



Restaurant  
& Catering

SAVOUR  
AUSTRALIA



2 September 2019

Christmas Eve Part-Day Public Holiday Consultation

Office of Industrial Relations

By Email: [publichol@oir.qld.gov.au](mailto:publichol@oir.qld.gov.au)

Dear Sir, Madam

Restaurant & Catering Australia (RCA) appreciates the opportunity to provide a submission regarding the Queensland Government's proposal to a part-day public holiday on Christmas Eve (24 December) from 6pm to 12 midnight. It should be noted from the outset that on behalf of the Restaurant, Café and Catering Industry, RCA does not support this proposal.

In principle RCA does not object to the gazetting of new public holidays. Public holidays are an important part of Australian culture and society. However, RCA does object to one of the important consequences of new public holidays – higher wage costs borne disproportionately by our industry through penalty rates that unfairly penalise small businesses who might seek to open their door and service customers.

RCA believes that the primary effect of this proposal on our industry will be the forced closure of restaurants, cafes and catering businesses.

### **Background**

Restaurant & Catering Australia is the national industry association representing the interests of more than 45,000 restaurants, cafés and catering businesses across Australia. RCA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment.

RCA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability and sustainability. This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the restaurant experience to the public.



RESTAURANT & CATERING INDUSTRY ASSOCIATION

PO Box 121, SURRY HILLS NSW 2010 T: 1300 722 878 F: 1300 722 396 E: [info@restaurantcater.asn.au](mailto:info@restaurantcater.asn.au)  
[www.rca.asn.au](http://www.rca.asn.au)

HOSTPLUS

RCA notes that Queensland currently has the second highest number of public holidays of any Australian state with 12 days gazetted as public holidays.

### **Queensland's Hospitality Industry**

Australian Bureau of Statistics Data shows that as at June 2018, the most recent Count of Australian Businesses showed 6,173 Cafes and Restaurants operating across Queensland. The most recent Census data shows that 49,488 workers derive their primary source of income from Cafés and Restaurants, making up 2.3% of the total workforce for the state of Queensland. This sector represents the fourth largest employment sector by employed people in the state of Queensland.

RCA notes that the Regulatory Impact Statement released by the Office of Industrial Relations shows the restaurant and café sector will be disproportionately affected by the proposed part-day public holiday, with more businesses than any other subsector of the Queensland economy likely to be impacted by the introduction of a public holiday.

Data from the RCA 2018 Benchmarking Survey shows wages and salaries continue to be the highest source of cost within the industry, representing 39 per cent of overall business costs. Total staff costs including wages, payroll tax, workers compensation and training now represent 48 per cent of total business costs which has increased from 44.2 per cent in 2017.

### **Nearly a quarter of Restaurants choose to close rather than trade on Public Holidays**

RCA notes the following statement contained within the Regulatory Impact Statement:

*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.*

Based on data obtained directly from the Restaurant and Catering Industry, RCA strongly disputes this statement. According to RCA's 2018 Industry Benchmarking Report, 24.1 per cent of businesses surveyed indicated that they opened on Sundays but closed on public holidays. Significantly, this was the highest percentage recorded over the last five years the Benchmarking Survey has been conducted.

The proposed changes drastically increase the cost of opening a restaurant on Christmas Eve. For 2019 and 2020, Christmas Eve falls on a Tuesday and a Thursday respectively, these days would generally be considered standard working days and evening work considered standard and reasonable within the restaurant and café industry.

For hospitality businesses, the decision to implement new public holidays adds another day to the calendar in which it becomes unprofitable for them to trade as it represents a nearly doubling of wage and salary costs, which make up nearly 40% of the total cost of the business.

Under the Restaurant Award, staff wages on public holidays incur penalty rates of 225 per cent for full time and part time staff and 250 per cent for casuals. Consequently, many café and restaurant businesses are forced to close rather than incur a loss on that day's trade. Whilst the business is unable to make a profit operating on a public holiday, it also means that casual staff members miss out on shifts due to the lack of trade.

For the restaurant industry, a part day public holiday that only impacts evening trade represents a significant new burden when businesses are considering whether not to trade. Finally, dinner or evening trade represents the most profitable time for the hospitality industry and seeking to penalise businesses who would otherwise remain open on Christmas Eve disproportionately affects the hospitality industry over other sectors such as retail trade.

One of the primary purposes behind introducing a new public holiday is to better compensate workers who do work public holidays. Instead, the true impact of this is that workers in nearly a quarter of Queensland's restaurants would not be compensated at all due to these restaurants closing on Christmas Eve representing lost wages for workers and lost opportunity for businesses to open and serve their customers.

It should be noted that if a restaurant was to close its doors once this new proposal has been introduced, it is the business who would feel the negative consequence from unhappy prospective customers who would have otherwise been willing to patron their restaurant.

Whilst RCA notes that state governments do not assume any direct responsibility for wage-setting, it is still possible to reduce the operating costs of hospitality businesses by not gazetting any additional public holidays.

### **Nearly two-thirds of Restaurants who stay open on Public Holidays use Surcharges**

The other major impact of the proposed Christmas Eve Part-Day Public Holiday is higher costs to consumers. RCA's 2018 Benchmarking Report found that 60 per cent of businesses also indicated that they charged a public holiday surcharge compared to 2017's survey of 47.7 per cent, indicating the increased difficulty of making a profit by trading on these days. Of the respondents who reported that they applied a surcharge on Public Holidays, most indicated that they did so at either 10 or 15 per cent.

It should be noted that RCA supports the rights of restaurant businesses to introduce surcharges on public holidays to reflect the increased cost of doing business and providing services to customers.

The Regulatory Impact Statement released with this proposal indicates this is a consideration against the introduction of the public holiday. However, the statement relied upon the South Australian Review of their own part-day public holiday, introduced in 2012, to suggest that the impact on consumers was small. Historical data obtained by RCA through our yearly benchmarking reports strongly disputes this. For our 2016, 2017 and 2018 benchmarking reports, restaurant industry data indicates that the majority restaurant businesses that choose to stay open on public holidays to introduce surcharges of between 10% and 15%.

Whilst surcharging is often needed to ensure restaurants can open, and without they would likely either operate at a loss or choose to close on that day, the unfortunate reality is consumer sentiment towards surcharges in the hospitality industry remains poor, and where restaurants do

try and remain open to provide choice for customers, they are often met with negativity and derision by consumers who are forced to bear the increased costs.

The effect of a new public holiday on Christmas Eve will bring significant costs to the restaurant sector, and restaurants will have to choose who bears this new cost, either the businesses themselves who are choosing to open on Christmas Eve and serve their customers (as they have done previously without the increased costs of public holiday wages), or the customers themselves through surcharging.

### **The proposal puts small businesses at a competitive disadvantage**

According to RCAs 2018 Benchmarking Survey 2018, the overwhelming majority of survey respondents indicated they were small businesses, with 58.9 per cent of businesses indicating that they employed between 0 and 19 employees. According to the ABS Counts of Australian Businesses, including Entries & Exits, Jun 2013 to Jun 2018, 92.1 per cent of all restaurant, café and catering businesses in Australia are small or non-employing businesses. Most respondents to the survey (67.4 per cent) also indicated that they owned only one business.

Compared to larger hospitality or food retail organisations, these businesses are more exposed to penalty rates for two reasons. Firstly, profit margins for small hospitality businesses are smaller and less resilient to significant changes such as higher required rates of pay and secondly, they are not able to enter into workplace agreements that reduce the impact of penalty rates that larger hospitality chains can.

A small restaurant operating in Queensland will be required to pay the full 225% or 250% penalty rate to their staff if they chose to open on Christmas Eve, where larger organisations who have negotiated an Enterprise Bargaining Agreements (EBA) are required to pay less on public holidays. For example:

- Nando's Restaurants across Australia have negotiated an EBA containing a flat wage rate across their business with no penalty rates payable on public holidays;

- Ribs and Burgers Restaurants have negotiated an EBA where only a 125% loading is payable on public holidays.

This means that the Christmas Eve Part-Day Public Holiday puts smaller restaurants at a competitive disadvantage to larger chain restaurants due to their greater exposure to full public holiday penalty rates.

### **Queensland's proposal is out of step with SA and NT examples**

Another issue of concern to RCA regarding the proposed Christmas Eve Part-Day Public Holiday is that it is out of step with other examples across Australia. The proposal seeks to commence the public holiday at 6pm on Christmas Eve, while existing examples in both SA and NT commence their Christmas Eve part-day public holidays from 7pm.

It is concerning that no discussion of the merits or decisions relating to the 6pm commencement is available in the Regulatory Impact Statement. RCA recommends that the seemingly arbitrary decision to commence the public holiday from 6pm be more clearly articulated.

Finally, if the proposed Christmas Eve Part-Day Public Holiday does proceed, RCA strongly recommends that the proposal be amended to set commencement from 7pm rather than 6pm, bringing QLD into line with other state jurisdictions.

### **Conclusion**

It is the strong view of RCA on behalf of the restaurant, café and catering industry, that the proposal to introduce a part Christmas Eve Part-Day Public Holiday would disproportionately affect the hospitality industry and would leave restaurants worse off.

Data presented to the Office of Industrial Relations shows that when presented with a newly introduced public holiday, nearly a quarter of restaurants close, and nearly two thirds of those who do stay open pass on surcharges of between 10% and 15%.

This proposal means that restaurants who for decades have opened on Christmas Eve to serve

customers are now penalised for doing so. Instead they now left with the choice to either run at a loss, to choose not to trade on Christmas Eve altogether or to introduce a surcharge to the frustration of their customers.

None of these options present a workable or reasonable choice to restaurant owners in QLD. It is for the reasons outlined that RCA does not support this proposal.

If you wish to discuss RCA's submission further, do not hesitate to contact Tom Green, Manager – Policy and Government at RCA by email at [tom@rca.asn.au](mailto:tom@rca.asn.au).

RCA again thanks you for the opportunity to make this submission.

Regards

A handwritten signature in black ink, appearing to be 'Wes Lambert', with a stylized, cursive script.

Wes Lambert CPA FGIA MAICD  
Chief Executive Officer  
Restaurant and Catering Australia