

Investigation into Proposed Christmas Eve Part-Day Public Holiday

2 September 2019



**Queensland
Council of Unions**

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Introduction

The Queensland Council of Unions (QCU) is Queensland's peak union council. The QCU has 26 affiliated unions collectively representing more a quarter of a million Queensland workers.

Since the takeover of the industrial relations power by the Howard Government in 2005, the Queensland Government has been restricted in its ability to directly improve conditions for workers. The concept of providing an additional part-day public holiday is one way in which the Queensland government can improve conditions for workers within contemporary constitutional restrictions. The Palaszczuk Government should be congratulated for taking the step of seeking community engagement in relation to this concept.

The Purpose of a Public Holiday

The QCU supports the proposal to declare 6pm to midnight on Christmas Eve as a public holiday. Workers currently receive penalty rates for working public holidays and other unsociable hours. It is important to remember the purpose of a penalty rate. Intentionally the penalty rate for a public holiday is set to provide a substantial disincentive for an employer to compel their employees to work on a public holiday, hence the term "penalty rate". In that sense the ability for some workers to avoid having to work on Christmas Eve would provide a social benefit for those workers and their families.

As discussed in the Consultation Regulatory Impact Statement, the purpose of proposed part-day holiday is to "observe Christmas Eve events of personal, social, religious and cultural significance or to be better compensated for missing out on that time with family and friends if they do work" (OIR 2019:4). This generally consistent with the long-held understanding of the purpose of other public holidays, some of which provide special meaning for large sectors of the community. We also understand that following the fallout from WorkChoices at a

federal level, the *Fair Work Act 2009* provides protection for workers who reasonably refuse to work a public holiday (Stewart 2018:260).

It is apparent from responses the QCU has received, that Christmas Eve is of special significance to many Australians. To begin with it is an important time for family and friends to get together. If workers are compelled to work, they should be compensated well for having to miss out on family and community time. Families will often have different branches. Often the immediate family might congregate on Christmas eve, while family members would then catch up with other branches of the family on Christmas day. It is not uncommon for one partner's family to be visited on Christmas Eve and the other on Christmas Day:

Many people have more than one family they want to spend time with at Xmas. Europeans celebrate Xmas eve. Let's enable those people to spend time with family

I think Christmas Eve is equally important as Christmas Day. A lot of married couples like myself spend Christmas Eve with one partner's family and then Christmas Day with the other partner's family.

and

Everybody deserves to prepare with their families for Christmas. If workers give their time up for others they have to be compensated.

Workers who are required to work on public holidays, particularly those with such cultural and religious significance as Christmas are able to describe the social deprivations that this requirement to work brings. Those who work in health and emergency service have to attend work and, in our submission, it is only fair that they are recompensed:

Because those of us who have to miss out on important family traditions and time with our kids (or disadvantage others) should be appropriately compensated for this. Babies are born in this time period, so Midwives are required!

Decision to Remain Open

There are some areas of employment, such as those identified on page 5 of the Consultation Regulatory Impact Statement, that are required to work regardless of the circumstances and their employers are compelled to remain open 24 hours a day on 365 days of the year. Organisations that provide emergency and health services, that are mainly in the public sector, would obviously need to remain open to provide these essential services.

In the case of these providers of essential services it largely becomes a budgetary decision for the Queensland Government as to whether the additional six hours that attract penalty rates is too large a burden by comparison to the public good that this proposal would bring to so many Queenslanders. For those public sector agencies, any increase in labour cost caused by an additional six hours at penalty rates would be insignificant in terms of the overall costs of operation and in our submission, easily justified in terms of a cost benefit analysis.

For those employers in the private sector, it would become a financial decision whether to remain open on Christmas Eve. For these profit-motivated employers the decision to remain open would be based on whether they would be able to recoup the additional labour costs. 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 cost; adjust prices for services provided on Christmas Eve; or increase profit by volume of sales. It is reasonable, in the event of an increase in the volume of sales on Christmas Eve that workers share in that prosperity.

Economic Impact

Following the Abbott Government asking the Productivity Commission to undertake a review of Australia's workplace relations framework, the Fair Work Commission (FWC) reviewed penalty rates in several awards (FWC 2017). There is little doubt that the Productivity

Commission’s report heavily influenced the FWC’s thinking. The following table sets out the changes made to penalties contained in the various awards because of the FWC 2017 decision. Where there is strike out of the penalty this indicates the effect of the decision.

Table 1 changes to penalties in modern awards 2017 penalty rates decision

Award	Sat%	Sun%	Public Holiday %	Late Night %	Early Start %
Fast Food Industry Award 2010				After 9 pm 10pm	After midnight
Permanent Level 1	125	150 125	250-225	10	15
Permanent Level 2	125	150	250-225	10	15
Casual	150	175 150	275 250	10	15
General Retail Industry Award 2010				After 6pm	
Permanent	125	200 150	250 225	25	
Casual	135	200 175	250	Nil	
Hospitality Industry (General) Award 2010*				Midnight to 7am	Before 7am
Permanent	125	175 150	250-225	15	10
Casual	150	175	275 250	15	10
Pharmacy Industry Award 2010*				9.00pm - midnight	before 8.00 am
Permanent	125	200 150	250 225	50	50
Casual	150	200 175	250	75	75
Registered and Licensed Clubs Award 2010*				Midnight to 7am	Before 7 am
Permanent	150	175	250	15	15
Casual	150	175	250	15	15
Restaurant Industry Award 2010				Midnight to 7am	Before 7am 6am
Permanent	125	150	250 225	15	15
Casual Level 1 & 2	150	150	250	15	15
Casual Level 3 to 6	150	175	250	15	15

Many of the workers likely to benefit from any additional payment, if their employer were to choose to remain open, are also those that have suffered from a reduction in penalties as a result of amendments in the table above, in particular, those who work in the hospitality, retail and fast food industries. This will provide some recompense for a group of workers that have systematically had their earnings reduced over recent years.

A typical response from employer organisations is that any additional penalty will have an adverse impact on employment. This argument lacks credibility particularly for such a brief period that attracts the additional penalty. Moreover, the justification for the cuts to penalty rates in various modern awards was the supposedly adverse impact that penalty rates had on employment. Research from the Centre for Future Work has demonstrated that instead of

creating employment as was promised, the penalty rate cuts have resulted in employment going backwards in those industries where penalty rates have been cut:

The accommodation and food services (hospitality) sector recorded a rate of job creation in the past 12 months significantly slower than the overall Australian economy. The retail sector experienced no job growth at all. For full-time employment, the retail sector shed 50,000 full-time jobs in the last year – a decline of 7.6 percent, the worst of any sector. The hospitality sector also recorded a decline in full-time work (2,000 lost jobs, a decline of 0.6 percent). (Stanford and Henderson 2018).

Far from improving the Queensland economy, the reduction in penalty rates actually ripped workers' spending out of the economy. Workers who were already doing it tough were required to struggle harder by the reduction in their income brought about by the 2017 decision. That little money that went to award-reliant workers discretionary spending was redirected to the more immediate priorities of food and shelter. In May 2017, the McKell Institute released data that outlined, by electorate, the extent of earning loss for such workers (McKell Institute 2017).

The McKell Institute Report found that rural and regional Australia was more adversely impacted by the penalty rates decision. There are three reasons for this being the case. Firstly, the proportion of workers employed in retail and hospitality industries is higher in regional and rural Australia than in urban areas. Secondly, those workers in regional and rural Australia were paid less than their urban counterparts. Finally, the businesses that employ those workers are not locally owned and therefore the increase in profit resulting from the reduction in wages goes out of the regional area and most likely to Sydney or Melbourne.

In this report, the McKell Institute estimated that workers in regional and rural Australia would lose \$667 million and that regional communities would lose in the order of \$289.5 million. Significantly, that McKell Institute Report identified that the greatest loss of disposal income (\$21M) from the penalty rates decision was in the federal division of Leichhardt based on Cairns in Far North Queensland.

The McKell Institute further postulated that the impact on employment would be slow job growth in these areas in which unemployment was higher than the rest of the country. Regional unemployment is a continual challenge for Queensland (Australia Institute 2019A). In Queensland 48.3 per cent of the population resides in the greater-Brisbane area which is the second smallest percentage of any jurisdiction next to Tasmania. Obviously, geographical and population differences between Queensland and Tasmania make those two jurisdictions incomparable. South Australia and Western Australia have 77.3 and 78.6 per cent of their population living in the metropolitan area of their capitals (ABS 2017). Outback Queensland provides the starkest comparison with the remainder of the state and the nation. In July 2019, the unemployment rate in Outback Queensland was 14.5 per cent, an increase of 3.8 percentage points over the year, despite an increase of 3,600 employed persons, or 10.8 per cent (Queensland Government Statisticians Office 2019).

The amount of money that has been removed by the penalty rates decision was recently calculated by the Australia Institute for the cluster of public holidays in April 2019:

Over that 10-day period, we estimate that wages will be \$80 million lower than if penalty rates had been maintained. And the problem is getting worse, due to further coming reductions in Sunday penalties (scheduled on 1 July this year and, for industries covered by the General Retail and Hospitality awards, again next year). After 2020, once the Sunday penalty rate reductions are fully implemented, the loss in wages would equal \$107 million for a corresponding 10-day cluster of holidays (Stanford 2019).

The union movement also welcomes any move that might be likely to improve the amount of revenue going towards wages. It is well recognised that Australia has a wage growth crisis. This wage growth crisis is not only recognised by the union movement but also traditionally cautious organisations such as the Reserve Bank of Australia (Australian Institute 2019B; Kyloh 2018) and the International Monetary Fund (Dabla-Norris et al 2015). Low wage growth is a major contributor to the sluggish economic growth being experienced in Australia as well as widening income and wealth inequality (Kinsella and Howe 2018). Whilst 6pm to midnight

on Christmas Eve is of limited application, it will contribute to workers' purchasing power which will have a positive flow on effect within the community.

Conclusion

Primarily, the QCU favour the proposal to make Christmas Eve Part-Day Public Holiday as it recognises that workers should be entitled to time off on Christmas Eve where it is not essential that they are at work. For those who are required to be at work, either by necessity, or because their employer is able to operate profitably on Christmas Eve, those workers should be properly compensated for that time.

The economic impact, as stated in the Consultation Regulatory Impact Statement is negligible. In our submission the capacity to return some of the income lost by workers impacted by the penalty rates decision of 2017 is in fact justified. The continued low wage growth that plagues Australia is in some small way ameliorated by providing due recompense to workers required to work on Christmas Eve.

As is discussed in the Consultation Regulatory Impact Statement, there is some cost associated with the proposition potentially costing employers between \$41.3 million and \$135.6 million. To put this into perspective, the previously mentioned McKell Institute research estimated the total loss of disposable income in Queensland from the loss of penalty rates to be \$146.3 million. In our submission the public good outweighs the potential cost of the proposal.

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