

Submission in response to the NSW Government Review of the *Banks and Bank Holiday Act 1912* Discussion Paper

24 July 2009

The National Retail Association (NRA) is the largest and most representative retail industry body in Australia, with over 3000 members and affiliates. Our members range from large national chain operations to independent retailers and franchise operators.

NRA welcomes this review of the *Banks and Bank Holidays Act 1912* (the Act). The need for the review has been clearly elucidated in the discussion paper and NRA supports the modernisation of the Act.

The primary concern of NRA and our members is that the review must not result in additional burdens for employers. The retail sector is the largest employing industry in Australia and New South Wales. Retail employers are already being faced with unprecedented labour cost increases through the award modernisation process. These cost increases will place pressure on employment and will result in job losses and price increases. It is therefore vital that the outcome of this review does not negatively impact the retail sector.

Please find our responses to the questions posed in the Discussion Paper set out below:

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

How should new legislation deal with public holidays which fall on a Saturday or Sunday? Should different arrangements be made for different public holidays? For example, are there reasons for treating New Year's Day, Australia Day and Anzac Day differently?

NRA is opposed to the creation of additional days when celebrated dates of a public holiday fall on weekends in any circumstances. Retail is one of the many sectors that operate across all seven days of the week. The creation of additional days when celebrated dates of a public holiday fall on weekends would double the burden on these employers. The common approach in industrial instruments is to provide for substitute days when certain public holidays fall on a Saturday or Sunday. The substitute day is generally observed on the following Monday, with the exception being if Boxing Day falls on a Sunday, in which case it would be substituted for Tuesday 28 December. In the case of a substitute day, the actual day ceases to be recognised as a public holiday and only the substitute day attracts penalty rates and associated benefits. This approach is also supported by s115(2) of the *Fair Work Act 2009*, which appears to have overcome the potential problems associated with the definition of public holidays under s611 of the *Workplace Relations Act 1996*.

NRA would support a nationally consistent approach to the substitution arrangements when celebrated dates of a public holiday fall on weekends. This would mean that when New Year's Day, Australia Day, Christmas Day and/or Boxing Day fall on a Saturday or Sunday, a substitute day should apply on the following Monday, provided that where Boxing Day falls on a Sunday the substitute day would be the following Tuesday.

Due to the significance and solemnity of Anzac Day in the Australian community, the NRA submits that it should always be celebrated on 25 April and no substitute or alternative day should be provided, including in 2011. In the alternative, the harmonisation position agreed at the Council for the Australian Federation Meeting of Premiers should be adopted.

2. The Queen's Birthday and Labour Day.

Should the Queen's Birthday and Labour Day holidays be fixed by a provision in the legislation, rather than be left to annual proclamation in the Gazette? Which dates are the most appropriate dates for celebration of these holidays?

NRA supports having these days fixed by legislation would provide certainty as to their date each year, without the need for proclamation by Gazette to confirm them. The most appropriate dates are those that would provide the greatest degree of national consistency.

3. Local public holidays and half-holidays.

Given the new significance of local public holidays, should the arrangements for choosing and proclaiming public holidays be changed, and if so, how?

NRA supports national consistency in relation to public holidays as far as practicable. Local public holidays create significant demands on resources of national employers. NRA would support a move for national harmonisation of the celebrated public holidays.

4. August bank holiday.

Should the August Bank Holiday be retained as a 'close bank holiday'?

Although this issue has little direct impact on our members, we would not support the retention of the August Bank Holiday as a 'close bank holiday' due to the inconsistency of this arrangement with other States and Territories and due to the confusion and inconvenience to banking consumers.

5. Weekend trading for banks.

Should the provisions making every Saturday and Sunday a 'close bank holiday' be repealed, so that banks (like other financial institutions) are permitted to open on weekends? Should the present arrangements be retained, which prohibit weekend trading, but allow banks to open if they are granted an exemption? If so, should the grant of an exemption be subject to any mandatory conditions?

Although this issue has little direct impact on our members, we would support the repeal of the provisions mandating bank closure on Saturday and Sunday. The significant list of banks with exemptions means the provision no longer has any meaningful impact. The vast majority of the retail and service sectors currently trade across seven days and access to banking services on weekends would provide substantial benefits to consumers and businesses.

The NRA thanks you for your consideration of this submission and we look forward to providing further comment on the options paper.