

Consultation Regulatory Impact Statement

Investigation into Proposed Christmas Eve Part-Day Public Holiday 2019

Office of Industrial Relations

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Contents

| | |
|---|----|
| 1.0 Executive summary | 4 |
| 1.1 Focus questions..... | 6 |
| 1.2 Purpose of this consultation regulatory impact statement (RIS)..... | 7 |
| 1.3 How to have your say..... | 7 |
| 2.0 Background | 7 |
| 2.1 The Effect of Public Holidays..... | 7 |
| 2.1.1 Observance of Public Holidays..... | 7 |
| 2.1.2 Compensation for working public holidays..... | 8 |
| 2.1.3 Requirements to work on a public holiday | 8 |
| 2.2 Why make a part-day public holiday on Christmas Eve from 6pm to midnight? | 8 |
| 2.3 Public Holidays in Queensland 2019 | 9 |
| 2.4 Public Holidays in other jurisdictions | 9 |
| 2.5 Part-Day Public Holiday on Christmas Eve in South Australia and Northern Territory..... | 11 |
| 2.6 Impacted Industries Trading on Christmas Eve..... | 14 |
| 2.7 Estimates of Employment on Christmas Eve..... | 14 |
| 3.0 Why should Christmas Eve be a Part-Day Public Holiday? | 15 |
| 4.0 Policy Objective | 15 |
| 4.1 What is the policy objective of investigating the introduction of a part-day public holiday on Christmas Eve in Queensland? | 15 |
| 5.0 What are the options? | 16 |
| 5.1 What options are available to the Government? | 16 |
| 5.2 Option 1: Status quo | 17 |
| 5.3 Option 2: Legislate for voluntary employment only for all Queensland employees on Christmas Eve | 16 |
| 5.4 Option 3: Legislate a part-day public holiday on Christmas Eve (24 December)..... | 16 |
| 6.0 What are the impacts of a part day Christmas Eve public holiday on workers, employers, the community and the government?..... | 18 |
| 6.1 Impact on workers | 18 |
| 6.2 Impact on employers | 20 |
| 6.3 Impact on the community..... | 20 |
| 6.4 Impact on the government | 21 |
| 7.0 Preliminary recommendation of the preferred option..... | 21 |
| 7.1 Is the recommended option consistent with COAG competition principles and Queensland’s fundamental legislative principles?..... | 21 |
| 7.2 Consistency with competition principles | 22 |
| 7.3 Consistency with fundamental legislative principles | 22 |
| 8.0 How would the recommended option be implemented, administered and evaluated? | 22 |
| 8.1 Implementation..... | 22 |

| | |
|---|----|
| 8.2 Monitoring, evaluation and review..... | 23 |
| References..... | 24 |
| Attachment A – Office of Industrial Relations – Estimate of Costs of Christmas Eve Part-Day Public Holiday from 6pm to 12 midnight (24 December)..... | 25 |
| Attachment B – Matters to be considered in deciding whether work on a public holiday is reasonable..... | 29 |

1.0 Executive summary

The Queensland Government is investigating a proposal to declare Christmas Eve (24 December) a part-day public holiday from 6pm to 12 midnight. If implemented, this proposal would give all Queensland workers the opportunity either to have time off from work 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.

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 such as Anzac Day. It is proposed that (the evening of) Christmas Eve is one such occasion where a new public holiday is warranted as it is a special time for the community and families to come together to celebrate and spend time together.

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)¹ 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 declaration of a part-day public holiday means that workers in the private sector and employees of the Commonwealth Government would be able to access the entitlements contained in the National Employment Standards (NES) for public holidays. The NES for public holidays is one of 10 minimum standards of employment set out in Chapter 2 of the *Fair Work Act 2009* (Cth) and it allows employees to refuse to work on a public holiday if the request is unreasonable or the refusal to work is reasonable. If the worker chooses to work, they will be entitled to public holiday penalty rates as per the applicable award or enterprise agreement. Except for public holidays, there are no other specific occasions where the NES currently allow workers to refuse to work in reasonable circumstances.

State industrial relations system employees (State public sector and local government employees) would also be entitled to public holiday penalty rates in accordance with their applicable state award or agreement and the right to reasonably refuse to work in accordance with the *Industrial Relations Act 2016*.

Many Queensland workers are already in the position of not having to work on Christmas Eve after 6pm and they are able to spend the evening as they choose with family and friends. These workers and their employers are not materially affected by whether the evening is a public holiday or not. This includes workers in most office-based jobs. As a result of trading hours changes introduced by the Palaszczuk Government in 2017, it also includes workers in large retail shops because after a period of extended trading hours in the lead up to Christmas, those shops are required to close by 6pm on Christmas Eve, thereby allowing most retail workers the rest of the evening off.

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.

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

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.

Should Christmas Eve be declared a public holiday from 6pm to 12 midnight, workers in these sectors would have the right to refuse to work or to be compensated at public holiday rates if they do work. If this occurred, a preliminary estimate of additional wage costs to Queensland industry per annum, including the public sector is in the range of a lower end estimate of \$41.3 million to an upper end estimate of \$136.9 million. The preliminary estimate for the public sector per annum is in the range of \$9.4 million to \$21.1 million.

Attachment A shows the method by which these estimations have been calculated, and the assumptions that underpin them. It should be noted that 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) turned out to be significantly lower than the estimates calculated when the Holiday was first proposed. The actual costs in South Australia (around \$3-4 million in total across the public, private, and community sector) were also far lower than the costs estimated above for Queensland, even allowing for the fact that South Australia is a smaller state than Queensland and the figures are from 2012-2013.

A summary of the social and economic impacts is at Table 1.

Table 1 – Social and Economic Impacts of Christmas Eve part-day public holiday

| 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. Many in the community wish to attend church services on Christmas Eve. 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 the majority of 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. These penalty rates would provide greater incentive for those workers willing to work on Christmas Eve to take on a shift. |
| Increased consumer spending - increase in wages through penalty rates may encourage increased consumer demand through a temporary increase in disposable income (e.g. 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. |

| Costs |
|--|
| Wages costs – increased costs for employers who employ staff during the part-day public holiday and consequently reduced profits. A preliminary estimate of additional wages costs to Queensland industry per annum, including the public sector, is in the range of \$41.3 million to an upper end estimate of \$136.9 million. Evidence from the SA review indicates the actual costs may end up being much lower than is currently estimated. |
| 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 public holiday. |
| Increased costs for consumers - increased consumer costs if businesses increase prices during the part-day public holiday due to penalty rates, although the SA review reported that most businesses opted not to impose an additional surcharge on their consumers, suggesting that this form of impact was small. |
| 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. A preliminary estimate for the public sector wages cost per annum is in the range of \$9.4 million to an upper end estimate of \$21.1 million. |

This Consultation Regulatory Impact Assessment is seeking feedback from interested stakeholders and will inform the Government in its consideration of the impacts and efficacy of introducing a part day public holiday on Christmas Eve (24 December) from 6pm.

1.1 Focus questions

The following focus questions may assist interested stakeholders in making their written submissions or participating in discussions to structure their comments in response to issues raised in this Consultation Regulatory Impact Statement. However, the focus questions are not intended to limit the matters that can be 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 to be 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?

If possible, please address any industry or workplace specific matters in your submission that you think are relevant to informing the Government's consideration of this proposal.

1.2 Purpose of this consultation regulatory impact statement (RIS)

The purpose of this consultation regulatory impact statement (Consultation RIS) is to invite stakeholders to provide advice to the Government on the potential benefits and costs of declaring a part-day public holiday on Christmas Eve (24 December) from 6pm to 12 midnight in Queensland. Submissions are invited from workers and business owners, their representative organisations and the wider community.

1.3 How to have your say

The Queensland Government is undertaking a comprehensive consultation process as part of its investigation of the proposal to declare a public holiday on Christmas Eve from 6pm. The Government will have regard to issues raised in written submissions responding to this Consultation RIS. Focus questions at the beginning of this document may assist in framing your feedback however these focus questions are not intended to limit comment relevant to the investigation.

You are invited to have your say about the introduction of the part-day public holiday on Christmas Eve (24 December).

Written submissions to this Consultation RIS can be lodged via:

Email: publichol@oir.qld.gov.au
Post: Christmas Eve Part-Day Public Holiday Consultation
Office of Industrial Relations
GPO Box 69
BRISBANE QLD 4001

Written submissions must be received by 4pm Monday 2 September 2019.

Submissions will be published unless provided in confidence. Material provided in confidence should be clearly marked 'IN CONFIDENCE'.

Any questions about this consultation process can be submitted via the above email address or by contacting the Office of Industrial Relations on 07 3406 9856.

Interested persons can also register to receive updates on the investigation of a part-day public holiday on Christmas Eve by sending a request to the email address above.

2.0 Background

2.1 The Effect of Public Holidays

The declaration of a particular day as a public holiday (or part-day public holiday) has two major effects.

Firstly, the declaration of a part-day public holiday enlivens the relevant provisions of state and federal industrial relations laws which provide that 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.

2.1.1 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 public holiday penalty rates, and in some cases additional days of annual leave in-lieu.

2.1.2 Compensation for working public holidays

Declaring a part-day public holiday on Christmas Eve will give rise to penalty rate entitlements of up to 250% ('double time and a half') 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.

2.1.3 Requirements to work on a public holiday

Both the *Industrial Relations Act 2016* (Qld) and the *Fair Work Act 2009* (Cwlth) provide that 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 Queensland Employment Standards (QES) that currently allow refusal to work in reasonable circumstances, apart from the public holiday provisions.

It is generally considered that, through advance planning of staff rosters along with the incentive for many employees to work in return for public holiday penalty rates, most employers are able to fulfil their staffing requirements on public holidays.

2.2 Why make a part-day public holiday on Christmas Eve from 6pm to midnight?

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, it is considered fair and reasonable to give all Queensland workers the opportunity to have Christmas Eve off from 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 evidence from the SA review outlined further in section 2.5 below is that there was strong community support for workers to have access to these protections and entitlements on Christmas Eve.

The effect of a part-day public holiday declaration on a retail worker is illustrated in **Case Study 1**.

Case Study 1

John works as a weekly shop assistant in a large retail store. On the week before Christmas, he is asked by his supervisor to work Christmas Eve (24 December) from 6pm to 9pm to stock the shelves for Boxing Day sales. John normally works 9am to 6pm Monday to Friday. Christmas Eve falls on a Friday night. John has longstanding arrangements to spend Christmas Eve with his family and relatives who are visiting from overseas.

Under the current industrial relations arrangements, John is required to work in accordance with his contract of employment and be ready willing and available to work as required by his employer. A request to work overtime by John's employer would be reasonable in the circumstances as it is an ordinary work day, not a public holiday.

John does not have any specific protections under the Fair Work Act to refuse to work overtime on that day or any other day that is not a public holiday.

John advises his employer that he is available to work the overtime from 6pm to 9pm and is paid at his award overtime rates under the federal modern award. He receives extra pay for overtime however his preference was to spend Christmas Eve with his family.

If Christmas Eve is declared a part-day public holiday, John is entitled to be absent on a public holiday. His employer can ask him to work on a public holiday, if the request is reasonable. John may refuse the request to work if he has reasonable grounds which include:

- the employee's personal circumstances e.g. family responsibilities
- whether the employee will get more pay e.g. penalty rates
- the needs of the workplace
- the type of work the employee does
- whether the employee's salary includes work on a public holiday
- whether the employee is full time, part time casual or shift worker
- how much notice the employee was given about working
- the amount of notice the employee gives that they refuse to work

If requesting that John works the part-day public holiday, the employer needs to consider all relevant circumstances.

John has the option to refuse to work on Christmas Eve so he can attend the family Christmas Eve gathering which is an important social and religious event for his family.

2.3 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

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

2.4 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 that 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.

There are seven public holidays observed on a national basis – New Year's Day, Australia Day, ANZAC Day, Good Friday, Easter Monday, Christmas Day and Boxing Day. All other public holidays are determined by states and territories. As a result, jurisdictions have different numbers and types of public holidays. 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. An additional public holiday in Queensland would bring it into line with the majority of other jurisdictions in terms of the number of public holidays.

The different types of public holidays include Canberra Day (ACT), Reconciliation Day (ACT), Picnic Day (NT), Royal Hobart Regatta (Tasmania, or Recreation Day outside Hobart), Friday before Grand Final (Victoria), and Western Australian Day (WA).

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 hour 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 |

2.5 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 South Australia, the Christmas Eve and New Year's Eve part-day public holidays were introduced in 2012 as part of an agreement between the peak employer and union bodies around extended trading hours. Following the introduction of the new public holidays, in March 2013, SafeWork SA released a report it commissioned from the South Australian Centre for Economic Studies at Adelaide and Flinders Universities reviewing the changes to the Holidays Act 1910 (SA Review).

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

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

Estimated total costs of the two part-day public holidays to private sector 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. It noted that although there is no legislative guidance on what constitutes a public holiday, there is a degree of consensus on the following 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 that 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 to it being a recognised as a public holiday. The community surveys conducted as part of the review also found strong support for the rights of workers to have extra protection and entitlements on Christmas Eve. As noted above, 78% of respondents strongly agreed that those working on Christmas Eve should be paid penalty rates and 74% strongly agreed that they should have the right to refuse to work if asked to do so by their employer.

No similar measurement has been made of perceptions in the Queensland community about the significance of particular public holidays, but there is no reason to suggest that survey results in Queensland would be substantially different to South Australia.

2.6 Impacted Industries Trading on Christmas Eve

In the private sector, industries that would be impacted by the declaration of a Christmas Eve 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, Myers 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 June 2018, there were 448,725² 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, the table 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.

| ABS Statistics as at 30 June 2018 | |
|--|-----------------------------|
| Business Type | Number of Businesses |
| 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 |

² Australian Bureau of Statistics, 8165.0 Counts of Australian Businesses, including entries and exits June 2014 to June 2018

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 public holiday establishes mandatory requirements and entitlements for both employers and employees that are consistent across a whole industry or workforce.

2.7 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 about 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 that 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**.

3.0 Why should Christmas Eve be a Part-Day Public Holiday?

As outlined in earlier sections, the Christmas period, included 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.

4.0 Policy Objective

4.1 What is the policy objective of investigating the introduction of a part-day public holiday on Christmas Eve in Queensland?

The Queensland Government is considering proposed legislative amendments to declare Christmas Eve (24 December) a part-day public holiday from 6pm to 12 midnight. This proposal is being investigated as a way to enliven mandatory industrial relations arrangements which would give all Queensland workers a reasonable opportunity to have time off to observe Christmas Eve events of personal, social, religious and cultural significance or, alternatively, to ensure workers are compensated appropriately if they miss out on such events because they are working during these unsociable hours. Currently, both Federal and State industrial relations legislation afford protections to employees by providing that an employee is entitled to be absent from work on a public holiday. Further, employees are entitled to refuse to work on a public holiday under reasonable circumstances. In the event that an employee does work on a public holiday, awards and agreements provide for the payment of penalty rates (and in a minority of cases - additional annual leave or time off in lieu) as increased compensation for working at a time when they would otherwise be entitled to time off.

These protections and entitlements are not currently available to Queensland workers who are asked or required to work on Christmas Eve after 6pm, as such protections and entitlements do not apply to work times other than public holidays. In Queensland, a day or part-day only becomes a public holiday by declaring that it is to be observed as such through an amendment to the *Holidays Act 1983*.

5.0 What are the options?

5.1 What options are available to the Government?

1. **Option One:** Continues the status quo – no change to legislation.
2. **Option Two:** Legislate for voluntary employment only for all Queensland employees on Christmas Eve.
3. **Option Three:** Legislate a part-day public holiday on Christmas Eve (24 December) between 6pm and 12 midnight to take effect from 2019.

The preferred option will best achieve the policy objective and provides the greatest net benefits for the community.

5.2 Option 1: Status quo

This option continues the status quo and makes no change to legislation. No special significance would be attached to Christmas Eve in terms of working arrangements. 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, as there would be no right for workers to reasonably refuse a request from their employer to work after 6pm. There would be no increased wage impacts to either private sector employers or the government.

5.3 Option 2: Legislate for voluntary employment only for all Queensland employees 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 that 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 effect of an amendment of a state industrial law to provide for voluntary employment on a public holiday, this is not the preferred option.

Under this option, private sector workers in the federal industrial relations jurisdiction would face the same issues as they currently do regarding having time off on Christmas Eve, as there would be no right for workers to reasonably refuse a request from their employer to work.

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

This is the preferred option.

This option would see 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 proposal to start the part-day public holiday from 6pm aligns with amendments made to trading hours legislation in 2017 requiring all large retail shops to close at 6pm on Christmas Eve. These amendments followed the recommendations from the review of trading hours by the Hon. John Mickel. 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 that 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 that 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. The matters to be considered in assessing the 'reasonableness' of a request or a refusal 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.

While this option provides a clear benefit to employees that is not currently available, it also represents an increased cost to employers. As this is a new proposal, there is no statistical information on the intentions of employers to employ workers or open their businesses on a Christmas Eve public holiday based on past experience. Therefore, an estimate of the potential cost impact has been made using assumptions about business operations on the Christmas Day public holiday as a proxy for Christmas Eve. This estimate puts the cost of a part-day Christmas Eve public holiday in the range of \$41.3 million at the lower end to \$136.9 million per annum at the upper end, as outlined in Attachment A. However, it should be noted again that 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) turned out to be significantly lower than the estimates calculated when the Holiday was first proposed in South Australia. The actual costs in South Australia (around \$3-4 million in total across the public, private, and community sector) were also far lower than the costs estimated above for Queensland, even allowing for the fact that South Australia is a smaller state than Queensland and the figures are from 2012-2013.

The calculation of positive (qualitative) economic impacts on the community from observing a part-day public holiday on Christmas Eve is more difficult to assess. 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. Many in the community wish to attend church services on Christmas Eve. 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) through economic multiplier effects. The availability of penalty rates also provides a greater incentive for employees to work on Christmas Eve if they are able to do so.

6.0 What are the impacts of a part day Christmas Eve public holiday on workers, employers, the community and the government?

This section discusses the costs and benefits of legislative change on workers and their employers, and the government.

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 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 the Christmas Eve between 6pm and 12 midnight.

It is also important to note that 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 the lengthening of the cumulative public holiday period by six hours could influence a business owner's decision to open or not 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.

6.1 Impact on workers

The introduction of a part-day public holiday on Christmas Eve would give workers a valuable respite at a busy time of the year and gives them an opportunity 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 to work 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.

Under the majority of 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 those workers who accept work on Christmas Eve will get the benefit of increased penalty rates, there is the possibility that 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 public holidays 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 positive impact on workers is perhaps best illustrated below by the examples of individual workers who provided evidence to the SA review on the significance of Christmas Eve to them and their family, and the importance of it being recognised as a public holiday.³

For years now, I have made a point of Christmas Eve as the more important day for us as a family – just the six of us. I do not shop on Christmas Eve and everything is done before Christmas Eve. We go to the movies, walk on the beach, play in the playground, and go out to dinner. When we return home, we put the Christmas stockings in place, put out the all-important milk and cookies for Santa before walking around the neighbourhood to see the houses decorated with Christmas lights. [...]

This is the reason I made the choice not to work on Christmas Eve. My youngest child who is six usually goes to bed around 7pm, just that bit later on Christmas Eve, and I knew I would never look back in years to come and think “I am glad I worked at Coles filling shelves instead of being home with my children.

...

I would have been rostered to work from 7.30pm to 11pm on Christmas Eve however I chose not to work.

Most of my family live in country Victoria and it takes me about 6 hours to drive there. If I had to work Christmas Eve I would not have been able to set off until midnight and would have arrived at about 6am on Christmas morning. This would have had a massive negative impact on my Christmas Day.

Instead, I was able to leave early and arrive in time to spend some extra time with my family and have a good night’s sleep before Christmas Day.

...

My husband is Dutch and we celebrate Christmas on Christmas Eve, not on Christmas Day. Generally, we have a dinner at 5pm with more than 30 family members including grandchildren and great grandchildren. It usually goes to about 9pm and it’s the only time that everybody gets together. Our children have been brought up to respect this tradition.

Over the years it has been difficult to explain my family’s cultural tradition to my manager. [...]

I missed out on the family celebration a couple of years ago, when I was rostered on between 4pm and 7pm on Christmas Eve. I went to the family celebration after work but by that time I missed seeing my grandchildren open their presents and everyone had eaten. [...]

The new part-day public holidays are a very good idea because I officially have the option to say that I am not working late on Christmas Eve because my family are getting together for our traditional Christmas celebration

...

My husband’s family is German and they celebrate Christmas on Christmas Eve. With the new Christmas Eve public holiday both me and my son were able to elect not to work on Christmas Eve to celebrate Christmas with my husband’s side of the family.

...

My partner’s family have their big Christmas celebration on Christmas Eve. In the past both my partner and I have missed out on part or all of this celebration due to work commitments.

The new part-day public holiday on Christmas Eve means that we will be able to attend this celebration in future.

...

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

6.2 Impact on employers

Employers would be potentially impacted by higher wage costs of penalty rates (mentioned above) that are 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. However, the evidence from the SA review was that most businesses opted not to impose an additional surcharge on their consumers, suggesting that this form of impact was small.

Alternatively, 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, however, as this is a new proposal, there is no data 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.

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.

The wages impact on an employer is illustrated in Case Study 2.

Case Study 2

Employer A has 5 level 1 casual employees working on Christmas Eve from 6pm to 12 midnight. Under the *Fast Food Industry Award - 2010* (the Award), employees are paid \$25.99 per hour. Evening work between 10pm and 12 midnight Monday to Friday is paid at \$28.07 per hour. The award currently provides for different penalty rates for casuals working on Saturdays and Sundays. As from 1 July 2019, the award will be varied and a penalty rate of 50% (inclusive of casual loading) will apply on both Saturdays and Sundays.

The following calculations have been made based on a 50% penalty rate for both Saturday and Sunday using the rates of pay effective from 1 July 2018. The rates applicable on Christmas Eve 2019 will be subject to any increase in accordance with the 2019 Annual Wage Review.

Currently Employer A would have to pay the following wages expenses on Christmas Eve:

- If Christmas Eve fell on a weekday - 5 staff x 4 hours x \$25.99 per hour plus 5 x 2 hours x \$28.07 = \$800.50 total casual wages
- If Christmas Eve fell on a weekend - 5 staff x 6 hours x \$31.19 per hour = \$935.70 total casual wages

Under the proposal to legislate a part-day public holiday, casual employees would be entitled to be paid penalty rates at a rate of 250% (inclusive of the casual loading) on Christmas Eve. Total wages expenses for Christmas Eve under the proposal would be as follows:

- 5 staff x 6 hours x \$51.98 per hour = \$1559.40 total casual wages

The proposal therefore impacts Employer A by an estimated \$758.90 (94.8% increase) on a weekday and \$623.70 on a weekend (66.7% increase).

6.3 Impact on the community

There are a number of potential beneficial 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 (e.g. for spending at post-Christmas sales), as well as providing a greater incentive for workers who are able to work.
- 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.

Preliminary estimates of additional wages costs to the economy if Christmas Eve is a public holiday from 6pm to 12 midnight is in the range of \$41.3 million to \$136.9 million per annum for the whole of the Queensland workforce (including the public sector). For the private sector, it is estimated to be in the range of \$31.9 million to \$115.8 million per annum. As noted previously in the paper, evidence from the SA review suggests the cost impact may not be as great as anticipated.

6.4 Impact on the 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 evening of Christmas Eve.

The estimate of increased wages costs for the public sector is in the range of \$9.4 million to \$21.1 million per annum. **Attachment A** shows the method by which these estimations were calculated.

7.0 Preliminary recommendation of the preferred option

The preferred 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*.

The purpose of this Regulatory Impact Statement is to investigate and assess the costs and benefits to workers, employers, the community and government of observing a part-day public holiday on Christmas Eve (24 December) in Queensland.

It should be noted that the South Australian Government commissioned a review of the legislation that 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 that it intends to make any changes to the current arrangements in South Australia.

7.1 Is the recommended option consistent with COAG competition principles and Queensland's fundamental legislative principles?

*The Queensland Government Guide to Better Regulation*⁴ requires that the recommended option in a consultation paper of this nature should be consistent with:

- clause 5 of the Council of Australian Governments' (COAG's) 1995 Competition Principles Agreement⁵; and
- Section 4 of the Queensland *Legislative Standards Act 1992*.

⁴ Queensland Treasury, *The Queensland Government Guide to Better Regulation*, 2016, p. 15.

<https://s3.treasury.qld.gov.au/files/guide-to-better-regulation.pdf>

⁵ See the website of COAG at <https://www.coag.gov.au/about-coag/agreements/competition-principlesagreement>

7.2 Consistency with competition principles

The COAG Competition Principles Agreement requires that proposed legislation should not restrict competition unless:

1. it can be demonstrated that the benefits of doing so outweigh the costs; and
2. the policy objective can only be achieved by restricting competition.

Any proposal to declare Christmas Eve a part-day public holiday is likely to impose a cost on a business that chooses to operate from 6pm to 12 midnight through increased wages costs to employees. However, these costs may be offset by the benefits to the community and workers to have time off to observe events of personal, social, religious and cultural significance.

Consideration of public submissions provided through this consultation process will inform whether COAG Competition Principles can be satisfied, noting that mandating a part day public holiday through legislation is the only way to give effect to a declaration of a public holiday in Queensland.

7.3 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.

8.0 How would the recommended option be implemented, administered and evaluated?

8.1 Implementation

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 public holiday (between 6pm and midnight). It is considered that this timeframe will provide sufficient opportunity for businesses to prepare and potentially make decisions on whether to open or close.

It is anticipated that 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 considered to be:

- A comprehensive consultation process, including this Consultation RIS.
- The introduction, passage and assent of an appropriate amendment Bill.
- A public awareness campaign to provide information on any changes.

8.2 Monitoring, evaluation and review

Any legislative changes would be subject to Government scrutiny. Consultation will continue with stakeholders in the development and consideration of this proposal.

References

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

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*

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>

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 Survey⁶ 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 |
| All industries | 419086 | 321150 | 333853 | 321985 | 301513 | 369275 | 94318 | 325551 | 309225 | 282322 | 273237 | 326462 | 5.9 |

⁶ 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 that 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 that 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 then 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 |
| All industries | 94318 | 9.08% | 108596 | 325551 | 9.08% | 360121 |

| 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 |
| All industries | 1,605.50 | 42.25 | 253.50 | 633.75 | 380.25 |

| 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 |
| All industries | 380.25 | 108596 | 41,293,530.73 | 360,121.31 | 136,936,129.03 |

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.