



Introduction

The Registered Clubs Association of New South Wales t/as ClubsNSW, would like to thank the NSW Government for the opportunity to make submissions with respect to the Government's Review of the *Banks and Bank Holidays Act 1912* (the "Act").

ClubsNSW represents over 90% of the approximately 1,500 registered clubs in New South Wales, which include RSL and ex-services, lawn bowling, golf, sporting, recreation, football, ethnic and religious clubs, as well as community and workers, business, social and country clubs. ClubsNSW is also the registered union of employers in the state of New South Wales for the club industry.

We note the Options Paper disseminated in August 2009 and respond primarily to the said paper. ClubsNSW's prime submission is that the system that regulates the creation and operation of public holidays in NSW must provide clarity, certainty and consistency. Further, the two key issues for clubs in NSW revolves around additional and substitute public holidays which fall upon a weekend and the issue of local holidays.

Clubs in NSW have traditionally largely been regulated from an industrial perspective by state awards. The majority of clubs, like many state regulated employers, were caught up with WorkChoices laws which took effect in March 2006. As the Review is aware it is the Act's interaction with the WorkChoices legislation and now the Fair Work legislation, that has caused the most significant issue for employers, notwithstanding some longstanding flaws in the system.

This submission will deal with the three main issues for NSW clubs.

1. Additional and substitute days when celebrated dates fall on weekends

Primarily ClubsNSW submits that State legislation should not mandate or enable "additional" public holidays to be created.

If the legislation allows an additional public holiday when they fall on a weekend the effect can create an opportunity for employees to be paid public holiday rates on two days rather than one. This naturally creates increased costs for employers especially for clubs that operate on a 7 day basis.

We note the National Employment Standards (“NES”) contained within the *Fair Work Act 2009* and to commence from 1 January 2010, expressly provides at section 115(2) that where a substitute day is declared by or under a State or Territory law, the substitute day is the public holiday. This would appear in conflict with policy represented by this subsection for an arrangement to be made at State level to establish additional public holidays for the celebration of the prescriptive public holidays contained in the Act.

ClubsNSW is generally not opposed to substituted days where it is consistent with established arrangements. However, ClubsNSW does not believe this should be extended to every public holiday falling on a weekend to substitute an additional day. In particular, ClubsNSW supports the position of The Returned and Services League of Australia (NSW Branch) (“RSL”) that a day of this stature should always be celebrated on 25 April regardless of what day it falls upon and that day should never be substituted.

ClubsNSW does not agree with distinction between “standard workers” and “non-standard workers”. In almost all of the proposed options, there is an option to deal with the purported inequalities of non-standard workers. These options would in ClubsNSW view, if accepted result in additional and significant labour costs particularly in the hospitality and retail sectors. Further, in such circumstances there may well be a double-dipping depending on the days and hours worked by a non-standard worker.

ClubsNSW makes the following points on the perceived problems around non-standard workers:

- (a) Most industrial instruments make provisions and allowances for employees who don't work Monday to Friday and may miss out on public holidays.
- (b) If these options that deal with non-standard workers are adopted, then the provisions in the industrial instruments that deal with non-standard workers should be removed. ClubsNSW believes this review does have the ability to enact such powers.
- (c) The Options Paper fails to recognise that non-standard workers are usually compensated in other areas such as an additional week's annual leave and weekend penalties.
- (d) When employees enter these “non-standard industries” eg retail and hospitality, they enter the industry knowing and accepting that they will be required to work weekends and public holidays.

2. Queen's Birthday and Labour Day

ClubsNSW agrees with the position purported in the Options Paper that the Government should legislate to declare public holidays each year on the second Monday in June (Queen's Birthday) and the first Monday in October (Labour Day) and the dates of these holidays only be removed if harmonisation of public holidays is achieved nationally.

3 Local Public Holidays and half-holidays

ClubsNSW is concerned with the costs and confusion caused by the introduction of the WorkChoices legislation which effectively extend the benefits of paid leave on local holidays to all national system employees, even those already entitled to another day's leave in lieu.

ClubsNSW supports option 1 which is a return to pre-WorkChoices practices whereby local councils advise the Minister of the days that should be gazetted for the observance of these holidays. These days would be proclaimed as Local Event Days, but not as public holidays, to be observed according to provisions in industrial awards and agreements.

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