Restaurant & Catering

Holidays and Other Legislation Amendment Bill 2019

R&CA Submission

October 2019

Restaurant and Catering Australia

Restaurant & Catering Australia (R&CA) is the national industry association representing the interests of more than 47,000 restaurants, cafés and catering businesses across Australia. The café, restaurant and catering sector is vitally important to the national economy, generating over $37 billion in retail turnover each year as well as employing 450,000 people. Over 92 per cent of businesses in the café, restaurant and catering sector are small businesses, employing 19 people or less.

R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment. R&CA 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.

Cover images courtesy of Tourism Australia:

Top (left corner): Aqua Dining Restaurant, Milsons Point, Sydney, Anson Smart.
Top (right corner): Hutchings Camps Pty Ltd, Paperbark Camp, Jervis Bay, NSW.
Middle (centre): Pretty Beach House, Bouddi Peninsula, NSW, Anson Smart.
Middle (top): Cruise Bar, The Rocks, Sydney, NSW, Anson Smart.
Middle (bottom): Tourism Australia, Hunter Valley, SDP Media.
Bottom (right corner): Tourism Australia, Balmoral Beach, Sydney, NSW, Ellenor Argyropou.
Bottom (left corner): Tourism Australia, Byron Beach Café, Byron Bay, NSW, Hugh Stewart.

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Introduction

Restaurant & Catering Australia (R&CA) appreciates the opportunity to provide a submission to the QLD Parliament's Education, Employment and Small Business Committee's inquiry into the *Holidays and Other Legislation Amendment Bill 2019*, which gives effect to the Queensland Government's proposal to introduce 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, R&CA does not support this proposal.

In principle R&CA does not object to the gazetting of new public holidays. Public holidays are an important part of Australian culture and society. However, R&CA 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.

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

R&CA believes that the primary effect of this Bill on our industry will be the forced closure of restaurants, cafes and catering businesses.

We are also concerned that after an extensive consultation process, the only reasons given for supporting the introduction of the Bill, despite clear opposition, was the number of submissions supporting the proposal outnumbered the number against. The figure quoted by Ministerial media release showed 1271 (or 71 per cent) were in favour.

R&CA clearly sets out below why this bill should not be supported and a genuine consultation with industry take place to better understand the costs and impacts of introducing a part-day Christmas eve public holiday.

Restaurant, Café & Catering Industry in Queensland

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.

R&CA notes that the Regulatory Impact Statement released by the Office of Industrial Relations shows the restaurant and café sector will be disproportionally 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 R&CA 2019 Benchmarking Survey shows wages and salaries continue to be the highest source of cost within the industry, representing 41 per cent per cent of overall business costs. Total staff costs including wages, payroll tax, workers compensation and training now represent 50 per cent of total business costs which has increased from 48 per cent in 2018 and 44.2 per cent in 2017.

Opposition to Part-Day Christmas Eve Public Holiday

One in three Restaurants choose to close rather than trade during Public Holidays

R&CA 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, R&CA strongly disputes this statement. According to R&CA's 2019 Industry Benchmarking Report, 21.3 per cent of businesses surveyed indicated that they opened on Sundays but closed on public holidays, 12.3 per cent stated that they were closed on Sundays and public holidays and 5.8 per cent said that they are open some Sundays and public holidays but not all.

This means that, based on data obtained directly from businesses in the restaurant industry, one in three restaurants choose to close rather than open their doors and serve customers.

Almost two-thirds of restaurants close of Christmas Day

The 2019 Benchmarking survey also asked what percentage of restaurants chose to close on Christmas Day. 62.6 per cent of respondents indicated that they did not trade on Christmas day, this represents the highest number of business choosing to stay closed of any public holiday across Australia and more than double the second highest, New Year's Day, where only 29.8 per cent of businesses remain closed.

As it is reasonable to assume that those businesses who close on Christmas day will remain closed once a public holiday is introduced on Christmas Eve, it can be assumed that nearly two thirds of all Queensland restaurants will close on Christmas Eve.

Increased wage costs stop restaurants from opening

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 over 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 closed 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 bill has been passed by the QLD Parliament, it is that business who would feel the negative consequence from unhappy prospective customers who would have otherwise been willing to patron their restaurant, not the QLD Government.

Whilst R&CA 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. R&CA's 2019 Benchmarking Report found that 60 per cent of businesses also indicated that they charged a public holiday surcharge compared to the same number in the 2018 survey and 47.7 per cent in the 2017 survey, indicating the increased difficult of making a profit by trading on these days

Of the respondents who reported that they applied a surcharge on Public Holidays, a majority indicated that they did so at either 10 or 15 per cent.

It should be noted that R&CA 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 the original 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 R&CA through our yearly benchmarking reports strongly disputes this.

For our 2016, 2017, 2018 and 2019 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 o 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 choose 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 Bill as introduced puts small businesses at a competitive disadvantage

According to R&CAs 2018 Benchmarking Survey 2019, the overwhelming majority of survey respondents indicated they were small businesses, with 73.5 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 hospitability 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:

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

2. Ribs and Burgers Restaurants have a negotiated 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 approach is out of step with SA and NT examples

Another issue of concern to R&CA regarding the proposed Bill is that is out of step with other examples across Australia. The Bill 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. R&CA 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, R&CA strongly recommends that the Bill 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 R&CA on behalf of the restaurant, café and catering industry, that the Holidays and Other Legislation Amendment Bill 2019, which seeks to give effect to the QLD Government's 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 and to the Committee shows that when presented with a newly introduced public holiday, a third of restaurants close, and when compared to the most comparative existing public holiday, being Christmas Day, nearly two-thirds of restaurants choose to close their doors. For those few who do remain open, 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.

This Bill is neither workable nor reasonable to restaurant owners in QLD. It is for the reasons outlined that R&CA does not support this Bill.