wages for work performed on Christmas Eve).

This option received considerable support in submissions to the Consultation RIS.

## 5: Impact Analysis

The Government released a Consultation Regulatory Impact Statement on 4 August 2019 requesting employees, employers and the wider community to have their say during the public consultation on the proposed change. The Consultation RIS asked interested stakeholders to make written submissions in response to focus questions. The focus questions were not intended to limit the matters addressed in submissions.

1. Do you think a part-day public holiday on Christmas Eve (24 December) from 6pm to 12 midnight in Queensland is desirable? Why/why not?
2. What do you see would be the key benefits of a part-day public holiday on Christmas Eve (24 December) from 6pm to 12 midnight? For workers? For employers? For government? For the community?
3. What costs do you see would be involved in a part-day public holiday on Christmas Eve (24 December)? For workers? For employers? For government? For the community?
4. Estimates of increased wages costs from observing a part-day public holiday on Christmas Eve are based on a 2011 survey of workers employed on Christmas Day. That day is considered the public holiday with the most similarity to business and community social practices on Christmas Eve. Is there another public holiday that you consider has a greater similarity to Christmas Eve and should be used for estimating increased wages cost if a part-day public holiday is observed on that day?

Does the evidence from the SA review suggest the actual costs could end up being much lower than these preliminary forecasts?

This section discusses the costs and benefits of legislative change on workers and their employers, and the government, taking into account the submissions and consultations with stakeholders.

There are a number of impacts and potential impacts of a part-day public holiday on stakeholders, including:

- Increased wages for those who work during the part-day public holiday, recognising the unsociable nature of working on the night before Christmas;
- Legislative protections for workers to refuse a request to work on Christmas Eve after 6pm, providing them the opportunity to instead spend that time with family and friends marking the occasion as they choose;
- Increased costs for employers who employ staff during the part-day public holiday;
- Reduced opportunity for hours of work if employers decide not to open their business during the part-day public holiday as a consequence of it being declared a part-day public holiday;
- Increased costs for consumers if businesses increase prices during the part-day public holiday;
- Costs to the State Government in direct costs from the public sector workforce who work on Christmas Eve between 6pm and 12 midnight.

It is also important to note the following two days, Christmas Day and Boxing Day, are already declared public holidays. Declaring Christmas Eve, from 6pm, to be a public holiday would increase the number of consecutive hours of public holiday from 48 to 54 hours. It is considered that lengthening the cumulative public holiday period by six hours could influence a business owner's decision to open but this may differ depending upon the type of business, whether the business usually closes early on Christmas Eve, and the number of workers who are entitled to penalty rates if they decide to open.

Focus questions 1, 2 and 3 are discussed in the impact analysis below. In relation to focus question 4, Clubs Queensland, the Queensland Nurses and Midwives Union (QNMU) and the Australian Industry Group (AiG) offered views on the estimated costings in the Consultation RIS.

The Australian Industry Group (AiG)<sup>4</sup>, in a consultation meeting on 26 August 2019, expressed strong opposition to the proposal stating that a range of industries other than retail and hospitality would be affected, citing the example of waste management operators who cannot cease work and as a result, have to absorb the additional penalty rates into their contracts.

The AiG expressed these concerns in a formal submission to the proposal. The AiG raised the issue of inconsistency with other states and territories public holidays arrangements and the disruption to Queensland businesses which adds a layer of complexity, particularly those who operate across state borders. The AiG have challenged the Government's estimates of cost of the holiday, claiming it is in a much higher range of \$123.9 million to \$410.7 million. The AiG has indicated, at page 5 of its submission, its assessment is based on employment on Boxing day (2018) and notes this is significantly boosted by workers in the retail sector. The submission states "with more than triple the number of people working on Boxing Day compared to Christmas Day ....this suggests the true cost could be more than triple the estimate presented in the RIS".

*It is important to note that the AiG's assessment has not accounted for non-exempt (large) retail outlets being closed from 6pm on Christmas Eve (which has been in place since 2017), making their comparison based upon Boxing Day employment (where the large retailers are open for their biggest trading day of the year) significantly overvalued.*

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<sup>4</sup> Australian Industry Group

Clubs Queensland provided actual wage costings for the likely cost for a part-day public holiday. Clubs Queensland consulted with its members and drew accurate figures from a range of clubs, both in terms of size and geographical location. The findings are that industry would see an overall additional wage cost of \$636,000 or \$106,000 per hour. This figure only takes into account the actual wage costs so additional costs such as superannuation and payroll tax would see this figure rise to \$750,000.

Clubs Queensland states that Christmas Day is not an appropriate comparison for Queensland's club industry because the majority of clubs close on Christmas Day due to restrictions to trade imposed by the Liquor Act and the Gaming Machine Act. It follows that the cost of labour estimates drawn from this day would be extremely low and not representative of those likely on Christmas Eve.

The QNMU, on the other hand, supports that Christmas Day is the most comparable public holiday both in community and social practices as well as pay for the proposed part-day public holiday on Christmas Eve.

*In the absence of an accurate overall estimate of increased wages costs across all industries, it is considered that the costs estimates as published in the Consultation RIS give a broad estimate across all industries.*

## 5.1 Impact on workers

The introduction of a part-day public holiday on Christmas Eve gives workers a valuable respite from the busiest period of work and gives an opportunity for workers to have time off to observe events of personal, social, religious and cultural significance.

Workers would have the chance to decline a shift at that time and therefore participate in family, religious or community events. This is based on the relevant provisions of the *Industrial Relations Act 2016* and *Fair Work Act 2009* which provide an entitlement for employees to be absent on a public holiday and the right to refuse a request if the request is unreasonable or the refusal is unreasonable. Workers who choose to work on the part-day public holiday would receive the benefit of penalty rates as per the applicable award or enterprise agreement.

Under most awards, those employees who work on public holidays are entitled to a penalty rate which is usually 150% of the base wage, e.g. workers are paid at 2.5 times their normal rate. Casual employees usually receive their casual loading and penalty rates.

State industrial relations system employees (public sector and local government) would also be entitled to public holiday penalty rates in accordance with their applicable State award or agreement.

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.

The Shop Distributive and Allied Employees Association (the SDA) is one of the largest unions in Queensland with more than 32,000 members employed across the retail, warehousing and fast food industry.

The SDA stated it has been lobbying the government since 2017 as this is an important issue for members and their families.<sup>5</sup>

The SDA welcomed the proposed legislation because Christmas Eve is no ordinary day. Retail, Fast Food and Warehousing staff work very hard during the festive season and deserve time off to attend Church

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<sup>5</sup> SDA media release 4 August 2019

services, spend time with their family and friends or in some cases, work and enjoy the appropriate penalty rates. The SDA argues that Christmas Day is a public holiday, Boxing Day is a public holiday, but Christmas Eve has not been a public holiday, and this is unfair to people who work nights and do shift work.

State Secretary SDA Queensland, Chris Gazenbeek stated, “Many people who work 9-5 jobs already enjoy Christmas Eve off – however our members in retail, fast food and warehousing have often missed out and had to be at work until 9pm – or even midnight!”.

“Christmas Eve is a very important religious night with many attending Church services. Even for those who are not religious, Christmas Eve is an important time to share with family and friends. Many people need to travel to see their family on Christmas Eve or prepare for Christmas Day with their loved ones.”

“Our members in retail, warehousing and fast food and many employees work extremely hard at very unsociable times to provide a seven-day-a-week service to the public.”

“No reasonable person would begrudge retail, warehousing and fast food workers the right to a part-day public holiday on Christmas Eve or to public holiday penalty rates if they work.”

“This will not only benefit members of the SDA, it will be great news for many hard-working Queenslanders including our well-respected essential services workers – such as fire fighters, paramedics, nurses and police officers.”

The SDA<sup>6</sup>, in a formal submission to the proposal, states that in 2015, it conducted a survey of SDA members to ascertain their views. 89% of SDA members want Christmas Eve to be a part-day public holiday from 6pm to 12 midnight. The SDA states it is reasonable to conclude, based on such an overwhelming result, this is the view of retail, fast food and warehouse workers, generally.

The SDA sees the real positive benefits of the public holiday for Queensland as:

- Providing valuable respite and giving workers the opportunity to have time off to spend Christmas eve with family and friends or participate in religious or cultural events;
- Allow workers time off to travel to see their family and loved ones on Christmas Day;
- Increased wages through penalty rates – workers who choose to work on the part-day public holiday would receive the benefits of public holiday penalty rates as per the applicable award or agreement;
- Increased consumer spending – the increase in wages through penalty rates may encourage increased consumer demand through an increase in disposable income;
- Right to refuse to work unsociable hours – workers will have the opportunity to decline work if they wish. Previously, they may have been required to work.

The SDA submits there are challenges in quantifying the impact of public holidays to the economy, both before and after the event. This is because while some parts of the economy may face higher labour costs if they remain open, others benefit from additional capacity for spending on leisure activities, particularly those in the leisure, hospitality and retail sectors. Some societal benefits are simply unquantifiable on a balance sheet.

The SDA submission also focused on the significance of Christmas Eve to many people for religious reasons. Christmas Eve is also significant to many 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.

The SDA provided 1149 submissions from its members to the Consultation RIS.

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<sup>6</sup> Shop Distributive and Allied Employees Association (SDA Queensland Branch)

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.

The impact on workers is best illustrated below by the examples of individual workers who provided submissions to the Government's proposal on the significance of Christmas Eve to them and their family, and the importance of it being recognised as a public holiday.

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*"I work day shift in warehousing and feel this should be passed. Although I will not not be affected personally for the shift side of things. I think this affects a lot of people who give up the right to see husbands, wife's, children and so on. From areas like Police, Fire Brigade, Ambulance and so on just to name a few..... So many give there time on this evening to help others when they miss time with family to do so".*

*Brad Heys, Warehouse Employee*

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*"To be able to spend Christmas Eve with my family on Christmas eve and share this time preparing for a special Christmas day is priceless. No money can make up for the lost time with my family. If people are required to work during this time they should receive special rate of pay to do so".*

*Gwen Fraser*

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*"The proposal for a part day Christmas Eve public holiday is very welcome to long suffering retail workers and warehouse workers in the retail supply chains. Christmas Eve evening is a very important time for families, especially those with children as the excitement and anticipation around this evening is a really special and exciting part of Christmas. In my experience in the supply chain part of retail, this period of 6-12pm on Christmas Eve is very quiet anyway as stores have already been supplied and employees are staying at work basically marking time when they should be at home with family. The huge benefits for families surely outweighs any small inconvenience for the retail sector and I hope that this time will be set aside for families".*

*Steven O'Neil, Warehouse Employee*

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*"There are many good reasons to make this a public holiday:*

- 1: People can travel to see their family and friends so that they can be together on Christmas Day. To some people that is the only time of the year when they get together.*
- 2: More money to spend if we get a little more in our pay packet from this penalty rate should anyone wishes to work.*
- 3; Refresh ourselves as leading to Xmas is often rather hectic, we don't want to sleep Xmas away. Good for our well being.*
- 4: Church Services.*
- 5: More time to prepare for Xmas.*

*John Poon*

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*"As someone who has worked in the retail industry for 10+ years and was often given no choice but to work until sometimes midnight on Christmas Eve to set up for Boxing Day sales (usually without pay), this is a great and necessary move for workers rights. I support it wholeheartedly. Thank you for putting forward the proposal."*

*Cassandra Leigh, Retail Employee*

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*"Christmas Eve a public holiday from 7pm would be excellent to spend time with family, if this happens this year it will be the first one I've had home with family for 8 years."*

*Rhonda Jenner*

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Some submissions<sup>7</sup> suggested the starting time for any proposed public holiday should be at 4pm or 5pm, rather than 6pm to allow for proper time with families on Christmas Eve.

Two submissions from shift workers<sup>8</sup> supported the proposal so shift workers would be able to be home with family on Christmas Eve.

The Rail, Tram and Bus Union (Queensland Branch)<sup>9</sup> (RTBU) made a submission on behalf of 60 members. The RTBU covers employees of large employers such as Queensland Rail and the Brisbane City Council. The key benefits summarised in the RTBU submission are:

- Improvements in mental health for those who wish to be with their families;
- Economic benefits in terms of more people spending more money around Christmas;
- Recognition of multicultural Queensland where a large number of people have traditions that take place on Christmas Eve.

The RTBU states the proposal will pay for itself in the increase in spending and increase in happiness in the workforce.

Views expressed by RTBU members in the RTBU submission are summarised below;

- *"I agree that Christmas Eve should be a Public Holiday. It would be good for me, because it would give the family and myself a chance to prepare the Christmas feasts and complete any last minute Christmas shopping. And if you don't get that option, you're at least paid extra to provide a service so that others may have the chance to do those things too. If we have to give up these things for others, we should be rewarded with a little bit extra. Businesses can afford to pay that little bit extra for an extra day for their staff, as Christmas Eve is one of the biggest shopping days of the year anyway. This won't upset the economy, and will provide much needed relief to shift workers around Christmas time."*
- *"Christmas Eve to be a Public Holiday is a good idea. For me spending time with my family during the Christmas holidays is very important. It starts with Christmas eve preparing last minute things with my 6 year old daughter. I work in a crazy roster with hardly any time to rest let alone spent time with my family. This holiday will be good reward for all hardworking workers out there."*
- *"Christmas is a time for family. I have not spent a Christmas Eve with my family for the last seven years because I have worked driving a bus so others can go about getting ready for the festivities. I think anyone who works on Christmas Eve deserves to be paid extra."*
- *"Christmas Eve is the day we celebrate Xmas with my maternal family, Christmas Day with my husbands' family and Boxing Day with my paternal family. We find it a lot less stressful to celebrate Xmas this way as opposed to trying to travel all over the place on the same day."*
- *"Christmas Eve is a time to spend time with family and also go to the Christmas Eve Church service as a family."*
- *"I believe that the employee should get paid extra to work Christmas eve, I left QR for 2 years to run a small business it is a struggle in small business particularly in a start up business like to one I had, saying that this time of the year is a time where business is making a lot more sales which equates to more profit and it is only one day of the year, I don't think business are going to go broke because they have to pay their employees penalty rates for one day, I have had to put kids bikes, trampolines ect together in readiness for Christmas day after working a 4PM to midnight shift so the kids don't see them before that day, other people that don't have to work those hours on this day don't have that problem, so this is another reason people working Christmas Eve should be paid extra."*
- *"My wife is of German heritage, so Christmas Eve is celebrated exactly the same as Christmas Day. Also I have family interstate, so need to travel on Christmas Eve to be able to get to the destination for Christmas Day."*

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<sup>7</sup> Members of the public Christine So and Amie Rose

<sup>8</sup> Members of the public Brett Carpenter and Rhonda Jenner

<sup>9</sup> Rail, Tram and Bus Union (Queensland Branch)

- *“I would love it if Christmas Eve was a public holiday. Christmas is a special time to spend with family and is a significant part of the Australian tradition. As suggested it is one time of the year where family comes together to celebrate festivities. Time needed to travel to be with family and preparation for the following day is done on Christmas eve, as well as doing last minute wrapping for presents under the tree. A public holiday would relieve the stress of time placed on individuals to the big event of Christmas day. Makes perfect sense to me and my family. After all, family always comes first.”*
- *“For decades, many Australians / Queenslanders in every Industry / Business have put the extra time in for their employers without receiving payment or time off in lieu. This is a way to give back to those employees who give their time (Without Complaint), when they could be with their loved ones, instead of staying back late or coming in early to assist their employer in achieving a positive outcome for their business / industry.”*
- *“It should be a public holiday because 90% of people are off already and workers who can't have the day off should be rewarded for not having the same opportunities.”*
- *“Christmas eve is a chance for our two families to come together safely and avoid traveling on roads Christmas day morning. It also allows the children that special opportunity to wake up in the house all together on Christmas morning gather at the same time. And start the celebrations knowing that everyone is already there safe together, so in reality Christmas eve starts at the end of a normal 9 - 5 working day for the majority of Australian Christian families and as such any work performed after these hours should fall into the realm of working a public holiday.”*
- *“Contrary to what business leaders have us believe, Christmas is traditionally about family and community, not about business.”*

Linda Reville, Lead Organiser, United Voice<sup>10</sup> supported the proposal in the following submission:

*“What do you do on Christmas Eve? Do you watch carols in the domain with your family? Do have a Christmas Eve tradition of watching home alone? Do you catch up with friends for a Christmas Eve drink? Does your culture mean that you exchange gifts on Christmas Eve? Do you attend a church service on Christmas Eve? Anyone that has to miss any of the above because they have to work on Christmas Eve MUST be compensated with decent penalty rates!!!”*

The Queensland Nurses and Midwives Union (QNMU),<sup>11</sup> representing more than 60,000 members across single person operations to large health institutions, made a submission supporting the proposal, believing that the benefits will outweigh the disadvantages. The QNMU highlighted in their submission, the Australian Council of Trade Unions (ACTU) submission to the Fair Work Australia Modern Award Review 2012, where it stated that “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”. (ACTU, 2012, p.16). The QNMU views this statement as the heart of the proposal to make Christmas Eve a part-day public holiday. The QNMU sees the key benefits as ensuring access to paid time off to spend time with family and friends, having more time to rest and recover from work and for many to start holidays a night earlier. The benefits include receiving extra pay due to penalty rates as compensation for working this day. The QNMU supports Christmas Day as the most comparable public holiday both in community and social practices as well as for the proposed part-day public holiday on Christmas Eve.

The Australian Workers Union (AWU)<sup>12</sup>, surveyed over 1,000 AWU members on this subject and found over 91% indicated their support for making Christmas Eve a part-day public holiday. The common themes amongst AWU members was the desire to spend time with family and friends, the impact of Christmas Eve on people working stressful and demanding jobs, the cultural and religious significance of Christmas Eve and the equity of workers sharing in significant private sector profits during this Christmas period. The AWU concluded, while there are considerable valid reasons raised by the membership as to why Christmas Eve should be a public holiday, in essence, Christmas Eve is special time for so many Queenslanders and should be treated as such.

<sup>10</sup> Linda Reville, Lead Organiser, United Voice

<sup>11</sup> Queensland Nurses and Midwives Union

<sup>12</sup> Australian Workers Union

The Queensland Council of Unions (QCU)<sup>13</sup> supports the proposal and argues that for those employers in the private sector, it would become a financial decision whether to remain open on Christmas Eve. In the case of those businesses that make the decision to remain open on Christmas Eve, employers would be able to make such a decision based on their ability to either absorb the increased wage costs, adjust prices for services provided on Christmas Eve, or increase profit by volume of sales. The QCU states that it is reasonable, in the event of an increase in the volume of sales on Christmas Eve that workers share in that prosperity. The QCU makes the point that the public good outweighs the potential cost of the proposal.

United Voice<sup>14</sup> supports the proposal on the basis that it provides significant benefits to workers.

Taking into account the submissions from employees, Unions and the community, it is reasonable to conclude that there is significant support for the proposal.

## 5.2 Impact on employers

Common themes in the submissions included a strong opposition to the impost of higher labour costs through public holiday penalty rates; that the declaration would force some businesses to close (to avoid increased labour costs) and thereby defeat the opportunity for workers to receive extra wages and also cause community disruption, particularly in regional and rural communities where options for retail services are reduced in comparison to larger regional centres; and that there was no need to legislate the right to refuse work as businesses report adopting a flexible approach to rostering on Christmas Eve to accommodate personal circumstances of staff.

508 submissions oppose the proposal (28.6%), with 422 being provided through the Chamber of Commerce and Industry Queensland (CCIQ). Only 2 of the CCIQ submissions support the proposal.

Employers would be potentially impacted by higher wage costs of penalty rates applicable for work performed by employees on a part-day public holiday. A business owner who chooses to open and trade during the part-day public holiday may, if able to do so, levy a surcharge on customers to cover, or partly cover, costs of increased wages. The surcharge, according to submissions, may be as high as 10-15%.

Submissions reflect that a business owner may choose to not open or trade on the evening of the part-day public holiday, or not to engage workers, due to the higher wage costs.

Due to higher wage costs applying to work on a public holiday, owner/managers or other salaried staff, for which penalty rates may not apply, may be required to work instead. In such circumstances, the owner/management staff are affected by losing the chance to attend seasonal festivities and observances.

There were concerns raised by stakeholders regarding the estimates of wage costings provided in the Consultation RIS and whether Christmas Day is an appropriate proxy for Christmas Eve.

In the absence of any data on the wages impacts of a part day public holiday, the Office of Industrial Relations estimated the increased wages costs resulting from a Christmas Eve part-day public holiday from 6pm to 12 midnight in 2019. Extrapolations were made from 2011 data, taking into account employment growth in the intervening period to 2018. Given Christmas Eve was not a public holiday in 2011, no specific data is available in respect of that part-day. Therefore, the estimations have used the data available in respect of the Christmas Day public holiday adjusted to the limited hours of a Christmas Eve part-day public holiday. It is considered the lower figures resulting from the use of Christmas Day data is most accurate as it is that day which is most similar to economic conditions (e.g. restricted trading hours) operating on Christmas Eve.

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<sup>13</sup> Queensland Council of Unions

<sup>14</sup> United Voice

Evidence from the experience in South Australia, also points towards the wages costs to be much less than anticipated. Section 2.8 of this RIS shows further details.

Submissions raised concerns over the business closures that could impact on the community on Christmas Eve. Christmas Eve dinners and other social opportunities for those with no family could be affected. Clubs Queensland, in its submission, highlighted the impact on regional Queensland and urge the government to consider the regional businesses already struggling with high labour costs and simply unable to absorb the economic and job costs under the proposal. Clubs Queensland gives an example of a medium sized community club in Western North Queensland where the costs are estimated at an extra \$3660 for the night.

Submissions raised the issue that most employees will not be rostered if they have expressed a desire to spend time with family and friends or take annual leave. Through advanced planning of rosters, staff can request time off for times of significance. This would not be considered sufficient protection for all employers and employees across Queensland in an employment relationship.

Several submissions from employer groups also argue that there is no case for a part-day public holiday and there is already reasonable opportunity for religious observance over the Christmas period given the current public holidays. Submissions from workers oppose that view and argue that there is a need to provide protections for workers to be with families over Christmas.

The option of starting the public holiday at 7pm for consistency with other states or starting the part-day public holiday at 9pm to align with independent retailers was also raised.

Changes to the starting time of a part-day public holiday will impact on costs to businesses in terms of wages.

*In response to this issue, the preferred option is to start the part-day public holiday at 6pm in order to align with the closing time of large retail shops. It should also be noted that several submissions from workers argued for a commencement time prior to 6pm in order to gain more family time prior at Christmas Eve.*

The wages impact on an employer is illustrated in **Case Studies 1 and 2**.

#### **Case study 1 – Casual employee under the Fast Food Industry Award 2010**

A fast food franchise owner employs a casual level 1 employee on Tuesday nights between 6pm and 12 midnight. The ordinary casual hourly rate of \$26.76 applies for work performed until 10pm. For work performed after 10 pm until midnight, the rate includes a further 10% loading on the ordinary hourly rate, bringing the casual rate to \$28.90 per hour. An employee who works a 6 hour period is entitled to a meal break of a minimum of half an hour.

Therefore, for a regular Tuesday night shift the employee would be entitled to the following:

- 4 hrs @ \$26.76 + 1.5 hrs @ \$28.90 = \$150.39

Under the proposal to legislate a part-day public holiday, the whole of the shift would be paid at public holiday penalty rates of 250% (inclusive of casual loading).

Therefore, for the shift occurring on 24 December 2019, the employee would be entitled to the following:

- 5.5 hrs @ \$53.53 = \$294.42

The proposal therefore increases the wages burden on the employer by 95.8%

#### **Case study 2 – Casual employee under the Hospitality Industry (General) Award 2010**

A restaurant owner employs a casual level 4 Cook (tradesperson) on Tuesday nights between 6pm and

12 midnight. The ordinary casual hourly rate of \$28.38 applies for work performed until 7pm. For work performed after 7pm until midnight, the rate includes a further 10% loading on the ordinary hourly rate, bringing the casual rate to \$30.65 per hour. A meal break is not requested by the employee and is therefore not necessary.

Therefore, for a regular Tuesday night shift the employee would be entitled to the following:

- 1 hr @ \$28.38 + 5 hrs @ \$30.65 = \$181.63

Under the proposal to legislate a part-day public holiday, the whole of the shift would be paid at public holiday penalty rates of 250% (inclusive of casual loading).

Therefore, the shift occurring on 24 December 2019, the employee would be entitled to the following:

- 6 hrs @ \$56.75 = \$340.50

The proposal therefore increases the wages burden on the employer by 87.5%.

Throughout the consultation process, there was wide media reporting from employer and employee organisations impacted by the proposal. The Australian Industry Group (AIG), Australian Hotels Association (AHA), National Retail Association (NRA) and Shop Distributive and Allied Employees Association (SDA) put forward their respective views on the impacts of the proposal.

#### Australian Industry Group

The Australian Industry Group (AiG)<sup>15</sup>, in a consultation meeting on 26 August 2019, expressed strong opposition to the proposal stating that a range of industries other than retail and hospitality would be affected, citing the example of waste management operators who cannot cease work and as a result, have to absorb the additional penalty rates into their contracts.

The AiG expressed these concerns in a formal submission to the proposal. The AiG raised the issue of inconsistency with other states and territories public holidays arrangements and the disruption to Queensland businesses which adds a layer of complexity, particularly those who operate across state borders. As previously stated, the AiG have challenged the Government's estimates of cost of the holiday, claiming it is in a much higher range of \$123.9 million to \$410.7 million. The AiG has indicated, at page 5 of its submission, its assessment is based on employment on Boxing day (2018) and notes this is significantly boosted by workers in the retail sector. The submission states "with more than triple the number of people working on Boxing Day compared to Christmas Day ....this suggests the true cost could be more than triple the estimate presented in the RIS".

*In response to this issue, it is noted that the AiG's assessment has not accounted for non-exempt (large) retail outlets being closed from 6pm on Christmas Eve (which has been in place since 2017), making their comparison based upon Boxing Day employment (where the large retailers are open for their biggest trading day of the year) significantly overvalued.*

The AiG disputes the government's assessment that employees do not otherwise have an entitlement to refuse to work for any day other than a public holiday, pointing to the current provisions of the *Fair Work Act 2009* in sections 62 and 63 as sufficient protection.

*In response to this issue, it is considered that the protections of the Fair Work Act (S114) and Industrial Relations Act 2016 (S116) are still required as they specifically provide coverage and entitlements for absences on public holidays. These specific protections are only enlivened through the declaration of a (part-day) public holiday.*

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<sup>15</sup> Australian Industry Group

## Retail Industry

National Retail Association<sup>16</sup> (NRA) chief executive Dominique Lamb said the announcement "flies in the face of a recommendation in the most recent report into trading hours, compiled by former Labor Minister, John Mickel," in late 2016 and "would come with a raft of unintended consequences".

*In response to this issue, in its submission to the 2016–17 Review of Queensland's Trading (Allowable Hours) Act 1990<sup>17</sup>, the SDA argued that a part-day public holiday on Christmas Eve will provide additional respite for its members following the busy period of work in the lead up to Christmas, give workers more opportunity to observe the personal, social, religious or cultural significance of that time of the year, and more adequately compensate those who are required to work. The SDA also stated that they would support the closure of shops but that this closure would not necessarily give all employees the benefit of not working on Christmas Eve. Both the Master Grocers Australia (MGA) and Queensland Tourism Industry Council (QTIC) opposed the declaration of a public holiday because of the costs involved. The Review report noted, at page 27, "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'.*

*The SDA contends that the personal, social, religious and cultural significance of the Christmas season commences on Christmas Eve and the consideration of a declaration of a public holiday on Christmas Eve from 6pm to 12 midnight should not be weighed purely on business/commercial criteria. The SDA also pointed to evidence from South Australia that the half day public holiday in that state has had no negative effects on business. The SDA position was opposed by major employer groups.*

*While the Review made no recommendation in relation to the declaration of a Christmas Eve part-day public holiday, it did recommend that all non-exempt (large) retail shops be closed from 6pm on Christmas Eve. The Trading (Allowable Hours) Act 1990 was subsequently amended from 2017 in line with that recommendation.*

In a consultation meeting of 26 August 2019, the NRA opposed the proposal making the following points;

- Penalty rates payments from the proposed part-day public holiday are a significant impost on all retailers which generally derive 30% of yearly income from December sales.
- Much preparation work is carried out after 6pm on Christmas Eve for opening after Christmas. Employees working will need to be paid penalty rates even though the shop is shut.
- A public holiday for Christmas Eve was considered during the trading hours review and an agreed and fair compromise to shut shops at 6pm was arrived at.
- Making agreements with staff for voluntary work (as allowed for under public holiday provisions) takes considerable administrative time.

The NRA<sup>18</sup>, in their formal submission, argue the festive season provides an opportunity for bumper-sales. However, many retailers rely on a strong Christmas sales period to insulate themselves during the quieter times of the year and/or during economic downturns. Increased penalties on wages during the Christmas period can have a material effect on the ongoing financial position of small retailers. The NRA is strongly of the view the proposal would result in retailers doing one, or all, of the following;

- Passing on added costs to Queenslanders via increased prices;
- Closing for trade during the effected hours thereby inconveniencing consumers;

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<sup>16</sup> Workplace Express 5 August 2019

<sup>17</sup> Review of Queensland's Trading (Allowable Hours) Act 1990

<sup>18</sup> National Retail Association

- Reducing staffing therefore negating opportunities for those who want to work, to earn additional income.

## Hotels

Australian Hotels Association, South Australia, general manager, Ian Horne, has warned the change has meant less choice for consumers and less hours for workers in SA.<sup>19</sup> “It has meant that a significant amount of hotels and cafes and restaurants simply don’t open because of the cost,’ Mr Horne said. “The general feeling here was that you could open and trade, but because the wage component is such a high part of the hospitality cost then you are really working for nothing. “The end result is that Christmas Eve ... is largely a ghost town.”

His Queensland counterpart, Queensland Hotels Association CEO, Bernie Hogan, said he believed pubs, clubs and restaurants would follow suit and close should the Queensland Government adopt the policy here. “I think it’s poorly conceived at the present time because it really has ignored the fact that hospitality or pubs, particularly in regional areas, are going to be unfairly disadvantaged here.”, Mr Hogan said. “They won’t trade past 6pm because they simply can’t afford to pay people in areas where there are not suddenly going to be extra people walking through the doors at 6pm.”

In a consultation meeting of 26 August 2019, the QHA drew attention to the effect of the proposed public holiday penalty rates on hotels in regional Queensland, stating hotels and bottle shops will close because of the increased costs. The proposal will impact on the social cohesion in small towns as the hotel is the gathering place for the population.

The QHA<sup>20</sup> does not support the proposal submitting it impacts negatively on regional Queensland. The greatest losses are borne by workers themselves as it is completely conceivable that staff would face a very real prospect of reduced hours during the Christmas trading period. The community would also lose as companies may close their doors for that time. The outcome is the community loses access to the tourism and hospitality services.

The QHA is concerned that sufficient time has not been allowed to prepare for a 2019 implementation, due to budgeting, forward planning and committed bookings and rostering of staff.

*In response to this issue, the government proposal for implementation in 2019 allows for a fair and transparent process of stakeholder engagement, consultation and consideration of the proposal from 4 August 2019, when the Consultation RIS was released, in order to provide sufficient time for preparation of the introduction prior to Christmas Eve 2019.*

Hotel operators across Queensland made individual submissions on the impacts of the proposal. In summary, some of the main submissions are as follows;

Peel Street Tavern Director<sup>21</sup>, Lyn Midgley, opposed the proposal on the basis of additional wages costs of \$1000 to trade that evening, meaning that owners, full-time and salary staff will have to work and miss spending time with their families.

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<sup>19</sup> Courier Mail 9 August 2019

<sup>20</sup> Queensland Hotels Association

<sup>21</sup> Peel St Tavern

Nicole Newman, Managing Director, Banana Hotel Motel,<sup>22</sup> says the changes will result in the community and travellers having services withdrawn as it is not desirable for them to be paying a premium for their patronage. Managers will be working Christmas Eve in preference to the casual staff.

Fernvale Hotel Motel Director, Brenda Krop,<sup>23</sup> echoed those views and stated the additional wages costs would be \$1500 for the night and it would not be financially viable to keep the bar or bistro open on Christmas Eve.

Philip Snook, General Manager, Grand Old Crow Hotel, Crows Nest, states his hotel is the only hotel in town and employs 21 staff. The proposal will increase wages not only at his hotel, but at the local supermarket, café, bakery and other businesses in town, and force them to close earlier to minimise the impact. Wendy Moore, owner of the Enterprise Hotel Motel at Charters Towers,<sup>24</sup> echoed similar concerns and said the additional costs would be crippling to a small business, paying staff three times the normal rate would mean the kitchen would not be open on Christmas Eve. Similar submissions were made by the Woolloongabba Hotel,<sup>25</sup> Longreach Tavern,<sup>26</sup> and Barcoo Hotel Blackall.<sup>27</sup>

### Clubs

In a consultation meeting dated 26 August 2019, Clubs Queensland representatives echoed the concerns of the QHA, stating most clubs will close as public holiday penalty rates would not justify opening at a loss. It would not even be viable to open in tourist areas with increased clientele because of holidays.

Clubs Queensland estimate, on average, it will cost between \$4000 - \$6000 to open with penalty rates. There would be impacts on social cohesion. Some clubs have, in the past, chosen to stay open on public holidays, even though they may trade at a loss. Employees may be rostered off to save costs, but managers and/or their families will have to work instead. Most clubs do not roster employees to work if they do not wish to work, so that objective of the proposal is redundant.

It was also submitted that Clubs pay more in penalty rates (250%) compared to other awards. Recovering costs through surcharges is very unpopular with customers and, at any rate, are not enough to recover increased costs of penalty rates.

Clubs Queensland,<sup>28</sup> submit their preferred option is for no change to legislation. As an alternative, an exemption should be granted to the community clubs' industry as the clubs' industry were not included in the Fair Work Commission's decision on penalty rates. Clubs Queensland consulted with members and concluded the industry would see an overall additional wage cost of \$636,000 or \$106,000 per hour.

Mr Tim Wright, General Manager, Greenbank RSL Services Club Inc, in a submission<sup>29</sup> to the proposal dated 6 August 2019, stated the proposal should not apply to employees covered by the Registered and Licensed Clubs Award as it will add 150% of the pay rate to all employees between 6pm and midnight on Christmas Eve. Mr Wright submitted Clubs Australia successfully opposed the reduction in penalty rates in the Registered and Licensed Clubs Award by the Fair Work Commission in 2017, resulting in the Fair

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<sup>22</sup> Banana Hotel Motel

<sup>23</sup> Fernvale Hotel Motel

<sup>24</sup> Enterprise Hotel

<sup>25</sup> Woolloongabba Hotel

<sup>26</sup> Longreach Tavern

<sup>27</sup> Barcoo Hotel Blackall

<sup>28</sup> Clubs Queensland

<sup>29</sup> Tim Wright, General Manager, Greenbank RSL

Work Commission excluding clubs from any reduction in penalty rates. Mr Wright submitted clubs should be exempted from the proposal.

<sup>30</sup>The Fair Work Commission’s (FWC) 23 February 2017 penalty rates decision planned a phased-in reduction of Sunday and public holiday penalty rates for award-reliant workers in the hospitality, fast food, retail and pharmacy industry. In June 2017, the FWC published its schedule of implementation, with the proposed reductions to be phased in between July 1, 2017 and July 1, 2020, with some reductions being completely phased in by 1 July 2019. By 1 July 2019, all but those on pharmacy awards and full-time/part-time workers in retail, will have had the full penalty rate reductions phased in. A comparison of the effect of the penalty rates reductions is shown below in **Table 3**.

**Table 3 – Penalty Rates Reductions**

<b>The Fair Work Commission’s 2017 Penalty Rates Decision</b>				
	<b>Sundays</b>			
	<b>Full-time &amp; Part-time</b>		<b>Casual</b>	
	<b>Previous Loading</b>	<b>Proposal</b>	<b>Previous Loading</b>	<b>Proposal</b>
<b>Award Title</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Hospitality Award	175	150	175	No change
Retail Award	200	150	200	175
Fast Food Award	150	125	175	150
Pharmacy Award	200	150	225	175

	<b>Public holiday penalty rates</b>			
	<b>Full-time &amp; Part-time</b>		<b>Casual</b>	
	<b>Previous Loading</b>	<b>Proposal</b>	<b>Previous Loading</b>	<b>Proposal</b>
<b>Award Title</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Hospitality Award (cl. 32)	250	225	275	250
Restaurant Award (cl. 34)	250	225	250	250
Retail Award (cl. 29)	250	225	275/250	250
Fast Food Award (cl. 30)	250	225	275	250
Pharmacy Award (cl. 31)	250	225	275	250

**Registered and Licensed Clubs Award 2010 (CI 29.1) (Excluded from the Fair Work Commission’s 2017 penalty rates decision.**

	<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Public holiday</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<b>Full-time and part-time</b>	100	150	175	250
<b>Casual (inclusive of the 25% casual loading)</b>	125	150	175	250

A submission from the Broadbeach Bowls and Community Club Inc.<sup>31</sup>opposed the proposal on the grounds they will be penalised within the atmosphere of a Christmas holiday family destination, stating “families arrive on the Coast to meet other friends and families on Christmas Eve. If dinner begins at 5.30pm – they must close from 6.00pm onwards or limit the amount of service to the visitors or members with their guests.” The Club believes this is not fair to both their employees, who join in the spirit of Christmas, or ‘nanny state’ laws who limit visitors to enjoy our Australian festivities. They appeal to the State Government to show some decency to the club operators who always give patrons and staff a fair deal.

The General Manager of the Blackwater Country Club,<sup>32</sup> Antonia Reed, does not support the Queensland

<sup>30</sup> McKell Institute, Fork in the Road Report, April 2019

<sup>31</sup> Colleen Gilbert, General Manager, Broadbeach Bowls and Community Club Inc.

<sup>32</sup> Antonia Reed, General Manager, Blackwater Country Club

Government's proposal to declare a part-day public holiday on Christmas Eve and submits there be no change to the legislation in this regard. *"If a part day public holiday was to be declared on Christmas Eve, it would cost our small club that is already under financial duress, an additional \$1501.10 in wages for that small window of time. The Blackwater Country Club is already competing with rising overheads and decreasing revenues and the imposition of additional labour cost during this period would result in The Blackwater Country Club closing its door for the evening on Christmas eve. The Blackwater Country Club is the only venue in town that fully caters for families."*

In response to the Queensland Government's position that declaring a part-day public holiday will give employees the right to refuse to work if the request to work is unreasonable or the refusal to work is reasonable, the Blackwater Country Club is very aware of families and only rosters those who have advised they are wanting to work and it is all kept to a minimum. In light of this, declaring a part-day public holiday will not change the status quo of the Blackwater Country Club in terms of rostering employees during this period.

Clubs across regional Queensland made submissions opposing the proposal.

Mr Doug Dalley, Secretary/Manager of the Mackay Northern Beaches Bowls Club,<sup>33</sup> does not support the Queensland Government's proposal to declare a part-day public holiday on Christmas Eve and submits there be no change to the legislation in this regard, stating *"it would cost an additional \$2000 in wages whilst already competing with rising overheads and decreasing revenues. The imposition of additional labour cost during this period would result in Mackay Northern Beaches Bowls Club either losing a high percentage of net profit and or closing at 8 pm on Christmas Eve. To regain the extra cost of staff wages they would need to increase our turnover output by an extra \$6000 to break even on the night."*

In response to the Queensland Government's position that declaring a part-day public holiday will give employees the right to refuse to work if the request to work is unreasonable or the refusal to work is reasonable, the Mackay Northern Beaches Bowls Club offers Christmas Eve off to any staff requesting time off to take part in family activities. *"We have never been in a situation where we don't have sufficient amount of staff to work on Christmas Eve."* In light of this, declaring a part-day public holiday will not change the status quo of Mackay Northern Beaches Bowls Club in terms of rostering employees during this period.

Brothers Leagues Club Innisfail General Manager, Paul Laffin<sup>34</sup>, opposed the proposal on similar grounds to other clubs, stating the wages costs would be an extra \$700 for the night in penalties. Natalie Bell, General Manager, Dicky Beach Surf Lifesaving Club,<sup>35</sup> opposed the proposal citing costs of \$3483.10 in additional wages for Christmas Eve. Dalby Leagues Club Secretary Manager, Wayne McKenzie,<sup>36</sup> opposed the part-day public holiday on the basis it would cost an additional \$1185.37 wages in the kitchen and \$1366.84 in the bar and gaming areas for the night.

Suzanne Long, Chief Executive, Nambour RSL Club<sup>37</sup>, opposed the proposal on the basis the extra wages costs for the night would be \$4000. The Nerang Community Bowls Club<sup>38</sup> echoed similar concerns with costs of at least another day's wages due to the penalty rates on a public holiday.

Carpentaria Buffalo Club Mount Isa General Manager,<sup>39</sup> Karen Graham, estimated a part-day public holiday would cost the club an additional \$3,660.81 and the club is already competing with rising overheads and decreasing revenues and the imposition of additional labour cost during this period which may result in closing their doors to the community at 6pm on Christmas Eve or working with a reduced roster.

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<sup>33</sup> Doug Dalley, Secretary Manager, Northern Beaches Bowls Club, Mackay

<sup>34</sup> Paul Laffin, General Manager, Brothers Leagues Club Innisfail

<sup>35</sup> Natalie Bell, General Manager, Dicky Beach Surf Lifesaving Club

<sup>36</sup> Wayne McKenzie, Secretary Manager, Dalby Leagues Club

<sup>37</sup> Suzanne Long, Chief Executive Officer, Nambour RSL

<sup>38</sup> Steve Condren, General Manager, Nerang Community Bowls Club

<sup>39</sup> Karen Graham, General Manager, Carpentaria Buffalo Club Mt Isa

In South-East Queensland, the Sherwood Services Club Manager, Russell Reeves,<sup>40</sup> estimated the extra cost for the night would be \$1387.

*In response to this issue, the concerns of clubs to be exempted from the proposal due to penalty rates reductions in other industries are acknowledged. However, as with any public holiday, the proposal will apply to all industries across Queensland. It should also be noted that modern award rates of pay and conditions of work (including penalty rates) are governed by the federal Fair Work Commission.*

In summary, the key themes raised by employer stakeholders include;

- Inconsistency with other states and territories public holidays arrangements which disrupts business and adds a layer of complexity for those that operate across state borders;
- Costs could be passed on to consumers which could be as high as a 10-15 % surcharge;
- Insufficient time for business to prepare for a 2019 implementation;
- A significant number of businesses will close early or choose not to trade or at best operate with fewer staff;
- Business closure can affect the community, especially in regional or non-tourist areas.

*It is noted that many stakeholder submissions to the Consultation RIS opposing the proposed part day public holiday did highlight specific concerns around business closures because of the declaration of the public holiday and the associated increase to labour costs. It was submitted that the declaration would force some businesses to close (to avoid increased labour costs) and thereby defeat the opportunity for workers to receive extra wages and also cause community disruption, particularly in regional and rural communities where options for retail services are reduced in comparison to larger regional centres. It has not been possible to quantify the impact of this proposition.*

*There is currently no data available on proposed closure of businesses or refusal of employment on a part-day public holiday to accurately assess the net effect on employment.*

### 5.3 Impact on small business

Master Grocers Australia<sup>41</sup>(MGA) is a national employer association representing independent grocery and liquor supermarkets in all States and Territories of Australia with brand names such as Drakes, Foodworks, Friendly Grocers, IGA, IGA Xpress, and SPAR. The MGA submission argued employers would be forced to pay higher wages or alternatively, close their doors and have their staff lose the opportunity to work hours they would normally work and therefore both employer and employee would incur losses. There is also a risk if consumers are looking to shop on Christmas Eve, they may find prices have increased, thereby incurring increased costs for them.

The MGA notes the options in regard to minimising the economic impact of introducing a part-day public holiday and prefers no change is made to the legislation. A second option may be to consider the introduction of a part-day public holiday from 9pm as this would provide some respite for stores that need to stay open both for their customers and for the business opportunity and it would lessen the financial impact of closure at 6pm by three hours.

In a consultation meeting with the MGA and IGA supermarket representatives on 26 August 2019, the main issues raised opposing the proposed Christmas Eve part-day public holiday included the following issues of concern to small retail business operators:

- Retail penalty rates have increased by 12% in last 4 years;
- Business does not need these additional public holiday penalty rates on top of everything else;
- Big operators such as Coles and Woolworths won't be open so will not have to pay penalty rates;

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<sup>40</sup> Russell Reeves, General Manager, Sherwood Services Club

<sup>41</sup> Master Grocers Australia

- Small businesses will be impacted by the need to pay penalty rates and lose the small advantage they retain by being open late on Christmas Eve;
- Small retailers employ some 21,000 employees in Queensland;
- The cost of trading from 6-9pm is approximately \$1170 per shop;
- The proposal is viewed as taking retail backwards;
- Government should consider delaying the start of the partial public holiday until 9pm and lessen the impact of penalty rates.

In relation to the point that retail penalty rates have increased by 12% in the last 4 years, it should be noted that penalty rates are based on the underlying base wages e.g 250% of base wage rates.

The Baking Association of Australia<sup>42</sup> expressed concerns over a range of issues including starting the public holiday from 6pm as that is the closing time for large shops and large shopping centres. Other shops closing at 6pm will have to pay public holiday penalty rates for closedown activity from 6pm. Franchisees will want to close early to avoid penalty rates during closedown. The flow on effect will be employees losing wages from employers not opening during a period which attracts penalty rates.

The Baking Association of Australia states further changes may be made by government in future years about public holiday and penalty rate changes, such as New Year's Eve or the whole day of Christmas Eve. The proposal is also seen as discriminatory as it only recognises Christian tradition and has never previously been a public holiday.

Since the proposal was announced, the Baking Association of Australia canvassed 2143 bakeries made up of franchisees/independent/manufacturers/bakeries with cafes. The response indicates from the 83% that responded;

- 75% would close early
- 15% would not roster any staff in the afternoon at all
- 8% would try and close before the 6pm
- 2% indicated that it was not worth the bother to open and would close over the part public holiday and public holidays of the Christmas period
- Public holiday wages usually increase by \$1000 for the day as opposed to a normal day
- Members in South Australia have stopped rostering staff to work into the public holiday time zone.

The Chamber of Commerce and Industry Queensland (CCIQ)<sup>43</sup> strongly opposed the proposal, submitting businesses would definitely close rather than pay penalty rates. Business owners will work instead of their employees. The CCIQ called for the government to commit to a post implementation review in light of the lack of statistics currently available.

508 submissions oppose the proposal (28.6%), with 422 being provided through the CCIQ.

The Restaurant and Catering Industry Association (RCA),<sup>44</sup> on behalf of the restaurant, café and catering industry, does not support the proposal. The RCA states the restaurant and café sector will be disproportionately affected by the proposal, with more businesses than any other subsector of the Queensland economy likely to be impacted. The RCA considers the changes will drastically increase the cost of opening a restaurant on Christmas Eve. The true impact will be that workers in nearly a quarter of Queensland's restaurants would not be compensated at all due to these restaurants closing, representing lost wages for workers and lost opportunity for businesses to open and serve customers.

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<sup>42</sup> Baking Association of Australia

<sup>43</sup> Chamber of Commerce and Industry Queensland

<sup>44</sup> Restaurant and Catering Industry Association

The other major impact of the proposal is higher costs to consumers. RCA supports the rights of restaurant businesses to introduce surcharges on public holidays to reflect the increased costs of doing business and providing services to customers. The surcharges may be as high as 10-15%, according to RCA benchmarking reports.

Submissions from the NRA, CCIQ and RCA emphasise that small business will be disproportionately affected by the proposal. Smaller businesses will be at a disadvantage compared to large retailers who are required to close at 6pm on Christmas Eve. The QHA also raises the issue that the bulk of the estimated costs in the Consultation RIS are costs borne by non-government hospitality businesses.

*In response to the assertion by the QHA that the bulk of the estimated costs are borne by non-government hospitality businesses, the data in the Consultation RIS showed significant costs would also be distributed across the mining, transport, postal and warehousing industries. Therefore, while the majority of costs are borne by the private sector, hospitality does not form a majority of people working on any public holiday.*

### Tourism and Small Business

The Queensland Tourism Industry Council (QTIC)<sup>45</sup> is the state peak body for tourism in Queensland, representing over 55,000 tourism businesses across Queensland, of which over 9 out of 10 are small businesses.

QTIC conducted an analysis of its members and the industry and does not support the proposal based on the significant negative impact to small business. QTIC's research indicates the proposed change will increase costs for businesses, forcing many to close early. Of the members that responded, 61% indicate their intention to operate on Christmas Eve this year, however, if it is to be made a part-day public holiday, 28% of those operators will no longer open their doors.

QTIC state one of the major concerns for operators is the additional costs associated with operations on public holidays and the reduction of profitability when operating over this time. It is expected that operating businesses will find it no less difficult to get staff willing to work due to the increased wages (47%), with only 3% of respondents stating it will be easier.

The closure of businesses during Christmas Eve is supported by the fact that 4% have said current business operations on Christmas Eve are very quiet, 5% quiet and 10% neither in comparison to normal workdays. Conversely, 40% identify Christmas Eve as a busy time for them and 18% very busy. By closing early on Christmas Eve due to additional costs, there will be harm to the reputation, profitability and competitiveness of businesses in Queensland.

The Department of Employment, Small Business and Training raised the issue of the extra administrative work that employers will incur in ensuring compliance with payroll systems to ensure that the penalty rates are paid correctly in accordance with industrial instruments.

When the impacts on small business are taken together with their geographical location, it is reasonable to conclude that small regional businesses will be the most likely to close as a result of the part-day public holiday. The impacts may be briefly summarised by the following case studies.

#### **Case Study 3 – Hotel in regional Queensland**

A hotel in western Queensland employs 7 casual staff and is the only hotel in town. Four staff are employed in the kitchen to prepare meals and three staff are employed in the bar area. The hotel owner

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<sup>45</sup> Queensland Tourism Industry Council

takes into consideration the extra wages costs of employing staff on Christmas Eve and closes the kitchen that night, preferring to keep the bar open to minimise wages costs for the night. The potential impacts in this case are that the hotel owner loses revenue for the night, the community loses the service of the hotel meals, and the staff in the kitchen area not rostered on for the night, losing wages.

#### **Case Study 4 – City Centre Restaurant**

A large city restaurant employs 15 casual and part time staff and is open for business six days a week. The restaurant opens as usual on Christmas Eve with full staffing. Due to the extra penalty rates for the part-day public holiday, the owner increases prices with a surcharge of 10%. The potential impacts in this case are that the staff are compensated for working Christmas Eve by the payment of extra penalty rates and the community pays more through the increased surcharges on a public holiday.

### **5.4 Impact on the community**

There are possible impacts on the community from a part-day public holiday on Christmas Eve. These are likely to include:

- Greater participation by family members in family, religious, social or community events. This is based on the relevant protections afforded by the *Industrial Relations Act 2016* and *Fair Work Act 2009* which provide an entitlement for employees to be absent on a public holiday and the right to refuse a request if the request is unreasonable or the refusal is unreasonable.
- Workers who choose to work on the part-day public holiday would receive the benefits of penalty rates as per the applicable award or enterprise agreement. This may encourage increased consumer demand through a temporary increase in disposable income (i.e. for spending at post-Christmas sales).
- Conversely, where businesses levy a surcharge to cover or partly cover additional wages costs, or close or otherwise not engage staff on the public holiday, this may reduce disposable income, place greater financial pressure on insecure workers and their families, reduce business services to the community and reduce aggregate consumer expenditure.

Dennis Scanlon, Parish Priest, Queen of Apostles Parish at Stafford,<sup>46</sup> supports the proposal as it will benefit the community by allowing people to celebrate family Christmas service which happens early on Christmas Eve. It will also allow people to celebrate a later Christmas service, especially with young adults who would normally have to work on Christmas Eve. It will give families time to travel to other parts of Brisbane to worship with extended family and help Christmas be a more family friendly celebration beginning on Christmas Eve.

Support for the proposal was also expressed by the Islamic Council of Queensland<sup>47</sup> President, Habib Jamal, who stated 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.

Clubs Queensland has raised the impact on regional Queensland, particularly small regional clubs that are struggling with high labour costs and unable to absorb the economic and job costs under the proposal.

Submissions from workers, unions and community groups indicate considerable community support (71% of all submissions made) for the improved protections and wages for workers that come with a

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<sup>46</sup> Dennis Scanlon, Queen of Apostles Parish, Stafford

<sup>47</sup> Islamic Council of Queensland

public holiday, as well as recognising the importance of the evening to spend time with family and friends and prepare for Christmas Day.

When the impacts on the community are taken together, the social and cultural benefits to community members and community expectations must be weighed against business needs. While it is difficult to quantify the positive qualitative economic impacts on the community from observing a part-day public holiday on Christmas Eve, it is reasonable to assume there are benefits to personal wellbeing and work/life balance by allowing workers to reasonably refuse to work and so enjoy relaxation, social interaction and observance of cultural and religious events with family and friends

## 5.5 Impact on the Queensland government

The Queensland industrial relations system covers public sector and local government workers. The introduction of a part-day public holiday on Christmas Eve is a direct cost to the government from those parts of the state public sector workforce who work on the evenings of Christmas Eve. The preliminary estimate of increased wages costs for the public sector was in the range of \$9.4 million to \$21.1 million per annum, as published in the Consultation RIS.

The consultation process did not yield further advice to reassess costs for the private sector, however public sector agencies reported an estimate of the combined cost impact of at least \$3.7 million (in 2019), lower than estimated in the Consultation RIS.

The Local Government Association of Queensland<sup>48</sup>, in a submission to the proposal, opposed the part-day public holiday, stating the additional costs to councils will not be overly exorbitant, however it will pose an additional cost to some councils with varying effects.

## 5.6 Impacted Industries trading on Christmas Eve

In the private sector, industries that would be impacted by the declaration of a Christmas Eve part-day public holiday include private hospitals and aged/disability care facilities, accommodation services, continuous manufacturing processes, private transport including freight and airport services, small and independent retail shops, takeaway/fast food outlets, petrol stations, licensed premises, restaurants and clubs. Large retail shops such as Woolworths, Coles, Aldi, Myer and David Jones are required to close in Queensland from 6pm on Christmas Eve (24 December) in accordance with the trading hours laws. These large retail shops may employ other staff such as night shelf fillers after the 6pm closing time.

In the state and local government sectors within the Queensland industrial relations jurisdiction, this would include public hospital and health services; emergency services i.e., police, fire and ambulance; corrective services, public transport e.g. Queensland Rail; and energy and electricity supply industries.

As of 30 June 2018, there were 448,725<sup>49</sup> businesses in Queensland. However, many of these businesses would not be trading on Christmas Eve after 6pm in the normal course of events. In terms of industry coverage, hospitality and the small-medium sized business segment of the retail sector are likely to be most affected. As an example, **Table 4** below details the number of Queensland businesses in selected sub-sectors of the retail and hospitality industries which are considered likely to continue to trade on a Christmas Eve part-day public holiday and therefore are likely to be affected by the observance of a part-day public holiday through the potential to pay penalty rates and accommodate refusals to work at that time. These businesses make up only 3-4% of all businesses in Queensland.

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<sup>48</sup> Local Government Association of Queensland

<sup>49</sup> Australian Bureau of Statistics, 8165.0 Counts of Australian Businesses, including entries and exits June 2014 to June 2018

**Table 4**

<b>ABS Statistics as at 30 June 2018</b>	
<b>Business Type</b>	<b>Number of Businesses</b>
Accommodation	1597
Cafes and restaurants	6173
Takeaway food services	3481
Pubs, taverns and bars	752
Clubs (Hospitality)	480
Fuel retailing	507
Supermarket and grocery stores (fewer than 20 employees)	991
Fresh meat, fish and poultry retailing	657
Liquor retailing	60
Other specialised food retailing	640

Employees in the hospitality and retail industries are employed under federal modern awards which specify minimum rates of pay for workers in the industry among other conditions of employment. Modern awards such as the Fast Food Industry Award 2010 (Fast Food Award) and the General Retail Award 2010 (General Retail Award) also specify the penalty rates that apply to work undertaken at certain times or on certain days. Penalty rates within the Fast Food Industry and General Retail Award vary by:

- The time of day: the Fast Food Award and General Retail Award offer penalty rates for work undertaken during unsociable hours such as late evenings or very early mornings.
- The day of the week: for example, the penalty rate for Monday to Friday is different to that which applies to Saturday and Sunday work.
- The day of the year: both the Fast Food Award and General Retail Award specify penalty rates for the public holidays that fall within the year.

Penalty rates apply a loading to the base or agreed rate of employee pay, which increases the wages paid to employees working at times or on days where penalty rates are applicable. An example of penalty rates under the Fast Food Award is 10% loading applies for all work between 10pm and midnight Monday to Friday, 25% for ordinary hours worked Saturdays and Sundays while the General Retail Award provides for a 35% loading for work performed after 6pm Monday to Friday, 25% for Saturday work and 65% for Sunday work.

While awards and penalty rates apply to most industries in Australia, the impact of penalty rates is greatest in those industries where the days and hours of work are not considered 'standard', meaning industries where weekend, evening and night work are common. This includes health and other essential services, along with retail traders, restaurants and accommodation service providers. Employers in these industries are more likely to require their employees to work outside 'standard' hours, hence it is more likely that penalty rates are relevant for such employers.

The Fast Food Award and General Retail Award also make provision for individual flexibility arrangements that facilitate an employer and an individual employee agreeing to vary the application of the terms of their modern award, including arrangements for when work is performed. However, it should be noted this is a purely voluntary option and the agreements made may vary widely between employees. Legislating for a part-day public holiday establishes mandatory requirements and entitlements for both employers and employees that are consistent across a whole industry or workforce.

## 5.7 Estimates of Employment on Christmas Eve

There is no readily available and reliable data on the number of people who work on Christmas Eve. The Office of Industrial Relations has preliminary estimates that were calculated in 2011. In 2011, the Queensland Government commissioned Queensland Treasury to collect data on the number of employees who had worked on public holidays in the previous 12 months (2010-2011), and the number of hours they worked. This survey was taken as part of the annual Queensland Household Survey. Using the data from the 2011 survey on the number of people who worked Christmas Day by industry, and

adjusting for employment growth, the Office of Industrial Relations has provided a projection of the number of workers likely to be employed on Christmas Day.

It is considered reasonable to assume a similar take-up of employees working on Christmas Eve as would work on Christmas Day. Further, it is also assumed the employment mix during these times would be a combination of full-time, part-time and casual employees, with the likely majority being casual employees, particularly in the retail trade, accommodation and food services. The estimates are shown in **Attachment A**.

There were concerns raised by stakeholders regarding the estimates of wage costings provided in the Consultation RIS and whether Christmas Day is an appropriate proxy for Christmas Eve.

It is considered the lower figures resulting from the use of Christmas Day data is most accurate as it is that day which is most similar to economic conditions (e.g. restricted trading hours) operating on Christmas Eve.

As previously mentioned, the AiG have challenged the Government's estimates of cost of the holiday, claiming it is in a much higher range of \$123.9 million to \$410.7 million. The AiG has indicated, at page 5 of its submission, its assessment is based on employment on Boxing day (2018) and notes this is significantly boosted by workers in the retail sector. The submission states "with more than triple the number of people working on Boxing Day compared to Christmas Day ....this suggests the true cost could be more than triple the estimate presented in the RIS".

*It is noted that the AiG's assessment has not accounted for non-exempt (large) retail outlets being closed from 6pm on Christmas Eve (which has been in place since 2017), making their comparison based upon Boxing Day employment (where the large retailers are open for their biggest trading day of the year) significantly overvalued. Government estimates for Christmas Eve wages costs take into account the closure of all large retail shops on Christmas Eve for the lower range figure by comparison to Christmas Day when the same shop closure arrangements apply. No specific data is available on employment on Christmas Eve from 6pm to 12 midnight, so the estimations have used data available in respect of Christmas Day adjusted to the limited hours of a Christmas Eve part-day public holiday. It is considered the lower figures resulting from the use of Christmas Day data is most accurate as it is the day which is most similar to economic conditions operating on Christmas Eve.*

## 6: Conclusion and recommended option

The investigation into the Government's proposed Christmas Eve part-day public holiday has generated wide responses from workers, unions, employer associations, employers, religious groups and the general community through submissions to the Consultation RIS.

The most prominent theme in the feedback revolves around the substantial benefits to workers in spending time with family at a very significant and cultural time of the year for Queensland families and the community. Unions, workers and consumers have clearly indicated Christmas Eve is of special significance (religious or otherwise) and public holidays provide recognition of days of special significance in the life of the wider community and a unique opportunity for people to participate in communal celebrations.

There were 1271 (71%) submissions supporting the proposed part-day public holiday Christmas Eve (24 December) due to the increase in wages from penalty rates and to give workers the right to have time away from work with their families at that important time of the year. Many of these submissions argued that it was a necessary move to protect workers' rights.

Small businesses, employer associations and key industry bodies made submissions on the labour costs

incurred by employers and other impacts, such as the potential of business closures on Christmas Eve and managers working for staff to cover the increased wages costs.

When considering the issue of a part-day public holiday on Christmas Eve, business needs must be weighed against workers' personal needs and expectations to ensure that a reasonable work-life balance is maintained. Refer to **Attachment C** for a summary of costs and benefits of the proposal.

In this regard it is important to note the discussion on costs and benefits from the Regulatory Impact Statement on proposed new public holidays in Victoria<sup>50</sup> conducted in 2015. Key issues raised in the discussion from the Victorian RIS include conclusions that the proposal is likely to result in reduced economic activity as well as additional leisure and social time, noting that estimating benefits and costs of proposed public holidays is difficult.

While it is difficult to quantify the positive qualitative economic impacts on the community from observing a part-day public holiday on Christmas Eve, it is reasonable to assume there are benefits to personal wellbeing and work/life balance by allowing workers to reasonably refuse to work and so enjoy relaxation, social interaction and observance of cultural and religious events with family and friends.

While not directly comparable to Queensland's Christmas Eve part-day public holiday proposal, the Victorian RIS analysis noted that while the costs of new public holidays may outweigh the benefits, they also have the potential for wider benefits accruing to families and the broader community.

For example, some ethnic groups celebrate Christmas Eve as an important religious/cultural holiday, with primary or an extended observance of Christmas taking place on Christmas Eve rather than on Christmas Day. Others undertake a significant proportion of their preparation for Christmas Day meals on Christmas Eve. The gathering together of extended families and friends on Christmas Eve is also a common event. Christmas Eve is also a day in which many people travel to be with family or friends on Christmas Day.

In light of the factors raised in the decision RIS, it is considered fair and reasonable to give all Queensland workers the opportunity to have 6pm to midnight, Christmas Eve, off work - and if they do work, to be fairly compensated for doing so by receiving public holiday penalty rates. At present, workers do not have this right to reasonably refuse to work on Christmas Eve because it is not a public holiday.

The Government has consulted with key stakeholders and the public on the proposal to declare Christmas Eve a part-day public holiday from 6pm to midnight.

The submissions to the Consultation RIS largely supported the option of legislating a part-day public holiday over the other options of maintaining the status quo or to legislate for voluntary employment.

The recommended option is to develop legislation to make Christmas Eve (24 December) a part-day public holiday from 6pm to 12 midnight under the *Holidays Act 1983*, such that it triggers the industrial relations rights protections for state and national industrial relations jurisdiction employees and employers, without displacement of other regulation that would normally follow the declaration of a full day public holiday.

It is noted the South Australian Government commissioned a review of the legislation which introduced a part-day public holiday on Christmas Eve in 2012. That review's report was made available in March 2013. No changes were made to the relevant legislation as a result of the review. The current Marshall Government has made no public indication it intends to make any changes to the current arrangements in South Australia.

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<sup>50</sup> Regulatory Impact Statement on proposed new public holidays in Victoria, Department of Economic Development, Jobs, Transport and Resources, July 2015.

## 7: Consistency with fundamental legislative principles

The meaning of 'fundamental legislative principles' is set out in the Queensland *Legislative Standards Act 1992*, which states that legislation should have sufficient regard to:

1. the rights and liberties of individuals;
2. the institution of Parliament.

Having sufficient regard to the rights and liberties of individuals may depend on whether the legislation:

- ensures access to review of administrative decisions;
- is consistent with natural justice;
- allows administrative powers to be delegated only to appropriate persons;
- does not reverse the onus of proof in criminal proceedings;
- confers search and seizure powers only with a warrant;
- provides appropriate protection against self-incrimination; and does not have adverse retrospective impacts; and is drafted in clear and precise language.

Having sufficient regard to the institution of Parliament may depend on whether the legislation subjects delegated legislative powers to the scrutiny of the Legislative Assembly and authorises the amendment of an Act only by another Act.

Based on existing precedents where the *Holidays Act 1983* has been amended to include observance of other public holidays (e.g. Easter Sunday), the declaration of a part-day public holiday for Christmas Eve (24 December) can have sufficient regard to both the rights and liberties of individuals, and the institution of Parliament.

## 8: Implementation, compliance support and evaluation strategy

Implementing the recommended option will require an amendment to the *Holidays Act 1983*. Subject to Government consideration, it is anticipated that a legislative change could be in place in time for 24 December 2019 to be a part-day public holiday (between 6pm and midnight). It is considered this timeframe will provide sufficient opportunity for businesses to prepare and make necessary decisions and arrangements for Christmas Eve after 6pm.

It is anticipated the Office of Industrial Relations will have operational responsibility for this work and will consult with stakeholders in industry, the community and government.

The key milestones for the implementation of the preferred option are:

- A comprehensive consultation process, including the Consultation RIS and Decision RIS.
- The introduction, passage and assent of an appropriate amendment Bill.
- A public awareness campaign including Ministerial media statements and communication with the key organisations.
- It is not considered necessary to conduct an evaluation of the impacts of the proposed legislated change.
- Compliance with the relevant provisions of the *Fair Work Act 2009* relating to employee entitlements for working on public holidays and the right to refuse work on a public holiday are covered by the federal Fair Work system and regulated by the Fair Work Ombudsman.

## References

Australian Bureau of Statistics, 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2014 to June 2018

Australian Bureau of Statistics, Cat. No. 6342.0, *Working Time Arrangements, Australia*, November 2012.

McKell Institute, Fork in the Road Report, April 2019.

See the website of COAG at <https://www.coag.gov.au/about-coag/agreements/competition-principlesagreement>

Office of Economic and Statistical Research, Office of Government Statistician Queensland. *Regional Household Survey May 2011 Survey Review*

Australian Council of Trade Unions. (2012) Australian Council of Trade Unions submission to Fair Work Australia Modern Awards Review 2012.

Queensland Treasury, *The Queensland Government Guide to Better Regulation*, 2016, p. 15.  
<https://s3.treasury.qld.gov.au/files/guide-to-better-regulation.pdf>

South Australian Centre for Economic Studies, Adelaide and Flinders Universities, *Review of Changes to Holidays Act 1910*, March 2013  
<https://www.parliament.sa.gov.au/HouseofAssembly/BusinessoftheAssembly/RecordsandPapers/TabledPapersandPetitions/Pages/TabledPapersandPetitions.aspx?TPSelectedView=1&TPProperties=H&TPParliamentSession=52%2c2>

Regulatory Impact Statement on proposed new public holidays in Victoria, Department of Economic Development, Jobs, Transport and Resources, July 2015

# Attachment A – Office of Industrial Relations – Estimate of Costs of Christmas Eve Part-Day Public Holiday from 6pm to 12 midnight (24 December)

There is no available data published on the number of people who work on public holidays.

Therefore in 2011, the Queensland Treasury (Office of Economic and Statistical Research) was commissioned to collect data on who worked on the public holidays in the previous 12 months and the number of hours they worked as part of the annual Queensland Regional Household Survey<sup>51</sup> conducted in June of that year. Each of the public holidays was listed and survey respondents were asked if they worked, the number of hours they worked and in what industry they worked.

## 2011 Data

Industry	Number of People Working												Average Daily Hours
	Labour Day	Good Friday	Easter Saturday	Anzac Day	Easter Monday	Australia Day	Christmas Day	Boxing Day	Christmas Day Additional Public Holiday	New Year's Day	New Year's Day Additional Public Holiday	Queen's Birthday	
Agriculture, forestry and fishing	13283	7221	2365	12897	4759	12550	257	5291	12601	2244	11955	13814	
Mining	35853	30404	22058	28690	18630	24870	10638	15749	22268	21210	17312	26005	8.1
Manufacturing	26912	6685	3777	8156	5036	27931	0	15991	9853	17027	28387	30063	7.0
Electricity, gas, water and waste services	5990	4699	3400	1556	2919	29381	2217	2838	4762	1983	905	1026	7.6
Construction	24541	4462	10474	2919	6801	16477	900	6107	3264	2255	4069	14892	7.0
Wholesale trade	5656	0	0	66	1566	374	0	5348	5656	0	0	66	6.7
Retail trade	46194	60317	86237	42368	61823	75209	14927	71778	81223	53342	52155	67374	5.4
Accommodation and food services	92406	93717	63779	93044	73114	50250	10472	64398	57286	80960	73326	37224	4.6
Transport, postal and warehousing	30244	28571	26411	24037	35487	31742	5556	19068	23351	10878	25932	11549	6.8
Information media and telecommunications	9681	866	623	1411	1489	2931	494	2943	2196	374	1546	1905	6.3
Financial and insurance services	17597	3842	205	2488	1080	3948	531	25000	8970	531	3438	37085	5.6
Rental, hiring and real estate services	5697	5324	4169	5560	5697	5877	0	4312	7137	5289	5697	2640	5.7
Professional, scientific and technical services	5608	4614	11356	6992	5942	5509	6082	6986	7667	5961	5622	9086	5.5
Administrative and support services	1392	1188	2688	549	4142	697	0	2936	2784	549	978	244	5.2
Public administration and safety	34661	15265	18450	29952	16362	25340	1977	18562	13750	28189	10552	15200	6.4
Education and training	6344	2653	2203	5676	2127	6749	0	346	747	2114	89	2948	5.3
Health care and social assistance	47440	44176	67752	46008	47123	41320	36325	53518	40754	45767	26907	50727	5.7
Arts and recreation services	4715	3563	3831	3749	5217	4933	2341	3006	2869	2546	2834	1508	5.2
Other services	4873	3581	4074	5868	2199	3188	1601	1376	2087	1105	1532	3106	5.3
<b>All industries</b>	<b>419086</b>	<b>321150</b>	<b>333853</b>	<b>321985</b>	<b>301513</b>	<b>369275</b>	<b>94318</b>	<b>325551</b>	<b>309225</b>	<b>282322</b>	<b>273237</b>	<b>326462</b>	<b>5.9</b>

<sup>51</sup> Office of Economic and Statistical Research, Office of Government Statistician Queensland. *Regional Household Survey May 2011 Survey Review*

## Estimation of Wages Costs for a Christmas Eve part-day public holiday in 2019

To estimate the increased wages costs resulting from a Christmas Eve part-day public holiday from 6pm to 12 midnight in 2019, extrapolations were made from 2011 data, taking into account employment growth in the intervening period to 2018. Given Christmas Eve was not a public holiday in 2011, no specific data is available in respect of that part-day. Therefore, the estimations have used the data available in respect of the Christmas Day public holiday adjusted to the limited hours of a Christmas Eve part-day public holiday. It is considered the lower figures resulting from the use of Christmas Day data is most accurate as it is that day which is most similar to economic conditions (e.g. restricted trading hours) operating on Christmas Eve.

Using the data from the 2011 survey on the number of people who work Christmas Day by industry, the number of workers in 2011 was multiplied by the rate of employment growth from 2011 to 2018 to give an estimate of the number of people working on Christmas Day by industry in 2018.

To calculate the cost per worker for Christmas Eve, Average Weekly Ordinary Time Earnings (AWOTE) for each industry was converted to an hourly rate (e.g. divide by 38) and multiplied by 6 to give a 6 hour ordinary time rate. Penalty rates were then calculated to give an average cost per worker for the public holiday by industry. This average cost was then multiplied by the estimate of the number of people working to give an estimate of the cost of the public holiday.

Industry	Number of people working					
	Christmas Day	Employment growth	Christmas Day	Boxing Day	Employment growth	Boxing Day
	2011	%	Estimate 2018	2011	%	Estimate 2018
Agriculture, forestry and fishing	257	-6.33%	240	5291	-6.33%	4956
Mining	10638	9.65%	11664	15749	9.65%	17269
Manufacturing	0	2.59%	0	15991	2.59%	16405
Electricity, gas, water and waste services	2217	3.99%	2305	2838	3.99%	2951
Construction	900	2.32%	921	6107	2.32%	6249
Wholesale trade	0	-5.00%	0	5348	-5.00%	5081
Retail trade	14927	3.01%	15376	71778	3.01%	73938
Accommodation and food services	10472	3.10%	10796	64398	3.10%	66394
Transport, postal and warehousing	5556	-4.46%	5308	19068	-4.46%	18217
Information media and telecommunications	494	-23.85%	376	2943	-23.85%	2241
Financial and insurance services	531	41.54%	752	25000	41.54%	35385
Rental, hiring and real estate services	0	-25.65%	0	4312	-25.65%	3206
Professional, scientific and technical services	6082	14.74%	6978	6986	14.74%	8015
Administrative and support services	0	20.23%	0	2936	20.23%	3530
Public administration and safety	1977	15.70%	2287	18562	15.70%	21476
Education and training	0	20.19%	0	346	20.19%	415
Health care and social assistance	36325	30.05%	47241	53518	30.05%	69600
Arts and recreation services	2341	6.09%	2484	3006	6.09%	3189
Other services	1601	16.52%	1866	1376	16.52%	1604
<b>All industries</b>	<b>94318</b>	<b>9.08%</b>	<b>108596</b>	<b>325551</b>	<b>9.08%</b>	<b>360121</b>

Industry	Average Cost per Worker				Additional cost for Public Holiday \$
	AWOTE	Hourly Rate (AWOTE / 38)	6 hour cost Ordinary time	6 hour cost with Penalty rates	
	\$	\$	\$	\$	
Agriculture, forestry and fishing					
Mining	2,611.70	68.73	412.37	1,030.93	618.56
Manufacturing	1,429.40	37.62	225.69	564.24	338.54
Electricity, gas, water and waste services	1,823.30	47.98	287.89	719.72	431.83
Construction	1,507.20	39.66	237.98	594.95	356.97
Wholesale trade	1,553.80	40.89	245.34	613.34	368.01
Retail trade	1,184.90	31.18	187.09	467.72	280.63
Accommodation and food services	1,161.00	30.55	183.32	458.29	274.97
Transport, postal and warehousing	1,610.20	42.37	254.24	635.61	381.36
Information media and telecommunications	1,978.00	52.05	312.32	780.79	468.47
Financial and insurance services	1,940.80	51.07	306.44	766.11	459.66
Rental, hiring and real estate services	1,458.20	38.37	230.24	575.61	345.36
Professional, scientific and technical services	1,880.50	49.49	296.92	742.30	445.38
Administrative and support services	1,491.70	39.26	235.53	588.83	353.30
Public administration and safety	1,686.70	44.39	266.32	665.80	399.48
Education and training	1,741.30	45.82	274.94	687.36	412.41
Health care and social assistance	1,511.30	39.77	238.63	596.57	357.94
Arts and recreation services	1,540.30	40.53	243.21	608.01	364.81
Other services	1,288.30	33.90	203.42	508.54	305.12
<b>All industries</b>	<b>1,605.50</b>	<b>42.25</b>	<b>253.50</b>	<b>633.75</b>	<b>380.25</b>

Industry	Estimated cost for Xmas eve Public Holiday					
	Additional cost for Public Holiday per worker		Low estimate of No. of workers	Low estimate of Cost	High estimate of No. of workers	High estimate of Cost
	\$			\$		\$
Agriculture, forestry and fishing		240			4,955.92	
Mining	618.56	11664		7,214,962.62	17,269.12	10,681,994.98
Manufacturing	338.54	0		0.00	16,405.25	5,553,867.52
Electricity, gas, water and waste services	431.83	2305		995,543.43	2,950.72	1,274,223.81
Construction	356.97	921		328,876.18	6,248.93	2,230,670.68
Wholesale trade	368.01	0		0.00	5,081.06	1,869,858.15
Retail trade	280.63	15376		4,315,090.55	73,938.27	20,749,608.19
Accommodation and food services	274.97	10796		2,968,704.63	66,394.31	18,256,687.23
Transport, postal and warehousing	381.36	5308		2,024,398.74	18,217.32	6,947,414.22
Information media and telecommunications	468.47	376		176,301.64	2,241.03	1,049,862.76
Financial and insurance services	459.66	752		345,678.88	35,384.53	16,264,966.14
Rental, hiring and real estate services	345.36	0		0.00	3,205.65	1,107,113.43
Professional, scientific and technical services	445.38	6978		3,107,907.54	8,015.16	3,569,805.82
Administrative and support services	353.30	0		0.00	3,529.52	1,246,969.69
Public administration and safety	399.48	2287		913,632.96	21,476.38	8,579,419.95
Education and training	412.41	0		0.00	415.43	171,327.26
Health care and social assistance	357.94	47241		16,909,251.32	69,600.03	24,912,597.73
Arts and recreation services	364.81	2484		906,052.29	3,188.91	1,163,338.96
Other services	305.12	1866		569,351.62	1,603.77	489,347.39
<b>All industries</b>	<b>380.25</b>	<b>108596</b>		<b>41,293,530.73</b>	<b>360,121.31</b>	<b>136,936,129.03</b>

Additional wages costs to the economy if Christmas Eve is a public holiday from 6pm to 12 midnight is estimated at low of \$41.3 million (high range estimate - \$136.9 million) per annum for the whole of the Queensland workforce (including the public sector).

Estimate of the increased wages costs for the public sector is a low of \$9.4 million (high range estimate - \$21.1 million) per annum calculated on a similar basis.

1. Estimate of additional wages in Queensland for public sector workers (Public administration and safety) working on Christmas Eve as a public holiday – low range \$0.9 million (high range - \$8.6 million) per annum.
2. Estimate that 50% public sector health employees (Health care and social assistance) would work on Christmas Eve in hospitals – low range \$8.5 million (high range - \$12.5 million) per annum.

Adding together increased wages costs from Public administration and safety and 50% of Health care and social assistance industries amounts to \$9.4 million (high range estimate - \$21.1 million) per annum.

## Attachment B – Matters to be considered in deciding whether work on a public holiday is reasonable

### **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 requirements;
- (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**

#### **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.

## Attachment C – Benefits and Costs Impacts of Proposal

### Benefits

Positive social and cultural impact on community - a part-day public holiday on Christmas Eve provides a valuable respite and gives workers an increased opportunity to have time off to observe Christmas Eve events of personal, social, religious and cultural significance. For example, some ethnic groups celebrate Christmas Eve as an important religious/cultural holiday in its own right with primary or an extended observance of Christmas taking place on Christmas Eve rather than on Christmas Day. Others undertake a significant proportion of their preparation for Christmas Day meals on Christmas Eve. The gathering together of extended families and friends on Christmas Eve is also a common event. Christmas Eve is also a day in which many people travel to be with family or friends on Christmas Day. These opportunities may be lost to workers who do not have the right to reasonably refuse to work on Christmas Eve because it is not a public holiday.

Increased wages through penalty rates - workers who choose to work on the part-day public holiday would receive the benefits of penalty rates as per the applicable award or enterprise agreement. Under most awards, this is usually 150% of the base wage, e.g. workers are paid at 2.5 times their normal rate. Casual employees usually receive their casual loading and penalty rates.

Increased consumer spending - increase in wages through penalty rates may encourage increased consumer demand through a temporary increase in disposable income (i.e. for spending at post-Christmas sales).

Right to refuse to work unsociable hours - opportunity to decline work for some workers who could potentially be asked to work during the part-day public holiday. These protections are required as the *Fair Work Act* and *Industrial Relations Act* provide specific coverage for absence on public holidays and the right to refuse to work.

### Costs

Wages costs – increased costs for employers who employ staff during the part-day public holiday and consequently reduced profits. The Consultation RIS included preliminary estimates of additional wage costs to Queensland industry per annum for Queensland’s private sector of between \$31.9 million and \$115.8 million, and for the public sector of \$9.4 million to \$21.1 million (**Attachment A**) The consultation process did not yield further advice to reassess costs for the private sector, however it is considered that the lower end cost estimate based on Christmas Day data is a better indicator of the likely cost impact of a Christmas Eve part public holiday than the higher end estimate which is based on Boxing Day employment patterns. Further advice from public sector agencies reported a combined public sector cost impact of at least \$3.7 million (in 2019), lower than estimated in the Consultation RIS.

Loss of income and hours of work – potential for reduced opportunity for hours of work and loss of income if business owners decide to not open on Christmas Eve as a consequence of it being declared a part-day public holiday.

Increased costs for consumers - increased consumer costs if businesses increase prices during the part-day public holiday due to penalty rates. Restaurant businesses may introduce surcharges on public holidays to reflect the increased costs of doing business and providing services to customers. The surcharges may be as high as 10-15%. There may be a loss of consumer choice due to potential business closure. Regional and remote areas of Queensland are more likely to be impacted.

Lost economic activity – an additional part-day public holidays will result in a cost to Queensland’s economic output in the form of foregone production. Employers that do not operate on a public holiday (but would otherwise have operated) would produce less output. Increase labour costs due to additional penalty rates can result in some businesses closing in order to avoid making a financial loss.

Costs to the State Government – direct wages penalty costs from the public sector workforce rostered to work on Christmas Eve between 6pm and 12 midnight as part of their normal operations e.g. public hospital and health services, emergency services, public transport and energy and electricity supply industries. The preliminary estimate for the public sector per annum is in the range of \$9.4 million to \$21.1 million. The final actual estimated cost for the public sector is \$3.7 million per annum, much less than the preliminary estimate.

Risk of inadequate time for preparation of the implementation, due to budgeting, forward planning and committed bookings and rostering of staff.

**Key themes raised in submissions;**

\* Inconsistency with other states and territories public holidays arrangements and the disruption to Queensland businesses which adds a layer of complexity, particularly those who operate across state borders.

\* Inadequate time has been allowed to prepare for a 2019 implementation, due to budgeting, forward planning and committed bookings and rostering of staff. *The Office of Industrial Relations notes submissions on timeframes for the proposal. The government implementation for 2019 allows for a fair process of stakeholder engagement and consultation from 4 August 2019 when the Consultation RIS was released.*

\* Submissions reflect that a business owner may choose to not open or trade on the evening of the part-day public holiday, or not to engage workers, due to the higher wage costs. Due to higher wage costs applying to work on a public holiday, owner/managers or other salaried staff, for which penalty rates may not apply, may be required to work instead. In such circumstances, the owner/management staff are affected by losing the chance to attend seasonal festivities and observances.

\* Business closures, especially in regional or non-tourist areas. In addition, Christmas Eve dinners and other social opportunities for those with no family could be affected.

\* Regional Queensland is impacted by higher costs and unable to absorb the economic and job costs.

\* The Ai Group disputes the government's assessment that employees do not otherwise have an entitlement to refuse to work for any day other than a public holiday, pointing to the current provisions of the *Fair Work Act 2009* in sections 62 and 63 as sufficient protection. *It is considered that the protections of the Fair Work Act (S114) and Industrial Relations Act 2016 (S116) are required as they specifically provide coverage and entitlements for absences on public holidays. The argument put forward by the Ai Group is not correct.*

\* Submissions raised the issue that most employees will not be rostered if they have expressed a desire to spend time with family and friends or take annual leave. Through advanced planning of rosters, staff can request time off for times of significance. *This would not be considered sufficient protection for all employers and employees across Queensland in an employment relationship.*

\* Clubs have requested to be exempted from the proposal. *As with any public holiday, the proposal will apply to all industries across Queensland. The government is unable to grant an exemption from the declaration. It is also noted that modern award rates of pay and conditions of work (including penalty rates) are governed by the federal Fair Work Commission. Therefore, the government does not have any ability to exempt clubs from the enlivening of penalty rates under the Fair Work Act.*

\* Christmas Day and Boxing Day are already declared public holidays. Declaring Christmas Eve, from 6pm, to be a public holiday would increase the number of consecutive hours of public holiday from 48 to 54 hours. It is considered that lengthening the cumulative public holiday period by six hours could influence a business owner's decision to open but this may differ depending upon the type of business, whether the business usually closes early on Christmas Eve, and the number of workers who are entitled to penalty rates if they decide to open.

\* Submissions from the NRA, CCIQ and RCA emphasise that small business will be disproportionately affected by the proposal. Smaller businesses will be at a disadvantage compared to large retailers who are required to close at 6pm on Christmas Eve. The QHA also raises the issue that the bulk of the estimated costs in the Consultation RIS are costs borne by non-government hospitality businesses.

\* Several submissions raised the option of starting the public holiday at 7pm for consistency with other states or starting the part-day public holiday at 9pm to align with independent retailers.

Changes to the starting time of a part-day public holiday will impact on costs to businesses in wages costs. There were also submissions suggesting bringing forward the start time to 4pm or 5pm. *The preferred option is to start the part-day public holiday at 6pm in order to align with the closing time of large retail shops. It should also be noted that several submissions from workers argued for a commencement time prior to 6pm in order to gain more family time prior at Christmas Eve. The impact of the starting time of the part-day public holiday will vary according to the start time of the part-day public holiday, however there are no costing estimates for the different start times.*