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2 September 2019

Christmas Eve Part-Day Public Holiday Consultation
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Christmas Eve Part-Day Public Holiday Consultation

The Housing Industry Association (**HIA**) takes this opportunity to provide feedback to the Queensland Government proposal to declare Christmas Eve a part-day public holiday (**proposal**).

HIA is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products. A significant proportion of HIA membership comprises small to medium business, including new home builders, renovators, and trade contractors.

HIA is therefore well placed to provide commentary on the impact the proposal will have on the construction industry, particularly small business in the residential building industry.

For the reasons outlined below, HIA opposes the proposal, and recommends the Queensland Government continues with the status quo (Option One).¹

Public sector costs

In reviewing the Office of Industrial Relations (**OIR**) Consultation Regulatory Impact Statement (**Consultation RIS**), HIA notes the projected wages cost of implementing the proposal are estimated at between \$41.3 million and \$136.9 million, with the public sector costs likely to be in the realm of \$9.4 million to \$21.1 million. Even at the lower end the estimated costs to the Queensland economy are significant, however given how far ranging the estimates are it remains unclear regarding the actual costs which are likely to be experienced.

Whilst the private sector are expected to absorb the additional direct wages costs arising from the part-day public holiday, it is unclear how the Queensland Government intends to pay for the wages cost from the public sector workforce should the proposal be implemented. Without such clarity, it is reasonable to assume such additional costs will be indirectly passed on to business and the wider community.

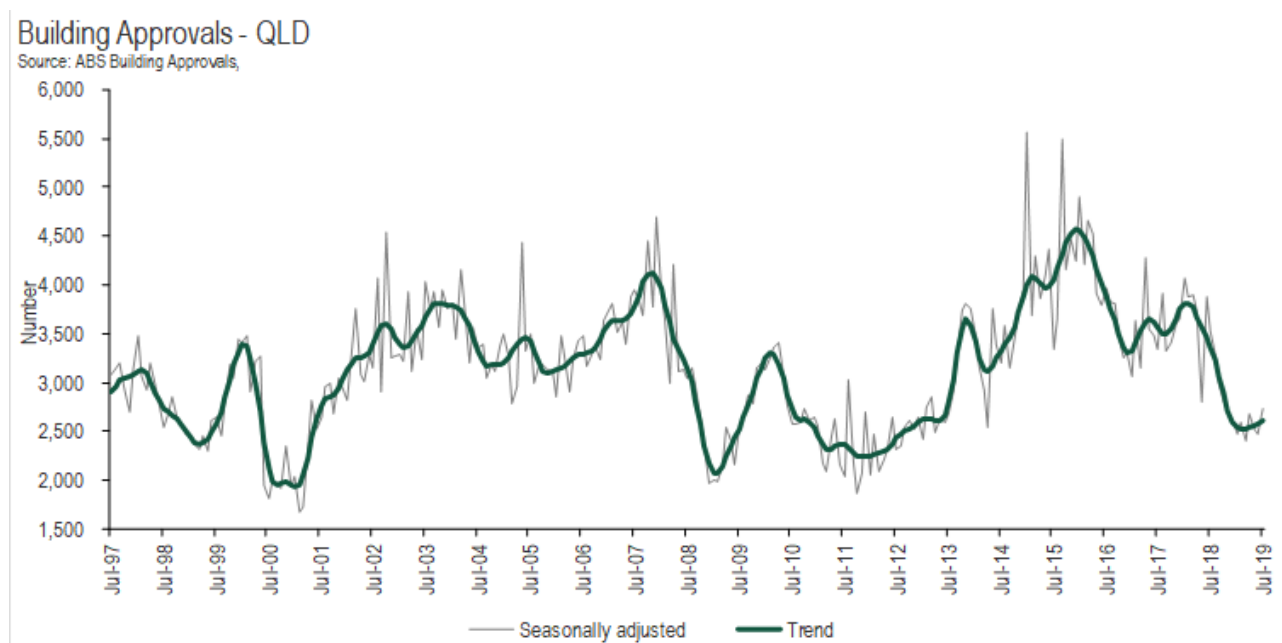
In an economy where business, particularly small business is overwhelmed with ever increasing taxes and charges, regulatory changes, and red tape, HIA opposes the proposal.

¹ Consultation Regulatory Impact Statement- Investigation of part-day public holiday on Christmas Eve (24 December), Office of Industrial Relations, August 2019, page 16

Construction industry costs

It is noted that the Consultation RIS estimates a potential wages cost for the construction industry to implement the proposal, to be between \$328,876.18 and \$2,230,670.68. Such additional costs are not insignificant and are likely to be at the higher end of the scale, due to the need for construction industry operations to continue during the Christmas period (e.g. - emergency works, etc.).

The last eighteen months have witnessed a significant fall in the number of building approvals issued in Queensland down 21.2 percent on the previous twelve months. HIA's economics team have advised that while the drop in activity has hopefully bottomed out it is unlikely that there will be any sustained increase in building approval activity until late 2022. Given the current volatility in the market and the ongoing uncertainty surrounding a timeframe for improvement the imposition of additional costs is unwelcome.



Existing mechanisms for refusal of additional hours

The main premise for introduction of the proposal, is to give workers the right to refuse to work or to be compensated at public holiday rates if they do work, on the evening of Christmas Eve.² The paper specifically notes '*the needs of business and the ongoing imperative to deliver critical public services must be weighed against workers' legitimate wishes and expectations to participate in Christmas Eve events and have social time with their family and maintain a reasonable work life balance*'.

The paper fails to account for appropriate existing mechanisms for employees to refuse to work such hours. Case Study 1 within the paper downplays the existing mechanisms available to employees who may be asked to work additional hours.³

In Case Study 1 the employee is asked to work additional hours beyond his ordinary hours of work. Such additional hours would be considered overtime. The Case Study suggests John is 'required to work' and 'does not have any specific protections under the *Fair Work Act 2009 (FW Act)* to refuse to work overtime on that day or any other day that is not a public holiday'. This is incorrect.

The FW Act section 62 contemplates maximum weekly hours, and the right of refusal of overtime (**Attachment A**). In the Case Study provided John could refuse to work the additional hours, due to, for example, the unreasonable request of the employer (section 62(2) of the FW Act) or due to the fact that the employee has personal circumstances, including family responsibilities which would warrant the refusal to work additional hours (section 62(3)(b) of the FW Act).

The paper suggests that if the proposal is adopted, it would provide employees like 'John' the right of refusal to work Christmas Eve evening, which is not a current right under the FW Act. This is misleading. As outlined,

² Ibid, pages 4, 5, 8, 9, 15, 18, and 21

there are already mechanisms in place which allow employees who are requested to work additional hours to refuse such additional hours. Mechanisms to refuse to work additional hours are also outlined in modern awards.⁴

Modern Awards system

Private sector employers in Queensland are required to comply with the FW Act and National Employment Standards (**NES**). As part of the 4 yearly review into modern awards, the Fair Work Commission (**FWC**) recently reviewed the Part-Day Public Holidays provisions. These provisions are replicated across most modern awards and are ongoing and continuous.⁵

A copy of Schedule F of the *Building and Construction General Onsite Award 2010* (Onsite Award), is set out at **Attached B** for reference.

The proposal seeks to declare a public holiday from 6pm to 12 midnight on Christmas Eve. The common provisions that sit within modern awards account for Part-Day Public holidays from 7pm to midnight on Christmas Eve or New Year's Eve. Therefore the proposal is at odds with the modern award framework.

HIA strongly recommends that if the proposal is to proceed, that it work within the industrial relations framework as already established for part-day public holidays.

SA part-day public holidays

In 2012 legislation was introduced to the SA parliament to create part-day public holidays for Christmas Eve and New Year's Eve evenings, from 5pm to 12 midnight⁶.

As a result of significant debate, the legislation was passed with an amendment, designating that the public holiday hours be from 7pm to 12 midnight. This was to represent a *'fair compromise that protects the interests of working people in the creation of those part-day public holidays but at the same time gives some relief from the costs associated with the additional higher rates of pay on those evenings which will be beneficial for a number of businesses and organisations that have raised concerns about the cost impact.'*⁷

Should the proposal proceed HIA would urge the Queensland Government to reconsider the 6pm to 12 midnight proposal in order to strike a fair and reasonable compromise between the community and business needs.

Conclusion

For the reasons outlined above, should the proposal proceed in its current form there will be a requirement for the Queensland Government to advance probative evidence and a case to support the proposed changes.⁸

In light of the potential cost implications, HIA does not see that such a case has been made, and accordingly does not support the proposal.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



Michael Roberts
Regional Executive Director- QLD

⁴ See for example Clause 36.1 of Building and Construction General Onsite Award 2010

⁵ [2018] FWCFB 6540, paragraph 18

⁶ Statutes Amendment (Shop Trading And Holidays) Bill

⁷ The Hon. J.W. Weatherill, Statutes Amendment (Shop Trading and Holidays) Bill - Final Stages

⁸ Ibid, paragraph 19

ATTACHMENT A - Fair Work Act 2009 - Section 62

Maximum weekly hours

Maximum weekly hours of work

- (1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:
 - a) for a full-time employee--38 hours; or
 - b) for an employee who is not a full-time employee--the lesser of:
 - i. 38 hours; and
 - ii. the employee's ordinary hours of work in a week.

Employee may refuse to work unreasonable additional hours

- (2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.

Determining whether additional hours are reasonable

- (3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:
 - a) any risk to employee health and safety from working the additional hours;
 - b) the employee's personal circumstances, including family responsibilities;
 - c) the needs of the workplace or enterprise in which the employee is employed;
 - d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
 - e) any notice given by the employer of any request or requirement to work the additional hours;
 - f) any notice given by the employee of his or her intention to refuse to work the additional hours;
 - g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
 - h) the nature of the employee's role, and the employee's level of responsibility;
 - i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;
 - j) any other relevant matter.

Authorised leave or absence treated as hours worked

- (4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:
 - a) by the employee's employer; or
 - b) by or under a term or condition of the employee's employment; or
 - c) by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.

ATTACHMENT B - Building and Construction General Onsite Award 2010

Schedule E—Part-day Public Holidays

This schedule operates in conjunction with award provisions dealing with public holidays.

- E.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
 - b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - e) Where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - f) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause E.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
 - g) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

This schedule is not intended to detract from or supplement the NES.