

# Holidays Amendment Bill 2010

## Explanatory Notes

### Short Title

The short title of the Bill is the *Holidays Amendment Bill 2010*.

### Policy Objectives

The *Holidays Act 1983* (the Act) prescribes those days which are public holidays. ‘25 December (Christmas Day)’ and ‘1 January (New Years Day)’ are listed as public holidays. The Act also provides for the substitution of other days as public holidays.

In 2010 Christmas Day falls on a Saturday and without an amendment of the Act would not be a public holiday because Tuesday 28 December was appointed as a substitute public holiday (as notified in the Government Gazette of 28 August 2009).

In 2011 New Years Day falls on a Saturday. A substitute public holiday has not yet been appointed for that day but in accordance with past precedent a substitute public holiday would normally be appointed on the following Monday 3 January in such circumstances.

When a day is appointed as a public holiday, workers are entitled to be absent from their employment on the day and still be paid their base rate of pay for their ordinary hours of work. If a worker agrees to an employer’s reasonable request that they work on a public holiday they must be paid any penalty rates prescribed in the relevant award or agreement (usually, double time and a half).

Without an amendment to the Act, workers working on Saturday 25 December 2010 and Saturday 1 January 2011 would receive only their usual Saturday payment for the day and would not have the right of refusal to work on the day.

The Act currently does not provide for additional public holidays and does not permit the Minister to appoint an additional public holiday. An amendment to the Act is required to permit the appointment of additional public holidays for Christmas Day 2010 and New Years Day 2011.

## **How the Bill achieves the policy objectives**

Notwithstanding the referral of Queensland's private sector industrial relations jurisdiction to the Commonwealth, the *Fair Work Act 2009* (Cwlth) (FW Act) recognises as a public holiday any day declared or prescribed under a law of a State to be observed within the State as a public holiday or any day substituted for a public holiday.

Therefore, the Act still determines what days are public holidays.

The appointment or prescription of a public holiday under the Act activates private sector workers' public holiday entitlements (e.g. paid day off, penalty rates for work) under the FW Act and the awards and agreements made under it.

Similarly, for public sector and local government workers remaining in the Queensland industrial relations jurisdiction, the appointment or prescription of a public holiday under the Act as amended by this Bill will activate public holiday entitlements (e.g. paid day off, penalty rates for work) under the *Industrial Relations Act 1999* and the awards and agreements made under it.

The Bill proposes amendment of the Act.

## **Alternative ways of achieving the policy objectives**

An amendment to the Act to provide for observance of public holidays for Christmas Day on both 25<sup>th</sup> and 28<sup>th</sup> December 2010 and for New Years Day on 1<sup>st</sup> and 3<sup>rd</sup> January 2011 activating public holiday entitlements in the relevant industrial relations legislation, award or agreement is considered to be the most appropriate way to ensure workers are treated equitably and consistently in respect of public holidays for Christmas Day 2010 and New Years Day 2011.

It is possible for the wage rates on any day - including public holidays or days that would have been a public holiday but for the appointment of a substitute day - to be determined by negotiation between unions and employer organisations for inclusion in the relevant award or agreement. However, it is considered that this approach would lead to inconsistency in public holiday entitlements across the workforce.

### **Administrative cost to government of implementing the Bill**

The appointment of an additional public holiday in this situation increases costs to employers through the potential for payment of public holiday penalty rates on both Saturday 25 December and Tuesday 28 December for Christmas Day 2010 and on both Saturday 1 January and Monday 3 January for New Years Day 2011.

### **Consistency with Fundamental Legislative Principles**

The Bill should not result in any breach to fundamental legislative principles.

### **Consultation carried out in relation to the Bill**

Key government agencies have been consulted on the proposed amendment.

### **Consistency with legislation of the Commonwealth or another State**

Although Queensland's private sector industrial relations jurisdiction has been referred to the Commonwealth, the *Fair Work Act 2009* (Cwlth) recognises as a public holiday any day declared or prescribed under a law of a State to be observed within the State as a public holiday. Therefore, this Bill's amendment of the Act to provide for observance of a public holiday for Christmas Day on both 25<sup>th</sup> and 28<sup>th</sup> December 2010 and for New Years Day on both 1<sup>st</sup> and 3<sup>rd</sup> January 2011 will activate public holiday entitlements for those days under federal modern awards. These entitlements apply unless there is an agreement between an employer and employee to substitute a day for a day that would otherwise be a public holiday.

In respect of the other State and Territory jurisdictions:

- for Christmas Day 2010, New South Wales (NSW) and Western Australia (WA) have arrangements in place maintaining a public holiday on 25 December as well as appointing an additional day on 27 December (WA – by standing legislation) or 28 December (NSW – by special proclamation). All other jurisdictions have standing legislative arrangements to substitute Monday 27 December as the public holiday for Christmas Day.

- for New Years Day 2011, New South Wales (NSW), Victoria (Vic) and Western Australia (WA) have arrangements in place maintaining a public holiday on 1 January as well as appointing an additional day on 3 January (WA and Vic – by standing legislation, NSW – by special proclamation). All other jurisdictions have standing legislative arrangements to substitute Monday 3 January as the public holiday for New Years Day.

## Notes on Provisions

### Short Title

Clause 1 provides that this act may be cited as the *Holidays Amendment Act 2010*.

### Act Amended

Clause 2 provides that this part amends the *Holidays Act 1983*.

### Insertion of new section 9

Clause 3 inserts new section 9 ‘Particular public holidays in 2010’ and new section 10 ‘Particular public holidays in 2011’ into the Act

Sub-section 9(1) provides for the new section to apply despite the Gazettal (dated 28 August 2009) of Tuesday 28 December 2010 as the substitute public holiday for Christmas Day in 2010.

Sub-section 9(2) provides that both 25 December 2010 and 28 December 2010 are to be observed as public holidays for Christmas Day in 2010.

Sub-section 9(3) clarifies that both 25 December 2010 and 28 December 2010 are to be recognised as public holidays in relation to any Christmas Day public holiday entitlements in 2010 under the *Industrial Relations Act 1999* or industrial instruments (e.g. awards or agreements) made under that act.

Sub-section 10(1) provides that both 1 January 2011 and 3 January 2011 are to be observed as public holidays for New Year’s Day in 2011.

Sub-section 10(2) clarifies that both 1 January 2011 and 3 January 2011 are to be recognised as public holidays in relation to any New Year's Day public holiday entitlements in 2011 under the *Industrial Relations Act 1999* or industrial instruments (e.g. awards or agreements) made under that act.

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