

Office of Industrial Relations

Submission to the Investigation into the Proposed Christmas Eve Part-Day Public Holiday 2019

Thank you for the opportunity to present a submission to the investigation into the Proposed Christmas Eve Part-Day Public Holiday 2019. My background is as a former hospitality worker, business owner and campaigner to end the underpayment of wages in hospitality and other vulnerable industries. My submission is in particular reference to hospitality workers and business owners who will make up a substantial number of those affected by the proposed plan. Hospitality workers are currently the lowest paid workers in Australia (ABS Survey of Employee Earnings and Hours 2018) and hospitality business owners have the highest failure rate of any industry tracked by the ABS. The hospitality industry also has the worst record of underpaying across all industries, with Fair Work Ombudsman Natalie James reporting, "it is a major concern that hospitality workers make up 7.2% of the labour market but so far this financial year they account for more than 25% of the underpaid workers the Fair Work Ombudsman has secured back-pay for" (9 May 2018). In 2016-17 the hospitality industry also constituted 39% of anonymous tip-offs from workers received by the Fair Work Ombudsman. Together, both employees and employers in this industry are the most vulnerable in Australia and are quite unlikely to receive the benefits of a new public holiday without some form of in-built compliance.

Without a reasonable effort to ensure the workers of Queensland are actually paid correctly for the proposed new public holiday, the holiday will just cause the most vulnerable workers, as well as the most vulnerable small business owners in Queensland, to fall further behind the rest. This was the case in Victoria when the Andrews government introduced the Grand Final Day Public Holiday with little effort to ensure all Victorians enjoyed it. The Queensland Parliament's Education and Employment and Small Business committee inquiry into wage theft found that the problem of underpaying was affecting 1 in 5 Queensland Workers and was costing the economy almost \$2.5 billion a year. The non-observance of Queensland's current public holidays is a common cause of underpaying today.

With the proposed holiday estimated to cost up to \$137 million, which will be part paid by taxpayers for public employees and part by private companies through a government-imposed rise in the price of labour, it begs the question whether that money could be better used ending underpayment in Queensland first. \$137 million could eradicate underpayment in not just Queensland but the entire nation of Australia. Workers and businesses in Queensland would be far better off financially with net benefits in the billions, not \$137 million which is the upper estimate for this holiday. This would also result in a more even distribution of wealth in the state, pulling up the lowest paid workers and hard-working business owners first. For instance, if a compliance programme were to eradicate just the bottom 1% of Australia's exploiting businesses in hospitality (whose businesses would not be viable without underpaying staff) the rest of the industry would enjoy \$450 million in extra trade per annum, helping to pay legal rates for labour and make better profits for hospitality owners, who now have the highest failure rate in the nation largely due to illegal and predatory competition.

Spending the money on a half-day public holiday will only help employees for 1 day, not 365 days which would be the case in fixing underpayment. And we know the true beneficiaries of the holiday

will only be the well-regulated industries and the public service, and not the 1 in 5 hard-working Queenslanders who are subjected to wage theft every year as they are unlikely to get the full benefit if any benefit at all.

Key Problems of Introducing the Holiday Without In-built Compliance

Business

The general economic theory of public holiday loading is that with higher wages payable on that day many businesses will close as it is not as profitable and that will cause those that stay open to have less competition, which will in turn give them extra trade to offset the cost of paying higher wages. Unfortunately, due to wide-spread non-compliance of Award wages and conditions, this never eventuates.

If there is no compliance to ensure businesses actually pay public holiday rates then the following will happen, as it does on all other Queensland public holidays:

- Some businesses will open and pay public holiday loadings which will decrease their profitability or even cause them to make a loss (Hospitality is now the industry with the highest failure rate of all industries tracked by the ABS). This will obviously negatively affect the family of the business owner/owners in question.
- Some businesses will open and not pay public holiday rates (includes cash paid workers and those working unpaid overtime) which will illegally inflate their profits at the expense of their vulnerable competition and their vulnerable employees.
- Some businesses will choose to pay penalty rates and use public holiday surcharges to compensate them for the cost. This will cause customers to more negatively review the business, both online and verbally, potentially affecting them in the future. There is ample evidence of this backlash to be found on online review sites.
- Some businesses will not pay penalty rates and not use public holiday surcharges which will more than likely induce more favourable customer reviews, both online and verbally, which will potentially affect them positively in the future.
- Over time, businesses that underpay their staff will survive at the expense of those that do the right thing, leaving the introduction of better pay or more public holidays a benefit only enjoyed by the already well off, well-regulated industries and the public service. This trend has been occurring for decades in hospitality.

Problems for employees

- Full time employees in hospitality traditionally work long and unsociable hours. Many of those hours we know are not paid at all, much less at penalty rates. While the average worker gets the benefit of 4 weeks annual leave and eleven public holidays per year for working 38 hours per week, a hospitality worker will often have to work 60 hours per week for the same benefit. Many will not actually get the paid public holidays at all as the unpaid overtime will often not reduce on a week where there is a public holiday. Without compliance this proposed holiday will cause the unfair gap between the haves and have-nots in the Queensland economy to widen.

- Foreign workers will often have no knowledge of Queensland public holidays and will work the day without extra holiday loading due to lack of proactive education on worker's rights.
- Vulnerable domestic and foreign workers will work the day without extra pay at the expense of workers who would like the opportunity to earn extra at this time of year. Currently a worker being undercut has no recourse to remedy this form of discrimination.
- Workers in the gig economy including Uber Eats will not enjoy the benefits of the public holiday putting them further behind other Queenslanders.

Solving the Problem of Poor Compliance

Ensuring compliance is not an easy task. In the wake of the Parliament's Education and Employment and Small Business committee inquiry into wage theft in Queensland, Minister for Education and Minister for Industrial Relations Grace Grace stated, "Compounding the problem is that the federal regulator does not have the resources to do the job properly and workers often feel powerless to reclaim their lost entitlements."

This would seem to contradict statements made to me in a letter in 2012 by then Labor Federal Minister for Small Business Brendan O'Connor who wrote, "the recent independent review of the Fair Work system found that overall, the Ombudsman has been successful in carrying out educational and enforcement activities; and has the right tools at hand to further advance and build on these activities."

To combat frustratingly poor compliance/regulation in hospitality, a group of industry professionals have, in the past year, designed a digital tool to combat underpayment which can harness State-based resources that are already having a great compliance record in Queensland hospitality. The compliance tool could be deployed in Queensland to ensure a near 100% education rate on workers rights and employers responsibilities for a tiny fraction of the cost of a part-day public holiday and will ensure it is not only the 'Haves' but also the 'Have-nots' that will enjoy a Christmas Eve part-day public holiday.

While hospitality has a big problem with wage compliance, the industry does not have a big problem adhering to its mandatory food safety compliance, nor does it have a problem with complying with fire regulations or liquor licensing requirements. The prime reason for these positive outcomes is that all businesses are inspected every year (not approximately once every 170 years as is the case with the Fair Work Ombudsman) and the businesses fund the cost of their own compliance inspection. The problem with doing the same with wage compliance now is that the required information is not always on premises or organised in a way that inspectors can view it quickly and easily. Another problem is the additional cost of another layer of compliance on top of the over \$6000 restaurants and cafes already spend every year in compliance fees and charges, not to mention the labour costs associated with reporting.

To solve these problems, the app designed by industry formalises the information businesses already collect when onboarding a new employee: pay rates and conditions (hopefully Award level), employee classifications, Responsible Service of Alcohol/Gaming Certificates, etc into a digital employee profile. This profile can then be signed off by both employer and employee to comply with existing legislation that requires (since 1 January 2010) all employers covered by the national workplace relations system to give each new employee a Fair Work Information Statement before, or as soon as possible after, the employee starts employment. The statement outlines employee's rights within the workplace and contact details should they feel they have experienced adversity.

(This statement is another example of yet another law currently not complied with by industry). The information on the app can then be quickly checked once or twice per year using existing regulatory visits: during locally based (Local Council) food safety audits, Liquor Licensing inspections (Queensland State Government) or even remotely in the app. Other forms of compliance can also be checked, like APRA AMCOSS licenses, Trade Waste Certificates, Responsible Service of Alcohol accreditation, etc

While designed for hospitality the system will work for other industries. For instance, fuel stations are regulated by the National Measurement Institute to ensure consumers actually get 5 litres out of the pump when they buy 5 litres of fuel. This regulator could easily check the app for wage compliance in this industry and the 7 Eleven and Caltex wage scandals would have been detected and stopped in their infancy.

The system was designed by industry for not only a better outcome for students and workers but also to create a level playing field for business operators. Attached to this submission is a brief report on how the app/system works.

If we progress with funding a new public holiday without or instead of better wage compliance, history may view the decision as a missed opportunity to better serve Queensland's truly low paid workers and to stop the billions lost every year to wage theft.

Thank you for the opportunity to submit to the investigation.

Kind Regards

Henry Honner

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