



2 September 2019

Christmas Eve Part-Day Public Holiday Consultation
Office of Industrial Relations
GPO Box 69
BRISBANE QLD 4001

By email: publichol@oir.qld.gov.au

Dear Sir/Madam

Submission – Christmas Eve Part-Day Public Holiday Consultation

Clubs Queensland thanks the Queensland Government for the opportunity to provide comment on the proposal to declare a part day public holiday, from 6:00pm to 12:00am on Christmas Eve (24 December) this year.

Clubs Queensland does not however support this proposal as it would impose significant financial burden on community clubs, many of which are already struggling with rising overheads and decreasing revenues. Clubs Queensland therefore submits that 'Option One' in the Queensland Government's Consultation Regulatory Impact Statement (**the Consultation Paper**), that there be no change to the legislation and that the status quo be maintained, be the preferred option.

As an alternative to Option One, in light of the Hon Anastasia Palaszczuk's public statement that this move is essentially out of retaliation to the Fair Work Commission's decision to cut penalty rates in retail and hospitality (NOTE: Clubs did not have penalty rates cut), we submit that the community club industry be granted an exemption from an amendment to the legislation.

For NOTING - If the Queensland Government's proposal is to proceed, many of Queensland's community clubs may simply choose to not trade from 6:00pm to 12:00am on Christmas Eve, or at best choose to operate with fewer staff. This means many staff would completely lose their remuneration and therefore be negatively impacted, as would the communities those clubs support.

Increased cost of wages for Clubs – Case Studies

The Consultation Paper correctly identifies that Clubs would be in the very small percentage of Queensland businesses affected by the proposal to declare a part day public holiday, from 6:00pm to 12:00am on Christmas Eve (24 December).

That however does not mitigate the significant increase in labour and on-costs during a period (Christmas/New Year), where there are already high impacted labour costs, given the number of public holidays.

Member consultation conducted by Clubs Queensland overwhelmingly confirms the general sentiment – i.e. that, given the dramatic increase in wage costs, most clubs would consider closing their doors at 6:00pm on Christmas Eve. This measure is compounded by the fact that most community clubs close in any case at 12:00am on Christmas Eve in light of restrictions under the *Liquor Act 1992* (Qld) (**the Liquor Act**) and *Gaming Machine Act 1991* (Qld) (**the Gaming Machine Act**) to trade on Christmas Day.

Brisbane Suburban Example

A large community club in the northern suburbs of Brisbane, employing approximately 85 staff has provided evidence to Clubs Queensland that its wage cost would increase by in excess of \$3,000 for the six-hour period between 6:00pm and 12:00am on Christmas Eve.

Evidence showed that the club would be operating at a loss for this six hour period, and therefore they are appropriately questioning the viability of trading. This community club also provides a good example of a club that (due to being in the suburbs of Brisbane), does not benefit at all from an increase in 'tourist trade' and unlike retail, also does not see a significant increase in profitability during this period to compensate for the increase in wages.

In light of the above, given the overall loss during this period, coupled with the closure of the Club on Christmas Day, many staff who may ordinarily work on Christmas Eve would lose shifts if this proposal was to proceed.

Sunshine Coast Example

A medium-sized community club on the Sunshine Coast, operating in a tourism precinct, employing approximately 60 staff, has provided evidence that its wage cost for this period would increase by approximately \$4,100 and again, they would be operating at a loss.

What about applying a public holiday surcharge? For a start, it will take some time for the general public to get across the fact that this period is a declared public holiday. Therefore, front line workers will cop the brunt of this challenge from consumers. Additionally, in this example – although they are in an existing 'tourism precinct' with significant trade, a surcharge on their food and beverage offer is underwhelming in terms of offsetting or compensating for the additional wage costs incurred.

Again, this club has provided evidence that it would be more cost effective to simply close at 6:00pm on Christmas Eve if this proposal was to proceed.

Regional Queensland Example

A medium-size club in Western North Queensland has provided evidence that December through to February are troublesome months, noting the following:

- School finishes a week earlier in December (usually around 6 December) as the town has been allotted travel time, being regional, and this in turn results in families going away for holidays and teachers leaving for holidays also;
- The town is a mining and transit town where it loses a lot of workers who head home down south for the Christmas holidays and escape the 40+ degree days of the town's summer; and
- The club does its best to capture the remaining local market that stay in town for Christmas, however they have found over the years that spending large amounts of money on bringing a big act out for December (for example) does not provide any return on investment as it only gains a small fraction of the community and in a once only event.

The Club provided evidence that if a part day public holiday was to be declared on Christmas Eve, this would in turn cost the Club approximately an extra \$3,660.00. The Club would then need to find a way to retrieve this amount, from a dwindling community at this time of year. The Club provided evidence that unless it can find a way to recover the increase in wage costs, it would be considering closing at 6:00pm on Christmas Eve.

Clubs Queensland submits that this is just one example of many where regional licensees will be closing at 6:00pm, resulting in employees losing shifts altogether and the already quite streets of regional Queensland becoming quieter.

Further, many clubs in regional areas hold Christmas Eve dinners, specifically targeted at those who have no family who are local. Social opportunities such as these are limited and would be lost if there were added cost pressures on this evening.

Overall industry increase

Clubs Queensland submits that if a part day public holiday was to be declared on Christmas Eve, the overall cost to the community club industry would be considerable. The Consultation Paper makes two fundamental errors when downplaying the likely increase in overall wage costs. These two errors are explained further below.

South Australia as a comparator

According to the Consultation Paper, evidence from the South Australia review indicated that, for Queensland, the actual wage cost increases may end up being much lower an expected. The Consultation Paper referenced - in South Australia, the additional cost to the club industry for two, part day public holidays on Christmas Eve and New Year's Eve was \$18,000.

Respectfully, South Australia is not an appropriate comparator when it comes to estimating the increase in wage costs for the community club industry in Queensland. The South Australian club industry is considerably smaller than Queensland's club industry, both in terms of the number of staff clubs employ and the number of clubs across that state.

In Queensland, an \$18,000 increase in wages can attributed to just four venues, thus the 'industry wide cost' across Queensland given 480 clubs are impacted is significant. Put simply the consultation paper numbers are flawed.

Christmas Day as a comparator

The Consultation Paper also looks at Christmas Day as a comparison when estimating the likely cost for a part day public holiday on Christmas Eve. While this may be an appropriate comparison for other industries, it is not an appropriate comparator for Queensland's community club industry.

This is because majority of clubs close on Christmas Day due to the restrictions to trade imposed by the Liquor Act and the Gaming Machine Act. It follows that cost of labour estimates drawn from this day would be extremely low and not representative of those likely for Christmas Eve.

Actual wage cost to the Queensland club industry

Clubs Queensland has consulted with its members and drawn accurate figures from a range of clubs, both in terms of size and geographical location, regarding the likely increase in wage costs if a part day public holiday was to be declared on Christmas Eve as proposed.

Our findings are that the industry would see an overall additional wage cost of \$636,000 or \$106,000 per hour.

It should be noted that this figure only takes into account actual wage cost increases, so associated costs such as the payment of additional superannuation, payroll tax, etc and other 'on costs' when factored in to overall calculations would see this figure rise to be in excess of \$750,000.

The reality of hospitality

According to the Consultation Paper, part of the reason to declare a part day public holiday from 6:00pm to 12:00am on Christmas Eve is to adequately compensate workers for having to work this period. This would include paying staff a penalty loading of 250% for all time worked.

The reality, however, is that hospitality businesses that choose to open on the public holiday most often only roster a small number of staff, with those staff typically being 'the managers' who have penalty rates built into salaried arrangements. This impacts general staff who would normally work in this period.

This is true of the recent decision by the Queensland Government to declare Easter Sunday as a Public Holiday in Queensland back in 2016. Overall, dramatically fewer hours are rostered on this day (and the whole Easter period) industry wide, then was seen prior to 2016. Further, according to the Chamber of Commerce and Industry Queensland, most of the cost fell on the shoulders of the hospitality and retail sectors.

Higher penalty rates for Community Clubs

As the Queensland Government would be aware, the community club sector did not see a reduction in penalty rates in 2017 like in other areas of hospitality and the retail industry. Clubs are still required to pay an employee at the rate of 250% of the base rate of pay for work performed on a public holiday, unlike in other areas of hospitality and the retail industry that only pay 225% of the base rate.

If the proposal were to proceed, the overall labour cost to Clubs would be far greater than that seen in other forms of hospitality and the retail industry.

In a public statement, The Hon Anastasia Palaszczuk stated, ***"while the Government can't restore the weekend penalty rate cuts inflicted upon some 160,000 Queenslanders by the then Turnbull/Morrison government, we can at least do the right thing for people working on Christmas Eve"***. This sentiment has also been expressed by a number of Queensland Government MPs on social media.

In light of the above comments, it is clear that part of the Queensland Government's reasoning for the proposal is to partly compensate workers for an overall reduction in penalty rates. Community Clubs are therefore unfairly being subjected to a proposed increase in labour costs when penalty rates were not reduced in its industry to begin with.

It follows that, if the proposal to declare a part day public holiday on Christmas Eve was to proceed, Clubs Queensland submits that community clubs be granted an exemption to any amendment to the legislation.

The reality of employees working on Public Holidays

According to the Consultation Paper, another reason behind declaring a part day public holiday on Christmas Eve would be to provide a mechanism for employees to refuse to work if the request to work is unreasonable or the refusal to work is reasonable.

Upon consultation with member clubs, many have commented that despite Christmas Eve not currently being a public holiday, most employees will not be rostered if they have expressed a desire to spend time with family and friends or take annual leave.

Clubs as employers generally roster these periods, taking into consideration the wishes of their employees, arising out of family commitments and holidays. This also takes into account most not opening on Christmas Day.

While it is accepted that declaring a public holiday on Christmas Eve will allow an employee to refuse to work if the request to work is unreasonable or the refusal to work is reasonable, there is rarely, if ever, an occasion when an employee would be rostered to work against their wishes. In cases staff are rostered to work, the request to work would often be reasonable in the circumstances.

Declaring a public holiday on Christmas Eve to achieve the right for an employee to refuse to work is still subject to a reasonableness test and for the Community Club industry, it would not change the status quo, i.e. any employees who do not want to work are typically not rostered and those who are rostered are only done so out of operational necessity, thereby satisfying the reasonableness test.

Conclusion

Clubs Queensland as the representative body for Queensland's Community Club sector, does not support the Queensland Government's proposal to declare a part day public holiday on Christmas Eve.

The evidence overwhelming shows that the cost to community clubs would be excessive and in reality, many will choose to simply not open their doors or operate with fewer staff if the government proceeds as proposed.

As an alternative to Option One, whilst taking into account 'the facts' around the impact and in light of the Hon Anastasia Palaszczuk's public statement that this move is essentially out of retaliation to the Fair Work Commission's decision to cut penalty rates in retail and hospitality, we submit that the community club industry be granted an exemption from an amendment to the legislation.

If you have any questions or require any further clarification, please do not hesitate to contact our Workplace Relations Manager, Dan Nipperess on (07) 3252 0770.

Yours faithfully


Doug Flockhart
Chief Executive Officer