



Professor Joellen Riley
Office of Industrial Relations
NSW Department of Commerce
2-24 Rawson Place
SYDNEY NSW 2000

By email: review@oir.commerce.nsw.gov.au

Dear Professor Riley,

David Jones Submission In Response To The Review Of The Banks And Banks Holidays Act 1912 Options Paper

David Jones welcomes the opportunity to respond to the options paper released on 17 August 2009.

OVERVIEW

David Jones operates department stores in New South Wales, Victoria, Queensland, South Australia, Western Australia and the Australian Capital Territory. The *David Jones Enterprise Agreement* applies to the majority of employees in David Jones and clearly stipulates that work on public holidays is voluntary for employees.

We understand that the intent of the review of the Banks and Bank Holiday Act 1912 (BBH Act) is to ensure greater consistency in the treatment of public holidays for all employees. We also understand that since the BBH Act was enacted, that shopping and work habits have changed and that a review of the Act is therefore timely. Furthermore, we welcome any outcome that will lead to a consistent approach to the treatment of public holidays across all states in Australia.

Due to changing shopping habits, weekends represent the busiest trading period of the week. So that we can ensure that our staffing levels are aligned with the times when many customers choose to shop, David Jones rosters employees on weekends. Consequently, similar to other major employers in the retail industry, over time David Jones industrial arrangements have been modified to accommodate these changing working patterns, including to provide for public holiday entitlements for non standard workers. As a result many of our employees may be affected by any decision made to substitute public holidays or create additional public holidays, particularly in relation to when the celebrated day falls on the weekend.

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Of our 38 Stores, 16 Stores are located in New South Wales, so any outcome through this Review that results in additional public holidays will have a material impact upon our business and result in additional costs. As the introduction of additional public holidays will result in additional salary costs but with no corresponding change in revenue, the salary costs associated with any such changes will need to be absorbed by the business and offset.

ADDITIONAL AND SUBSTITUTE DAYS WHEN CELEBRATED DATES FALL ON WEEKENDS

As noted in the *Review of the Banks and Bank Holidays Act 1912 Options Paper*, the practice of substitution and addition for public holidays varies from state to state.

The *David Jones Enterprise Agreement* stipulates that work on public holidays is voluntary for all permanent and casual employees in David Jones. This means that when a David Jones employee's normal rostered day to work coincides with a public holiday, that the employee has an equal opportunity to participate in family activities by electing not to work on the public holiday.

David Jones does not support the proposal for the automatic provision of additional days where a public holiday falls on a weekend as this would result in the creation of additional public holidays and create an inconsistency in the treatment of public holidays between years. David Jones submits that, as well as being contrary to the intention of the review, such a proposal would create an additional financial burden for employers.

In additional *David Jones Enterprise Agreement* incorporates the standards established by the decision of the Australian Industrial Relations Commission – Public Holidays Test Case, including those for employees not working a standard Monday to Friday week, and extends the principle to include part time employees working less than 5 days per week.

Public holidays falling on non-working days are treated as shown below:

- A full-time employee, and a part-time employee working an average of five (5) days per week, whose non-working day falls on a public holiday will receive either an additional days wages, an additional day off or an additional day of annual leave, as mutually agreed.
- A part-time employee not covered by sub-clause (a) above is entitled to the benefit of sub-clause (a) where the employee works an alternating roster and the public holiday falls on a day on which the employee works in any week of their roster cycle.

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- For the purpose of this sub-clause, a “day” will mean the average number of ordinary hours worked by an employee in the roster cycle immediately prior to the day on which the holiday falls.

David Jones submits that the current Federal industrial arrangements covering non-executive employees at David Jones provides for the consistent treatment for employees and ensures that ‘non standard employees’ are treated no less favourably in relation to entitlement to public holidays.

On this basis David Jones does not support the proposal to grant substitute or additional days in instances where a public holiday falls on a Saturday or Sunday.

CHRISTMAS DAY, BOXING DAY, NEW YEAR’S DAY AND AUSTRALIA DAY

David Jones recognises that the Christmas and Boxing Day period is a very special time for many people. In particular, we acknowledge that this is an important time for many people (including our employees) to spend time with their families. We note that Professor Riley recommends that an additional public holiday be granted when Christmas Day or Boxing Day falls on a Sunday.

David Jones submits that the objectives of the review are already satisfied by the current provisions of the *David Jones Enterprise Agreement*, which provide the following arrangements in relation to Christmas Day, Boxing Day, New Year’s Day and Australia Day:

- When Christmas Day is a Saturday or Sunday, a substitute holiday is observed on 27 December
- When Boxing Day is a Saturday or Sunday, a holiday is observed on 28 December
- When New Year’s Day is a Saturday or Sunday, then a holiday in lieu thereof will be observed on the following Monday.
- When Australia Day falls on a Saturday or a Sunday, the public holiday will be observed on the Monday.

In these instances, again in alignment to the principles set out in the Public Holidays Test Case, according to the *David Jones Enterprise Agreement*:

- Where an employee is rostered to work on both the actual public holiday and the substituted public holiday, then the employee elects on which day they wish to apply the public holiday

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- Where an employee is rostered to work on either one of the substituted day or the public holiday only, the employee receives public holiday entitlements for the day on which they are rostered to work.

It is submitted, therefore, that additional public holidays should not be provided in instances where public holidays fall on a weekend. Whilst we understand that the intention of the proposal to introduce additional public holidays is to ensure that employees do not miss out on public holiday entitlements, we submit that this is already captured by the Federal industrial arrangements and furthermore such a change may result in:

- “Double gazettement” of public holidays for employees who are covered by the scope of the David Jones Enterprise Agreement. This would then inadvertently create inequity amongst employees, as those employees who fall within the ambit of an agreement that grants substitute days for public holidays will be entitled to incremental public holiday entitlements over other workers;
- An unfair financial burden on many retailers, in particular where employees may claim the benefits of “double gazettement”;
- An inconsistency in the treatment and number of public holidays from year to year; and
- More confusion as to the rights of both employers and employees as they relate to public holiday entitlements.

EASTER SUNDAY

David Jones does not support the argument that Easter Sunday should be proclaimed as a public holiday.

According to the *David Jones Enterprise Agreement*, work on Easter Sunday is voluntary in the first instance.

Any change to the status of Easter Sunday would create an unfair financial burden on employers due to the requirement to pay public holiday penalty rates on that day. Furthermore, as the Options Paper points out, Easter Sunday “is presently not named as a public holiday in any State or Territory public holidays legislation”. The declaration of Easter Sunday as a public holiday therefore, is likely to cause confusion at a national level. It is submitted that the proclamation of Easter Sunday as a public holiday in New South Wales does not meet the objective of the review, as

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it would result in the creation of an additional public holiday. In addition it would create an inconsistency relative to the treatment in all other States and Territories and consequently, for David Jones an inconsistency in the entitlements of employees across the business.

ANZAC DAY

The *David Jones Enterprise Agreement* designates 25 April as the public holiday for ANZAC Day, irrespective of the day of the week on which it falls. As with other public holidays, work on Anzac Day is voluntary for all David Jones employees. This arrangement allows all David Jones employees the opportunity to have the day off work and observe ANZAC Day ceremonies. Furthermore, we recognise that ANZAC Day is a very significant day for many people, and that it is important to allow employees the opportunity to be involved in ANZAC Day ceremonies such as dawn services. We submit, therefore that the substitution of days for ANZAC Day when 25 April falls on a weekend should not be adopted.

In relation to the proposal in the *Review of the Banks and Bank Holidays Act 1912 Options Paper*, to introduce an additional public holiday for ANZAC Day when 25 April falls on a Sunday, it is submitted that such arrangements would:

- Create an unnecessary financial burden on retail employers; and
- Create further uncertainty and confusion around the observance of ANZAC Day and dilute the significance of the day.

We recommend, therefore, that New South Wales should not adopt the practice of designating an additional public holiday for ANZAC Day when it falls on a weekend.

AUGUST BANK HOLIDAY

David Jones does not support the extension of the August Bank Holiday to be a general public holiday.

David Jones notes that there is no cultural or religious significance to warrant the extension, and further states that this would, in effect, create an entitlement to an additional day as the *David Jones Enterprise Agreement* already prescribes an alternate day for employees in NSW, traditionally referred to as the union picnic day, on Melbourne Cup Day.

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SUMMARY

David Jones welcomes the discussion on public holidays, and a review of the Banks and Bank Holidays Act (1912) that would result in more certainty for workers and employers in New South Wales.

David Jones submits that any changes to the observance of public holidays in New South Wales:

- Must not result in some employees being able to take advantage of incremental public holiday entitlements that are not available to others (“double gazetting”);
- Must recognise the operation of Federal industrial arrangements that already provide for the management of public holidays for non-standard workers, provide for Easter Sunday work to be voluntary and provide an additional public holiday by way of ‘Melbourne Cup day’;
- Must not result in any additional public holidays being observed;
- Must not result in an unnecessary financial burden for retail employers; and
- Must not result in additional public holidays being granted when a holiday falls on a weekend.

Any review of public holidays in New South Wales must result in an equitable situation for all employees. In particular, employees who fall under the ambit of a federally recognised agreement such as the *David Jones Enterprise Agreement*, should not be in a position where they receive more public holiday entitlements than other workers in our business or in other States.

David Jones appreciates your consideration of our submissions and welcomes any further support or assistance we can provide the Review.

Yours faithfully,

MATTHEW FITZGERALD
Employee Relations Manager

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