

UNIONS NSW SUBMISSION TO

REVIEW OF THE

BANK AND BANK HOLIDAYS ACT 1912 (NSW)

OPTIONS PAPER



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Introduction

On 29th May 2009, the NSW Minister for Industrial Relations, the Hon. John Hatzistergos announced a review into the Bank and Bank Holidays Act 1912.

Unions NSW welcomes the review and the ability to comment, particularly in light of the history of the introduction to the Workchoices legislation and the loss of rights to certain public holidays for many workers employed in NSW. Further, Unions NSW and affiliates agree that the Act needs to be 'updated' to take into account changes that have occurred during the 97 years since the Act was made.

This submission by Unions NSW and its affiliates is in response to the Review of the Bank and Bank Holidays Act 1912 Options Paper by Professor Joellen Reilly, released on 17 August 2009.

This submission addresses the various options as outlined in the abovementioned paper. This submission should be read in conjunction with the submissions by Unions NSW and affiliates to the Bank and Bank Holiday Act 1912 Discussion Paper.

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Option Paper Responses

List of Public Holidays in the Act

The Options paper examines whether or not a list of public holidays should be set out in the Act. Unions NSW and affiliates support the inclusion of a list of public holidays into the reviewed Act. Unions NSW submit that the list should outline not only the days on which public holidays are to be observed, but also the additional day/s that are to be observed, should such public holidays fall on a Saturday or a Sunday.

Unions NSW submits that the list of New South Wales public holidays that are to be outlined in the Act should be done so similar to the Victorian Public Holidays Amendment Act and /or the WA Public and Bank Holiday Act 1972. Unions NSW would envisage the provision would be as set out below:

Public Holidays

The following days are appointed as public holidays –

- (i) 1 January (New Year's Day);*
- (ii) 26 January (Australia Day)*
- (iii) Good Friday;*
- (iv) Easter Saturday;*
- (v) Easter Sunday;*
- (vi) Easter Monday;*
- (vii) 25 April (Anzac Day)*
- (viii) The second Monday in June (the day on which the anniversary of the birthday of the Sovereign is observed);*
- (ix) The first Monday in August (Bank Holiday);*
- (x) The first Monday in October (Labour Day);*
- (xi) 25 December (Christmas Day)*
- (xii) 26 December (Boxing Day);*

The following days are appointed as public holidays as follows:

- (i) The Monday after 1 January (New Year's Day) when 1 January (New Year's Day) is a Saturday or Sunday;*
- (ii) The Monday after 26 January (Australia Day) when 26 January (Australia Day) is a Saturday or Sunday;*
- (iii) The Monday after 25 April (Anzac Day) when 25 April (Anzac Day) is a Saturday or Sunday;*
- (iv) The Monday after 25 December (Christmas Day) when 25 December (Christmas Day) is a Saturday or the Tuesday after 25 December (Christmas Day) when 25 December (Christmas Day) is a Sunday;*
- (v) The Monday after 26 December (Boxing Day) when 26 December (Boxing Day) is a Saturday or the Tuesday after 26 December (Boxing Day) when 26 December (Boxing Day) is a Sunday."*

Unions NSW outlined in our submission to the Discussion Paper an additional day mechanism should operate within the legislation for all public holidays that fall on a Saturday or Sunday. By providing for this mechanism and such additional days, both standard and non standard workers, (as outlined in the Options Paper) are able to enjoy the original intent of the legislation, which was to provide respite from the normal working week to commemorate specific holidays.

It should be noted that Easter Sunday has been included in the list of Public Holidays that Unions NSW submits should be inserted into the Reviewed Act. Unions NSW supports Easter Sunday being recognised as a public holiday. As stated in our submission to the Discussion Paper, when the legislation was introduced in 1912, there was no need to gazette such a day as work was from Monday to Saturday, with Sunday being a day of rest **for all**. Since the 1912, working hours, patterns of work and shop trading hours have changed dramatically. The inclusion of such a day as a public holiday is just and proper and provides all workers whether they work a standard working week or a non-standard working week with public holiday protections on such day.

How should new legislation deal with public holidays which fall on 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?

As stated above, Unions NSW believes that the concept in both the WA and Vic legislation is an appropriate way to deal with any public holidays that fall on a Saturday or Sunday. The legislation automatically allows for the creation of an additional day on the Monday and/or Tuesday after such day. The practice of creating additional days already exists in other States throughout Australia. The benefit of the adoption of such an approach is that public holidays would then apply equally to both standard and non-standard workers.

In relation to the appropriate options for each day as outlined in the Options Paper, UNSW supports the following:

Christmas Day and Boxing Day

Unions NSW and affiliates support the inclusion of Option B: Maintain current benefits for standard workers and extend those benefits to non-standard workers.

For the reasons stated above and those already outlined in our previous submission to this Review, this option is the most appropriate method of ensuring that all workers and their families are able to enjoy the entitlement to such public holidays.

Option A is in the view of Unions NSW, not a viable option. Such option does not update and modernise the Act to take into account the different types of work patterns that are in existence in NSW. Such an option would allow those workers who are rostered on for work on Boxing Day – 26

December receive no additional compensation for working on such a day, with limited ability to take the day off to spend with family and friends.

New Years Day

Unions NSW and affiliates support the inclusion of Option B: Maintain current benefits for standard workers and extend those benefits to non-standard workers.

For the reasons stated above and those already outlined in our previous submission to this Review, this option is the most appropriate method of ensuring that all workers and their families are able to enjoy the entitlement to such public holidays.

Australia Day

Unions NSW and affiliates support the inclusion of Option B: Maintain current benefits for standard workers and extend those benefits to non-standard workers.

For the reasons stated above and those already outlined in our previous submission to this Review, this option is the most appropriate method of ensuring that all workers and their families are able to enjoy the entitlement to such public holidays.

Further, there is no reason to differ in the approach as to how all public holidays are to be treated. All public holidays are proclaimed for a specific reason and each is important in their own right. Any move to treat Australia Day different to the other public holidays above, in our view diminish the importance of such day.

Anzac Day

Unions NSW and affiliates support an amended version of Option B: Maintain current benefits for standard workers and extend those benefits to non-standard workers.

Unions NSW in its initial submission supported that all days that fall on a Saturday or Sunday remain public holidays and an additional day be proclaimed for the following Monday. This is still the

position of the Unions. Option B should also contain reference to when Anzac Day falls on a Saturday.

It is important to note that it is not the intention of the Unions in making this submission to reduce the importance of Anzac Day. The 25 April should remain a public holiday irrespective of the day of the week that it falls. Observing an additional public holiday as outlined in Option B when 25 April falls on a Saturday or a Sunday in our submission does not diminish the importance and relevance of such day. It is appropriate that all workers be given the same entitlement to public holidays irrespective of whether they are standard or non standard workers.

Implications of Changes Proposed

We do not accept that the adoption of the options as supported by Unions NSW, would provide any great additional costs to business, nor would it see all employees receiving the benefit of the same public holiday twice. In the event that a workers roster entails both days as so proclaimed in the legislation, we submit that it would be left to the appropriate industrial instrument as to which day attracts such penalties. Further, such provisions as proposed already exist in other states within Australia. With the introduction of the Fair Work Act 2009 and the push for one national system for all private sector employees/employers, NSW will be in the same position as two other states as to how the State Act would interact with various industrial instruments. It is our understanding that those Acts operate with relatively little confusion or dispute.

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?

Unions NSW and affiliates support the permanent inclusion into the Reviewed Act, of the Queen's Birthday and the Labour Day holiday on the days that they are currently observed.

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

Unions NSW and affiliates support the inclusion of Option B: Maintain current practice. We do so on the following basis.

As outlined in our previous submissions, local public holidays play an important part of our social and community life. If local public holidays were to be "local event days" few workers would be able to participate in the community and the events held on such days

Option A considers that local public holidays be recognised as local event days. This would create problems within all industrial instruments, as no industrial instrument currently recognises a local event day. The likelihood of varying all modern awards, enterprise agreements and state awards to include such a term, is in the view of the unions unrealistic and not likely to occur. Thus this means that the entitlement to such local public holidays would be lost for many workers in New South Wales. It is noted that it is not the intention of the Review to reduce the number of public holidays available to workers in NSW.

Further, the premise of Option A is that WorkChoices created a right to a paid day off for local public holidays. The argument is that this was not in effect before WorkChoices and has resulted in confusion, and double dipping (i.e. workers getting both the traditional award picnic day and local public holidays) The Options Paper uses Newcastle Show Day as the example. It is true to say that the

WorkChoices legislation created a right to a paid day off on local public holidays. However, such an entitlement was already in existence prior to the introduction of WorkChoices. In the *Geoffrey Trunks and Ors v Waratah Engineering Pty Ltd and Ors, unreported, 12 December 2008* (at para 31 – 37) Hart J held that the award itself, the Metal, Engineering and Associated Industries Award provided a right to a paid day off on local public holidays. Whilst there may have been confusion in Newcastle in 2008, there is no such confusion at the present. It is important to note that there was no dispute in Newcastle in 2009 that workers had the right to a day off with pay.

As outlined in our previous submissions, local public holidays play an important part of our social and community life. If local public holidays were to be “local event days” few workers would be able to participate in the community and the events held on such days

Further it should be noted that in the case of the metal industry, the additional public holiday of Easter Tuesday, has been expressly bargained for and agreed to between the parties and is a term of many enterprise agreements. The fact that such a day has been negotiated and such entitlement exists is no reason to penalize workers and remove their right to the local public holiday.

In these circumstances, NSW Government should not try to take corrective action with respect to Federal legislation. The Fair Work Act recognises local public holidays and leaves it to the State to gazette the actual days. It is the submission of the Unions that the State Government should not deny any workers the entitlement they currently enjoy to a paid local public holiday.

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

Unions NSW and affiliates support the inclusion of Option C: Extend August Bank Holiday (under another name) to all employees.

Unions NSW submits that the August Bank Holiday should be extended to all employees in NSW. We also submit August Bank Holiday should be retained as a close bank holiday.

Unions NSW submits that it is logical that this day be extended as public holiday for all employees within the State. Not only those in the banking industry have the benefit of such day, but it is a day that is widely accepted as a public holiday in many other industries, thus entitling a large proportion

of employees in NSW with such an entitlement. There are numerous agreements and awards throughout NSW that provide such a day as an additional public holiday. Awards and agreements in the Public Sector, Rail industry and also the Health and Aged Care industry, including both for profit and not for profit employers and both public and private entities. Many of those awards allow for the day to be substituted for another day. I.e. a day between Boxing Day and New Year's Day.

The Unions primary submission was for a public holiday to reinstate the entitlement that was lost under WorkChoices – the Union Picnic Day. The union picnic day is observed on different days of the year depending upon what industry workers are employed in. It should be noted that many unions to this day continue to hold a picnic for members on a specified day each year.

Whilst it would be fair to say that all unions would prefer that Unions Picnic Day is a day for their individual industry and celebrated on an appropriate day. The adoption of Option C would go a fair way to rectifying the injustice caused by WorkChoices. It is conceivable that if August Bank Holiday is extended to all employees that the day be available to be substituted to a different day by agreement of the parties. This would allow for all unions through industrial instruments to move the day to the existing picnic days in each industry.

The Unions would request that further discussions occur between the NSW Government and the NSW Union movement should such Option be adopted.

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?

Unions NSW supports **Option A** as the appropriate option in regard to weekend trading for banks. That is that there should be no change to the current system of weekend trading exemption. Unions NSW further supports the submissions of the FSU with regards to this matter and those already made in the submission of both Unions NSW and the FSU to the Discussion Paper.