

# **Holidays and Other Legislation Amendment Bill 2011**

**Report No. 6  
Industry, Education, Training and Industrial Relations  
Committee  
November 2011**

## **Industry, Education, Training and Industrial Relations Committee**

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### **Acknowledgements**

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its Inquiry. In particular the Committee acknowledges the assistance provided by the Office of Fair and Safe Work within the Department of Justice and the Attorney-General.

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## Abbreviations

ADF	Australian Defence Force
ARL	Australian Rugby League
DET	Department of Education and Training
DLGP	Department of Local Government and Planning
DJAG	Department of Justice and the Attorney-General
QCU	Queensland Council of Unions
QIRC	Queensland Industrial Relations Commission
RSL	Returned Services League
SPA	<i>Sustainable Planning Act 2009</i>
UDA	Urban Development Area
ULDA	Urban Land Development Authority
ULDA Act	<i>Urban Land Development Authority Act 2007</i>

## Chair's Foreword

The Industry, Education, Training and Industrial Relations Committee received a referral of the Holidays and Other Legislation Amendment Bill 2011 from the Legislative Assembly on 16 November, 2011. The Legislative Assembly set a reporting date of 28 November for the Committee's report on this Bill, to ensure that the Bill can be passed in time to apply for the forthcoming Christmas and New Year holiday period in December and January 2011 – 2012.

The Bill makes permanent provision for changes that last year, were enacted specifically for the 2010 – 2011 holiday period, where all three holidays fell on weekend days; and it would also provide for an additional public holiday in 2012 and a permanent move of the Queen's Birthday holiday from June to October each year.

The timing for reporting on the Bill is also relevant to other changes proposed in the Bill, relating to RSL and service clubs. While not directly relevant to the key public holiday issues that are the main focus of the Bill, the reduced administrative requirements which would result would be particularly beneficial to operators over the busy festive season.

The Bill contains other unrelated legislative changes, relating to land development in declared Urban Development Areas.

The Committee did not agree on all elements of the Bill and so the report recommendation necessarily reflects the majority view of the Committee.

The short time frame allowed for consideration of the Bill has limited the Committee's ability to fully consider the policy issues; and further, the Committee has been unable to conduct its own consultation with stakeholders. Members were also limited in their ability to seek any specific advice they might have wished to seek from constituents. However, the Department of Justice and the Attorney-General has provided the Committee with the submissions the Government received during its own extensive consultation on proposed changes to public holiday arrangements. The Committee has therefore relied on these to inform it of public opinion.

On behalf of the Committee, I thank the staff of the Department of Justice and the Attorney-General for their assistance in our meeting the challenging timeframe for this Inquiry.

The Committee recommends by majority vote that the Bill proceed without amendment.



Kerry Shine MP  
**Chair**

November 2011

## Executive Summary

This report presents the recommendations and findings of the Committee's Inquiry into the Holiday and Other Legislation Amendment Bill 2011.

On 15 November 2011 the House referred the Bill to the Legal Affairs, Police, Corrective Services and Emergency Services Committee for consideration and report, it having been introduced on that day by Hon Cameron Dick MP, Minister for Education and Industrial Relations. On 16 November 2011 the House subsequently referred the Bill to the Industry, Education, Training and Industrial Relations Committee and set a reporting date of 28 November 2011.

This date was set to enable the Bill to be debated in Parliament in time for enactment before the Christmas – New Year holiday period of 2011 – 2012. The benefits of the public holiday proposals contained in the Bill, and the proposals around RSL and service clubs can thus be realised by those they affect, during this forthcoming holiday period.

The Committee would like to thank all of those who have informed the Committee's deliberations: officers from the Office of Fair and Safe Work, Department of Justice and the Attorney-General; those who contributed to the Government's consultation process in respect of holidays and whose contribution has been made available to the Committee; as well as the Committee's secretariat and the Technical Scrutiny of Legislation secretariat within Parliamentary Services.

The Bill seeks to:

- move the observation of the Queen's Birthday public holiday from June to October each year; providing for a special June holiday in 2012 to observe the Queen's Diamond Jubilee and to create a transition period between now and June 2013 for events traditionally held on the June long weekend; and
- declare a public holiday on the actual date of the holiday in respect of Christmas Day, Boxing Day and New Year's Day. Under current legislation, when these dates fall on a Saturday or a Sunday, as two of them will in 2011 – 2012, the public holiday and associated penalty rates of pay are observed on a day in the following week. The Bill would provide that both the actual day and the substitute day in the following week, are public holidays – as occurs in other states, and as occurred in Queensland last Christmas and New Year.

The Bill also contains measures that are unrelated to the public holidays issue. These would:

- enable RSL club members and Australia Defence Force members to enter any RSL or services club in Queensland without signing in; and
- enable clubs to set their own rules about requiring members of clubs to sign in as visitors when they visit clubs with reciprocal membership.

A third component of the Bill relates to the ability of private land developers to enter into pre-sales contracts – to 'sell off the plan' – when the land in question is part of a designated Urban Development Area. Their ability to do so is currently restricted, but the Bill would remove that restriction, supporting the Urban Land Development Authority in achieving its objective of bringing land to the market quickly; and to enable the government to provide housing in areas experiencing housing affordability pressures.

The clubs and land sales components of the Bill appear, based on the stakeholder submissions provided by the Government to the Committee, to be uncontroversial and generally supported. While the Committee's view is that the proposals appear to be sound, it has not been able in the time allowed to make a full assessment of the broader implications.

The Government (through DJAG) advised the Committee that 24,505 responses to its survey on public holiday changes were received, along with 53 individual submissions.<sup>1</sup>

Committee members were particularly focused on two key elements of the Bill: the proposal to move the Queen's Birthday holiday to October in 2012 and create a one-off holiday in June 2012 to recognise the Queen's Diamond Jubilee; and the question of creating additional public holidays where Christmas Day, Boxing Day or New Year's Day fall on a weekend.

The information provided by the Government indicates to the Committee that while the community in general strongly supports the move of the Queen's Birthday public holiday from June to October, concerns are held by organisers of events that are traditionally associated with the June long weekend. Some Committee members strongly shared this concern.

In respect of declaring public holidays where Christmas Day, Boxing Day and New Year's Day fall on a Saturday or Sunday as well as the substitute day/s in the following week, the key benefit is that it enables people to celebrate these significant holidays with their families and friends. The key concern is that where businesses operate and people choose to work on those days, employers would be required to pay public holiday penalty rates on more days than allowed for under the current law (though less than for last year), at a time when many businesses are facing economic pressure.

While the Committee by majority vote recommends that the Bill proceed without amendment, ultimately this is a decision to be taken by the Parliament. The Committee's report attempts to highlight some of the arguments behind each position to support that parliamentary decision.

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<sup>1</sup> NB: the Discussion Paper that formed the basis of the Government's consultation on this matter also included proposals to make changes to school holidays and such changes have subsequently been announced by the Government. These changes did not require legislative amendment, and have been announced by the Government.

## Recommendations

**The Committee recommends that the Bill proceed without amendment.**



## 1. Introduction

### 1.1 The role of the Committee

The Industry, Education, Training and Industrial Relations Committee (the Committee) is a bipartisan portfolio committee of the 53<sup>rd</sup> Queensland Parliament established by motion of the House on 16 June 2011. It has responsibility for the portfolio areas of tourism, manufacturing, small business, state development and trade, the Coordinator-General, education, employment, skills and training, workplace health and safety, industrial relations and retail.

Section 93 (1) of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider:

- The policy to be given effect by the legislation
- The application of fundamental legislative principles and
- For subordinate legislation – its lawfulness.

### 1.2 The Committee's processes

#### Referral

On 15 November 2011, the House referred the [Holidays and Other Legislation Amendment Bill 2011](#) (the Bill), introduced by Hon Cameron Dick MP, Minister for Education and Industrial Relations, to the Legal Affairs, Police, Corrective Services and Emergency Services Committee for consideration and report. On 16 November the House subsequently referred the Bill to the Industry, Education, Training and Industrial Relations Committee and set a reporting date of 28 November 2011. The timeframe was determined by the Government's wish to have the new legislation in place for the coming Christmas and New Year holiday period. The Committee's consideration of the Bill in respect of its policy implications has therefore been very limited. In addition, the Committee has considered advice on the Bill's conformance with fundamental legislative principles listed in section 4 of the [Legislative Standards Act 1992](#).

#### Consultation

As it was unable to undertake its own consultation in the time allowed, the Committee considered the submissions provided to government agencies relevant to the Bill. During September and October 2011 the Government held a public consultation process in respect of holidays. It published a discussion paper titled 'Getting the Balance Right: A proposal on holidays in Queensland'. The discussion paper contained links to an online survey, and the survey was also widely advertised in the media. A total of 24,505 responses to the online survey were received, as well as 53 individual submissions responding to the discussion paper.

The Committee has relied on the submissions to the Government's consultation process to inform it of public opinion.

#### Departmental briefing

The Committee has not been able to receive a formal briefing in the time allowed for consideration of the Bill. However it has sought and received verbal advice from the

Department of Justice and the Attorney-General (DJAG) in the preparation of this report, and thanks officials of that agency, and in particular Mr Tony James, for their assistance.

### **1.3 Policy objectives of the Holidays and Other Legislation Amendment Bill 2011**

The Bill seeks to:

- move the observation of the Queen's Birthday public holiday from June to October each year to spread public holidays more evenly through the year; providing for a special June holiday in 2012 to observe the Queen's Diamond Jubilee. This would also create a transition period between now and June 2013 for events traditionally held on the June long weekend; and
- declare a public holiday on the actual date of the holiday in respect of Christmas Day, Boxing Day and New Year's Day. At present when these dates fall on a Saturday or a Sunday, as two of them will in 2011–2012, the public holiday and associated penalty rates of pay are observed on a day in the following week. The Bill would provide that both the actual day and the substitute day in the following week, are public holidays – as occurs in other states.

The Bill also contains measures that are unrelated to the public holidays issue. These would:

- enable RSL club members and Australia Defence Force members to enter any RSL or services club in Queensland without signing in; and
- enable clubs to set their own rules about requiring members of clubs to sign in as visitors when they visit clubs with reciprocal membership.

A third component of the Bill relates to the ability of private land developers to enter into pre-sales contracts – to sell 'off the plan' – when the land in question is part of a designated Urban Development Area (UDA). Their ability to do so is currently restricted, but the Bill would remove that restriction, supporting the Urban Land Development Authority (ULDA) in achieving its objective of bringing land to the market quickly; and enabling the government to provide housing in areas experiencing housing affordability pressures.

#### **Amendments to the *Holidays Act 1983***

##### **Move the Queen's Birthday holiday from June to October**

The Queen's Birthday holiday is currently held on the second Monday in June in Queensland and in all other states and territories except Western Australia. The majority of other states and territories have a public holiday in October or November (Labour Day, Melbourne Cup Day, Recreation Day, Family and Community Day). Queensland has no state-wide public holiday between the June Queen's Birthday holiday and Christmas Day – all of the State's other public holidays are concentrated between January and May.

The Explanatory Notes state that the Queen's Birthday holiday is not tied to a particular date of significance to Queensland or Australia, while the other public holidays are. For this reason the Government considers it is the most appropriate holiday to move.

To minimise the impact on community events that are planned around the second weekend in June, a special holiday for the Queen's Diamond Jubilee celebration would be held on that date in 2012.

*Christmas Day, Boxing Day and New Year's Day to be public holidays*

The Bill would ensure that Christmas Day, Boxing Day and New Year's Day are declared public holidays, even where they fall on a weekend and a day in the following week is declared a public holiday as well. This was the case in 2010, when Christmas Day and Boxing Day fell on a Saturday and Sunday respectively and the Parliament in November 2010 passed an amendment to address the upcoming holiday season. Consequently, last year workers were required to be paid public holiday penalty rates for up to six public holidays, rather than the three that the *Holidays Act* generally provided. In his introductory speech on 15 November 2011, the Minister for Education and Industrial Relations noted that when the change was made for 2010-11 it was strongly supported by Queensland workers; and that the Opposition had supported the move. He also stated that at the time, he undertook to review the *Holidays Act* and provide for a permanent solution when those days fell on a Saturday and Sunday.<sup>2</sup> This Bill is the result of that review, and attempts to provide the permanent solution.

The *Holidays Act* at present generally provides that these holidays cease to be official public holidays and a day in the following week is a substitute public holiday. The 2010 amendments to the *Holidays Act* provide exceptions for 2010-11, as noted above. These holidays fall on a weekend every sixth and seventh year, for one and two days respectively. As illustrated in the table below, this differs from the general situation in other Australian jurisdictions where all of these days remain public holidays even where a day in the following week is declared as an additional public holiday (with the exception of Victoria, where Christmas Day itself is not observed as a public holiday when it falls on a Sunday, and Tasmania, where New Year's Day itself is not observed as a public holiday when it falls on a Sunday).

**Table 1: December 2011 Christmas Day and Boxing Day Public Holidays<sup>3</sup>**

	Qld (proposed)	Qld (current)	NSW	SA	Tas	Vic	WA <sup>4</sup>	ACT	NT
<b>Christmas Day</b>	Sun 25 & Tues 27	Mon 26	Sun 25 & Mon 26	Sun 25 & Mon 26	Sun 25 & Tues 27	Tues 27	Sun 25 / Mon 26	Sun 25 & Mon 26	Sun 25 & Mon 26
<b>Boxing Day</b>	Mon 26	Tues 27	Tues 27	Tues 27	Mon 26	Mon 26	Mon 26 / Tues 27	Tues 27	Tues 27

<sup>2</sup> Hansard, 15 November 2011, p.3627

<sup>3</sup> From the Parliamentary Library Research Brief *Public Holidays: Holidays and Other Legislation Amendment Bill 2011 (Qld)*. Advance Committee draft.

<sup>4</sup> Where two dates are listed for a public holiday in Western Australia, a person's award or agreement will set out which of the days is the relevant public holiday.

**Table 2: 2012 Public Holidays<sup>5</sup>**

	Qld (proposed)	Qld (current)	NSW	SA	Tas	Vic	WA	ACT	NT
<b>New Year's Day</b>	Sun 1 Jan & Mon 2 Jan	Mon 2 Jan	Sun 1 Jan & Mon 2 Jan	Sun 1 Jan & Mon 2 Jan	Mon 2 Jan	Sun 1 Jan & Mon 2 Jan	Sun 1 Jan / Mon 2 Jan	Sun 1 Jan & Mon 2 Jan	Sun 1 Jan & Mon 2 Jan
<b>Australia Day</b>	Thur 26 Jan	Thurs 26 Jan	Thur 26 Jan	Thur 26 Jan	Thur 26 Jan	Thur 26 Jan	Thur 26 Jan	Thur 26 Jan	Thur 26 Jan
<b>Good Friday</b>	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr	Fri 6 Apr
<b>Easter Saturday</b>	Sat 7 Apr	Sat 7 Apr	Sat 7 Apr	Sat 7 Apr		Sat 7 Apr		Sat 7 Apr	Sat 7 Apr
<b>Easter Monday</b>	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr	Mon 9 Apr
<b>ANZAC Day</b>	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr	Wed 25 Apr
<b>Labour Day</b>	Mon 7 May	Mon 7 May	Mon 1 Oct	Mon 1 Oct	Mon 12 Mar (Eight Hours Day)	Mon 12 Mar	Mon 5 Mar	Mon 1 Oct	Mon 7 May (May Day)
<b>Queen's Birthday</b>	Mon 1 Oct	Mon 11 Jun	Mon 11 Jun	Mon 11 Jun	Mon 11 Jun	Mon 11 Jun	Different dates in various regions	Mon 11 Jun	Mon 11 Jun
<b>Queen's Diamond Jubilee</b>	Mon 11 Jun								
<b>Christmas Day</b>	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec	Tues 25 Dec
<b>Boxing Day</b>	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec	Wed 26 Dec

Observation of Christmas, Boxing and New Year's Days as Queensland public holidays on their actual dates would provide that public holiday penalty rates are paid to employees whichever day of the week the holidays fall on, and that an additional public holiday (with public holiday penalty rates of pay) is provided on a week day when any one of them falls on a weekend – every sixth and seventh year.

#### **Amendments to the *Land Sales Act 1984***

The Bill would allow private land developers to enter into pre-sales contracts – to 'sell off the plan' – when the land in question is part of a designated UDA. Their ability to do so is

<sup>5</sup> From the Parliamentary Library Research Brief *Public Holidays: Holidays and Other Legislation Amendment Bill 2011 (Qld)*. Advance Committee draft.

currently restricted, but the Bill would remove that restriction, supporting the ULDA in achieving its objective of bringing land to the market quickly; and to enable the government to provide housing in areas experiencing housing affordability pressures.

The ULDA would operate in the same manner as a local government authority operates for non-UDA land, in respect of issuing permits to developers.

**Amendments to the *Liquor Act 1992***

The amendments proposed in the Bill would enable RSL club members and Australia Defence Force members to enter any RSL or services club in Queensland without signing in; and enable clubs to set their own rules about requiring members of clubs to sign in as visitors when they visit clubs with reciprocal membership.

This has been identified by some clubs as an unnecessary administrative burden, which the Bill seeks to remove.

## 2. Examination of the Holidays and Other Legislation Amendment Bill 2011

In September 2011 as part of a review of the *Holidays Act*, a Queensland Government discussion paper – “*Getting the balance right: A proposal on holidays in Queensland*” (the discussion paper) was released inviting public comment on holiday arrangements in Queensland and in particular on the amendments proposed by the Bill.

The correspondence from DJAG at Appendix 1 provides a summary of comments on the Bill as raised by submitters to the Government’s consultation.

The following section discusses the key issues based on comment from submitters and committee members’ perspectives, and identifies any clauses that may be inconsistent with fundamental legislative principles. It provides any Committee comments about these matters.

### 2.1 Part 1 – Preliminary (clause 1)

This clause contains the short title. There are no issues identified by the Committee in this part.

### 2.2 Part 2 – Amendment of [Holidays Act 1983](#) (clauses 2 - 6)

These clauses would amend the *Holidays Act* in relation to public holidays to:

- maintain the public holiday status of Christmas Day, Boxing Day and New Year’s Day when they fall on a weekend;
- move the Queen’s Birthday public holiday to the first Monday in October from 2012; and
- provide for the observance of a once only public holiday to mark the Queen’s Diamond Jubilee on 11 June 2012.

In respect of Christmas Day, Boxing Day and New Year’s Day, under the current public holiday substitution arrangements when any of these days fall on a weekend the day ceases to be a public holiday. This means that workers working on that day are not entitled to public holiday penalty rates, nor do they have a right of refusal to work.

The effect of these amendments would be that workers working on a Christmas Day, Boxing Day or New Year’s Day that falls on a weekend would receive public holiday penalty rates for working on one or more of these days from December 2011, and would have the right to refuse to work on those days.

#### Consultation

The Explanatory Notes state that community comments received in response to the discussion paper indicated wide support for these amendments.<sup>6</sup> This is confirmed by the information supplied by DJAG.

DJAG has advised the Committee that the discussion paper directed stakeholders to an online survey where they could voice their opinion by voting for or against the proposals and make comments. DJAG advised that, of the 24,505 people who responded to the online survey:

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<sup>6</sup> At p.9

- 85.4% (19,393 of 22,705 respondents) supported moving the Queen's Birthday holiday to the second half of the year
- 82.0% of respondents agreed to move it specifically to a Monday in October and the remaining 3.4% agreed to move it, but not to a Monday in October
- 90.6% supported the creation of additional public holidays when Christmas Day, Boxing Day or New Year's Day fall on a weekend.

In addition to the online survey, which asked respondents whether they supported the move of the Queen's Birthday holiday to October, free text feedback was also possible. An examination of the free text feedback indicated considerable support for the relocation of Labour Day, rather than the Queen's Birthday holiday, to October. There were mixed views about how public holidays should be dealt with when Christmas Day, Boxing Day or New Year's Day fall on a weekend. Most of the comments made in relation to these days were predicated on preserving the significance of the day by maintaining its unique holiday status with about one quarter of the responses expressing a view that businesses should be closed on these public holidays.

The Government (through DJAG) has advised that 53 individual submissions were received from members of the public and interested organisations. The Committee understands that these submissions indicated widespread support for the proposed changes to Christmas public holiday arrangements and a majority support for moving Queen's Birthday holiday to October. These submissions are referred to below.

In relation to the recognition of additional public holidays when Christmas Day, Boxing Day or New Year's Day fall on a weekend, some submissions from representatives of the retail and hospitality sectors expressed strong concerns about the additional wage costs that a requirement to pay both actual and the additional public holidays at public holiday penalty rates would impose on businesses.

#### Committee comment

This coming holiday season, Christmas Day and New Year's Day fall on a Sunday. Under the law as it stands, this year, public holidays and the associated penalty rates for Christmas Day and New Year's Day would be observed on a substitute day, being the Monday of the following week. People working on the days themselves would be paid the normal weekend penalty rates, rather than public holiday penalty rates. However, if the Bill is passed, workers working on Christmas Day and/or New Year's Day will receive the same public holiday penalty rates as workers receive on the substitute days. This occurred under a one-off amendment to the *Holidays Act*, last Christmas and New Year holiday period.

Under the proposed amendments, this Christmas some employers (those who operate on both Christmas and New Year's days, which fall on a Sunday) may have to pay four days at public holiday penalty rates instead of just two days at public holiday penalty rates (normal rate plus 150%) and two days at Sunday penalty rates (normal rate plus 100%). After 2011 employers will not have to pay any additional Christmas-New Year public holidays until Christmas 2017, when one or more of these holidays again falls on a weekend.

Last Christmas–New Year in Queensland, because of a one-off amendment to the *Holidays Act*, Christmas Day, Boxing Day and New Year's Day were treated as public holidays, as were the substitute days in the week that followed. Public holiday penalty rates, rather than the usual weekend penalty rates, therefore applied for up to six days rather than the four which

would result this year if the Bill is passed. Any detrimental impacts on employers last year have not been raised in submissions, as far as the Committee has been able to ascertain.

The Committee notes the advice in the Explanatory Notes that this is the situation in most other Australian states and territories.

The Committee notes that the Bill would also continue to allow restriction of retail trading hours on the actual Boxing Day and actual New Year's Day to times starting after 9am and finishing before 6pm. Some respondents to the Government's discussion paper also expressed a view that trading hours should not be restricted on these or other public holidays such as Easter Sunday or Anzac Day, to allow businesses to recoup costs associated with higher penalty rates.

The Committee deliberations included discussion about the ability of employers to choose whether or not to operate on a Boxing or New Year's Day when it falls on a Sunday. If they do not open for business, there is no issue. If they do open, they would have to pay staff at the public holiday rate, which is more than the usual weekend rates. While presumably a business would only choose to open if it was considered to be profitable to do so, members acknowledged that not all businesses have a choice about whether or not to open – for example, businesses providing services such as aged care cannot choose to close.

On the other side of this discussion is the question of whether employees have to work or not, if the employer does operate. As the law stands, they cannot refuse to work on Christmas Day, Boxing Day or New Year's Day when they fall on a weekend and the business operates, if they would normally be required to work on those days. With the amendments, the employee would have a right to refuse to work as these days would be considered public holidays. This provides people with greater ability to spend time with their families on what are generally considered to be significant days; and allows others to choose to work and receive additional pay in compensation.

The cost of this individual amendment could arguably be manageable for many businesses because essentially it would result in an increase from weekend to public holiday penalty rates, and not a full 150% increase. However it is the cumulative effect of this amendment that causes concern to some Committee members, when it is added to the costs arising from the proposal in this Bill to create another public holiday in June 2012; and in the context of difficult economic circumstances affecting some businesses. Some members were of the view that one element of the two proposed amendments might have been tenable, but combined, the amendments could represent a significant impost on businesses.

By majority vote, the Committee supports the amendment.

### **Queen's Birthday Holiday**

In respect of the Queen's Birthday holiday, the Explanatory Notes to the Bill provide three reasons for moving the holiday to October. These are that the change would<sup>7</sup>:

- spread public holidays more evenly across the year giving some additional respite and rest to workers during the second half of the year;
- achieve some uniformity with arrangements in other States and Territories; and

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<sup>7</sup> At 2.



- lessen disruptions to industry resulting from the concentration of public holidays/long weekends falling in quick succession in the first half of the year.

The rationale for moving the Queen's Birthday holiday rather than Labour Day or any other holiday that falls in the first half of the year, is that it is the only one which is not associated with a particular date that is relevant to Queensland or Australia.

### Consultation

Concerns were raised in a number of submissions that moving the Queen's Birthday public holiday would disrupt a number of events held during the current Queen's Birthday weekend in June.

Netball Queensland advised that it holds its largest netball event, Queensland's State level competition - State Age Carnival - which attracts around 1,600 players plus about 1,000 supporters and officials to Brisbane every Queen's Birthday weekend. While it was concerned that the Queen's Birthday holiday not be moved in June 2012, to avoid disruptions for their 2012 event, they supported moving the Queen's Birthday holiday in 2013, on the basis that the change would ultimately benefit Queensland.

The Willowbank Raceway Managing Committee expressed strong opposition to moving the Queen's Birthday public holiday. It stated that the Winternationals event has been held at the Willowbank Raceway on the June Queen's Birthday weekend for 26 years, it is of significant economic benefit to Ipswich and South East Queensland with a four day program running from Friday through to Monday. It was submitted that moving the public holiday to October would decimate the event and affect the long term viability of the Raceway. It supported moving Labour Day to October instead.

Strong opposition to the move was also expressed by the Cooktown Chamber of Commerce and Tourism on the grounds that the re-enactment of Cook's Landing has been held on Queen's Birthday weekend for the past 52 years. They submit that any change in 2012 would cause disruption, disappointment and bad publicity for Queensland and have an adverse financial impact on the region's already struggling tourism industry. Further, they submit that any change would have to be extensively advertised over a long period of time, the cost of which would be beyond the means of local businesses and organisations. It would support moving Labour Day to October.

The Queensland Council of Unions (CQU) points out that the first Monday in May date for Labour Day (which is traditionally celebrated on May Day – the first of May – in the United Kingdom) is particularly significant for Queensland as it was the first place in the world to hold a Labour Day procession, and this occurred on 1 May 1891 in Barcaldine. The QCU is supportive of moving the Queen's Birthday holiday to October.

The Australian Sugar Milling Council expressed concern that moving the Queen's Birthday public holiday to October would place additional pressure on the industry which ideally harvests and processes its crop from mid June to late November or early December. They estimate that one day of missed crushing would cost the sugar industry community about \$40 million.

Six submissions from large retail and industry organisations and representatives<sup>8</sup> expressed support for moving the Queen's Birthday public holiday to October, largely to minimise

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<sup>8</sup> Bunnings Group Limited, Coles, the National Retail Association, the Shopping Centre Council of Australia, the Chamber of Commerce and Industry Queensland and an individual business owner

disruptions to business caused by the concentration of public holidays in the first half of the year.

One submission<sup>9</sup> suggested that moving the Queen's Birthday public holiday to October would align it with the Queen's Birthday weekend in New South Wales when the Australian Rugby League (ARL) Grand Final is usually held, making it easier for Queenslanders to travel to Sydney to support their teams. The submission points out that given there is a strong likelihood that at least one of Queensland's three ARL teams will regularly feature in the ARL Grand Final, it would be prudent to provide Queensland rugby league fans with the same advantages as those fans in New South Wales.

Committee comment

The Committee noted that while the information provided by the Government indicated strong support from the community in general for moving the Queen's Birthday public holiday to October, concerns were held by a number of organisers and supporters of events held over the Queen's Birthday long weekend that such a move would cause considerable disruption to their activities.

The Committee acknowledges that many of these events rely on the public holiday to attract visitors from outside their region. Many of the events have been held on a Queen's Birthday weekend for many years and are strongly associated with the Queen's Birthday weekend.

Some members strongly shared the concerns of event organisers about the impact that moving the Queen's Birthday weekend may have on their ability to attract visitors and thereby retain special events. The Gold Coast's Wintersun festival, after a 15 year history on the Gold Coast, moved to Port Macquarie in June 2011. It is generally held over the first two weeks in June. While it is to be held in Coffs Harbour from 1 - 11 June 2012, the Gold Coast has also re-established its Wintersun festival for 2012 in Coolangatta, over the same dates, as 'Cooly Rocks'. The 11 June 2012 is the currently scheduled Queen's Birthday holiday. There are views that moving the Queensland date, even after 2012, will jeopardise this festival. New South Wales would retain the holiday on the second Monday in June, providing a competitive edge for their festival and the associated economic benefits it brings.

The Committee understands that the observance of a once only public holiday on 11 June 2012 is intended to assist those communities and cultural or sporting organizations that have events planned around 11 June 2012.

Some members of the Committee were of the view that the Queen's Birthday public holiday should remain in June for 2012 until it is moved to October in 2013, without an additional day in October in 2012. This would avoid the creation of an additional one off public holiday in June 2012 which may be regarded as an added impost on business at a time when the economic climate for some industries is difficult and some businesses potentially face added public holiday costs over the Christmas period as a result of the amendments proposed in this Bill.

The Committee realises that not all businesses have a choice about whether to open on a public holiday. The impact of moving the Queen's Birthday holiday from June to October and creating another public holiday is significant because it represents an increase from normal rates of pay to public holiday penalty rates. This differs from the situation proposed for

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<sup>9</sup> Shopping Centre Council of Australia

Christmas, where on a weekend Christmas Day, Boxing Day and New Year's Day are already paid at weekend penalty, rather than normal, rates of pay.

The point was made by some members that there is a cumulative impact of these proposals on business and while one amendment may have been tenable the amendments should not be considered in isolation.

The Committee noted that the creation of an additional public holiday may result in a loss of wages for people employed on a casual basis because they will not be entitled to payment if they do not work on the public holiday; and because employers may choose to reduce staffing costs or close, and not employ casuals on that day.

It is the view of a majority of the Committee that the overall benefits outweigh the short term challenges presented by moving the Queen's Birthday public holiday to October; that any challenges will not be insurmountable for organisers to plan for in 2013 and that the creation of a one off public holiday in June will go some way towards ensuring that these events are not unduly disrupted.

By majority vote, the Committee supports the proposed amendments.

*The Committee recommends by a majority vote that Part 2 of the Bill should proceed without amendment.*

### **2.3 Part 3 – Amendment of [Industrial Relations Act 1999](#) (clauses 7 – 8)**

Clauses 7 and 8 would make consequential amendments to the *Industrial Relations Act* to support the *Holidays Act* amendments. No additional issues are identified by the Committee in this part.

### **2.4 Part 4 – Amendment of the [Land Sales Act 1984](#) (clauses 9 – 15)**

The amendments will allow private developers on land that is part of a declared UDA the ability to enter into pre-sales contracts for unregistered lots of land. This will be consistent with the situation for other land in local government areas, which is subject to the [Sustainable Planning Act 2009](#) (SPA). The amendments will see the UDLA recognised and operating as a 'planning authority' the same way as a local government authority does under the SPA.

This will enable private developers to secure finance for development and ultimately, allow the ULDA to achieve its objective of bringing land to the market quickly and the government to provide housing in areas experiencing housing affordability pressures.

It is understood by the Committee that the amendments are in response to issues raised by private developers.

The Committee sees no issue with these policy objectives or the means proposed to achieve them.

### **2.5 Part 5 – Amendment of [Liquor Act 1992](#) (clauses 16 – 24)**

The intent of these amendments is to reduce the administrative burden on clubs in respect of managing admission, and to honour current service and ex-service persons. They would allow members of the RSL, who are also members of an RSL or services club, to enter any RSL or services club in Queensland without having to sign in; to allow Australian Defence

Force members to enter any RSL or services club in Queensland without signing in; and allow visitors to enter clubs without signing in if they are members of a reciprocal club. Clubs would be able to regulate their sign-in requirements themselves.

It is understood that DJAG has consulted with the RSL (Queensland Branch), the RSL and Services Club Association and the Queensland Hotels Association and all are supportive of the proposal.

The Committee sees no issue with this policy objective or the proposed amendments.

## **2.6 Part 6 – Amendment of the [Trading \(Allowable Hours\) Act 1990](#) (clauses 25 – 27)**

These are consequential technical amendments to support the *Holidays Act* amendments (part 2 of the Bill).

The Queensland Industrial Relations Commission (QIRC) currently has jurisdiction to limit trading hours arrangements on Boxing Day and New Year’s Day in south east Queensland. The QIRC cannot prescribe a time starting after 9am or finishing before 6pm on Sundays or public holidays EXCEPT where the Sunday in question is Boxing Day or New Year’s Day, and would have been a public holiday if a substitute holiday had not been declared. The amendment would allow the QIRC to prescribe trading hours on Boxing Day and New Year’s Day starting after 9am and finishing before 6pm, irrespective of which day of the week they fall on.

**Recommendation:**

**That the Bill proceed without amendment.**

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

No potential breaches of fundamental legislative principles were identified with this Bill.

However, the Committee would like to comment on the Explanatory Notes. The Explanatory Notes would have been clearer had they stated that the changes to observance of the Christmas Day, Boxing Day and New Year’s Day public holidays were not new; and that amendments to the *Holidays Act* applying only to 2010-11 had been passed in November 2010 with the Minister at that time stating that the Act would be reviewed further and a permanent arrangement put in place for these holidays. This context is relevant, explaining as it does the genesis of the Bill.

## 4. Appendices

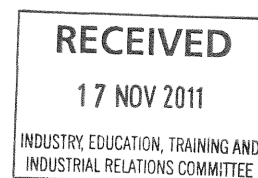
### Appendix 1: Correspondence from the Department of Justice and the Attorney-General

Our reference: T James Holidays and other Acts Amendment Bill  
Your reference: 11.1HOLAB



Office of the  
**Director-General**  
Department of  
**Justice and Attorney-General**

Mr Kerry Shine  
Chair  
Industry, Education, Training and Industrial Relations Committee  
Parliament House, George Street  
BRISBANE QLD 4000



Dear Mr Shine

Thank you for your letter of 16 November 2011 regarding Inquiry into Holidays and Other Legislation Amendment Bill 2011.

The Department of Justice and Attorney-General wishes to nominate Mr Tony James, Acting Executive Director, Private Sector Industrial Relations, Office of Fair and Safe Work Queensland, Department of Justice and Attorney General as the committee's point of contact in this matter.

In relation to your specific questions in relation to amendments to the *Holidays Act 1983* (the Act), in September 2011 the Government initiated a public consultation process as part of a review of the Act through the release of a discussion paper – "*Getting the balance right: A proposal on holidays in Queensland*" (the discussion paper – Attachment 1).

The discussion paper made a number of proposals both in relation to public holidays and state school holidays. In relation to public holidays the discussion paper proposed:

- movement of the Queen's Birthday public holiday to the second half of the year from 2012 with a Monday in October each year being the preferred option. This would more evenly spread public holidays across the year and achieve some consistency with other jurisdictions (in Western Australia the Queen's Birthday holiday is observed on a date proclaimed each year in October and in New South Wales, South Australia and the Australian Capital Territory the Labour Day holiday is observed on the first Monday in October) in observing a public holiday in the second half of the year.

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50 Ann Street Brisbane  
GPO Box 149 Brisbane  
Queensland 4001 Australia  
Telephone (07) 3239 3520  
Facsimile (07) 3239 3474  
Website [www.justice.qld.gov.au](http://www.justice.qld.gov.au)  
ABN 13 846 673 994

- declaration of a public holiday on the actual date of the holiday as well as an additional public holiday in the following week when Christmas Day, Boxing Day or New Year's Day fall on a weekend. Currently a substitute day is appointed when public holidays fall on a weekend. The weekend date ceases to be a public holiday and people working on that day do not receive public holiday entitlements. The proposal would result in both the actual and additional day treated as public holidays. People working on either day would receive public holiday entitlements.

The discussion paper directed stakeholders to an online survey where they could vote for or against the proposals and make comments in relation to them. The consultation period closed on 31 October. 24,505 people responded to the survey (Attachment 2 – raw results). Results indicated (Attachment 3) showed that

- 85.4% (19,393 of 22,705 respondents) supported moving the Queen's birthday to the second half of the year
- 82.0% of respondents agreed to move it specifically to a Monday in October and the remaining 3.4% agreed to move it, but not to a Monday in October
- 90.6% supported creation of additional public holidays when Christmas Day, Boxing Day or New Year's Day fall on a weekend.

Free text feedback was also obtained as part of the survey. Results of this feedback are attached (Attachment 4) and indicate a preference for the relocation of Labour Day to October, in line with the southern states. There were mixed ideas about how public holidays should be dealt with when Christmas Day, Boxing Day or New Year's Day fall on a weekend, with the majority of comments suggesting substitute days or additional days with no access to penalty rates.

In addition, 53 individual submissions and letters were received from members of the public and interested organisations (Attachment 5) in relation to rearrangements of public holidays. Significant organisations which provided written submissions included:

- Queensland Council of Unions
- Clubs Queensland
- Bunnings
- Coles Group Ltd
- Queensland Hotels Association
- National Retailers Association
- Queensland Tourism Industry Council
- Australian Sugar Milling Council
- Chamber of Commerce and Industry Queensland
- Shopping Centre Council of Australia

Analysis of these responses indicates:

- Five expressed concerns about the economic burden of additional public holidays

- 49% (26 of 53) were opposed to moving Queen's Birthday public holiday to the second half of the year. Of these respondents 25 nominated Labour Day to be moved instead of Queen's Birthday
- 15% (8 of 53) were opposed to the creation of additional public holidays when Christmas Day, Boxing Day or New Year's Day fall on a weekend.

Other concerns were raised that the movement of the Queen's Birthday public holiday in 2012 would disrupt a number of events already planned for the current date of the public holiday in June (e.g. Australian National Drag Racing Winternationals at Willowbank Ipswich, Netball Qld State Age Championships, Discovery Festival & Re-enactment of Cook's Landing at Cooktown, The Dreaming, Australia's Indigenous Festival at Woodford and the Observer Boyne Tannum Hook Up fishing event in Gladstone and Coolys Rocks Festival in Southport). It should be noted that the Government subsequently decided to allow for a one-off celebration of the Queen's Jubilee in June 2012 to allow organisations to plan for 2013 and beyond.

In relation to amendments to the *Liquor Act 1992*, a letter, dated 27 June 2011, was sent to the Premier of Queensland and Minister for Reconstruction, the Honourable Anna Bligh MP, by Chris McHugh, Chief Executive Officer of the Returned and Services League of Australia (Queensland Branch). The letter proposed a change in Queensland Government policy and legislation (via amendments to the *Liquor Act 1992*) which would allow RSL (Queensland Branch) members automatic entry to all RSL and Services Clubs within Queensland, provided that they are members of at least one RSL or Services Club. Mr McHugh stated that this situation currently occurs in Victoria and has bipartisan support for the introduction in New South Wales.

The Attorney-General, Minister for Local Government and Special Minister of State, the Honourable Paul Lucas MP, as Minister responsible for this area of Government policy, responded to Mr McHugh, stating that his proposals would be given consideration. There was a subsequent telephone conversation with the RSL (Queensland Branch) in November 2011, regarding the RSL's views on RSL member's entry into RSL and Services clubs, and providing further clarification regarding the scope of the RSL, RSL sub branches, RSL clubs and services clubs.


A letter, dated 2 November 2011, was sent to the Attorney-General by Penny Wilson, Chief Executive Officer of the RSL and Services Clubs Association Queensland Inc. The letter proposed that the Government change its policy and allow members of the RSL, who are members of an RSL or Services club, automatic entry into RSL and Services clubs. The letter also referred to proposed legislation in New South Wales, which allows members of the RSL, who are members of an RSL or Services Club, automatic entry to all RSL and Services Clubs by extending honorary member status to them on the day that they attend a club's premises.



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Should your officers have any queries in relation to this matter, Mr James, 07 322 52353 would be pleased to assist.

Yours sincerely



Philip Reed  
**Director-General**  
16/11/11

## Dissenting report

**Dr Bruce Flegg MP, Member for Moggill**  
**Mr Steve Dickson MP, Member for Buderim**  
**Mrs Jann Stuckey MP, Member for Currumbin**

### DISSENTING REPORT

#### HOLIDAYS AND OTHER LEGISLATION AMENDMENT BILL 2011

I do not support the Bill in its present form.

What the government has done in a rushed move on the eve of an election is throw a whole swag of additional public holidays at the Queensland public that will have dramatic cost impacts on already struggling industries, in particular tourism, hospitality and retail.

The government has provided two separate Queen's Birthday holidays in 2012 as well as providing additional public holidays for Christmas Day and Boxing Day.

That is three additional public holidays above and beyond what is provided for currently; where employers, particularly in the industries mentioned above, will have to pay additional rates in order to keep open.

Many of these industries are essential services such as medical and health, aged care, travel, accommodation, retail and the like that are already carrying significant cost increases in other areas.

The combined effect of all of these changes, in my view, is unacceptably large. It is the quantum of the impost on industries and the likely effect on consumers that is central to my concern. Where there is an option to close such businesses as medical centres, cafes, restaurants and the like, it is likely that many of these will close, impacting consumers and of course workers who will not receive any pay if the business doesn't open.

Were the quantum more manageable such as simply the Christmas and New year amendment which only applies when those days falls on Saturdays or Sundays which in most cases already carry a degree of penalty pay, then the Bill could be supported but in its present form, the cost to Queensland across the board is considered too high.

Although not contained in this Bill another poor government decision that will impact cumulatively with the public holidays decision is the harmonization of the September school holidays with the other major eastern states, New South Wales and Victoria. The staggering of the September school holidays has been of substantial benefit to Queensland families who are able to book holidays even within areas of Queensland popular with southern visitors, such as the Gold and Sunshine Coasts, without incurring peak season tariffs.

It has also been good for operators in tourist areas because it allows the school holiday peak to be spread and helps them to improve occupancy.

Any Queenslanders who have attempted to book an airline flight during school holidays is only too well aware of the impact that school holidays have on travel and leisure activities. Airline travel is significantly harder to book and more expensive. By harmonizing the holidays with the interstate holiday periods, this will be exacerbated.

The government has clearly provided two Queen's Birthday holidays in 2012 because rushing this matter through in the last couple of sitting days left it too late to move the 2012 holiday. The move could be done in 2013 without giving 2 holidays.

The government 'survey' directed respondents to moving the Queen's Birthday. May Day wasn't offered as an alternative. Even so individuals didn't welcome the move and 25% supported moving Labor Day despite it not being offered as an option. It is agreed there is strong support for moving a public holiday to the second half of the year. However the government seem to have consulted to get the result they wanted.

### Summary

The government has not defined the cost of three additional public holidays in any of the following terms:-

- Total lost production for Queensland (likely to be considerable)
- Total loss of state (or federal) tax revenue from lost production and lost wages
- Total loss of wages for thousands of Queenslanders who work casually
- Total extra cost (which has to be made up somewhere) to business
- Effect on productivity

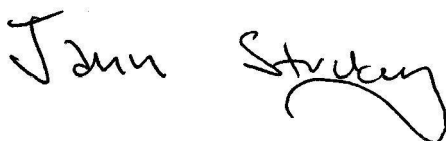
The cumulative effect of all these 'rushed' measures will be paid for by the Queensland community. I can't support the quantum of these increases as they stand.



Dr Bruce Flegg MP  
Shadow Minister for Education  
Shadow Minister for Aboriginal & Torres Strait Islander Partnerships  
Member for Moggill



Mr Steve Dickson MP  
Shadow Minister for Energy and Water Utilities  
Member for Buderim



Mrs Jann Stuckey MP  
Shadow Minister for Tourism, Manufacturing and Small Business  
Member for Currumbin