

26 July 2016

Executive Director  
Review of Public Holidays Act 2010  
GPO BOX 5469  
SYDNEY NSW 2001

Dear Sir/Madam

**RE: Statutory Review of the Public Holidays Act 2010**

The SDA welcomes this opportunity to make a submission to the New South Wales Government's Review of the Public Holidays Act 2010 (NSW) ("the Act").

**About the SDA**

The Shop, Distributive and Allied Employees' Association, New South Wales Branch and the Shop Assistants and Warehouse Employees Federation of Australia, Newcastle and Northern New South Wales ("the Unions") represent the interests of retail, fast food, warehousing and distribution and pharmaceutical manufacturing employees throughout New South Wales with over 70,000 members.

**Review of the Public Holidays Act 2010**

The Unions do not support any changes to the Public Holidays Act that would result in a loss of entitlements, rights or a reduction in benefits currently enjoyed by retail workers and their families.

An extensive review of the *Banks and Bank Holidays Act 1912* culminated in the making of the *NSW Public Holiday Act 2010*. Since its assent in November 2010, the Act continues to fulfil the purposes for which it was made, namely:

**Branch Secretary**  
Bernie Smith



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- **Providing certainty and clarity.** Employees and employers no longer rely on the administrative gazettal of public holidays, but instead know in advance when public holidays will be observed. In this way, the Act is fulfilling its primary purpose of making predictable and transparent the provisions identifying days of cultural, social and religious significance to the NSW community.
- **Supporting community values.** Public holidays provide welcome respite from work and an opportunity to join together in family and community activities. The Act ensures that all sections of the community, including workers engaged in seven day industries such as retail, hospitality and healthcare, have access to guaranteed family and community time during public holidays.
- **National harmony.** The Act provides for, as far as possible, consistency and harmony with other States and Territories on the days on which public holidays are observed. These include Australia Day, and Anzac Day. For example, an additional public holiday when Christmas Day falls on a weekend is now observed in all Australian jurisdictions except Victoria and the Northern Territory. It is also noted that since the commencement of the Act, Easter Sunday is now observed as a public holiday in Victoria and the Australian Capital Territory.

As the Act continues to fulfil the objectives for which it was made, the Unions strongly urges the NSW Government to not make any changes that would depart from these purposes or result in a loss of existing entitlement.

### **The importance of public holidays**

Public holidays remain significant cultural and religious occasions in the life of the broader Australian community. They are occasions when the vast majority of Australians share increasingly rare time with their immediate family, celebrate together with friends and relatives and commonly express and observe their religious beliefs. They should continue to be fully protected at law and should be observed in a manner which provides a meaningful benefit to employees engaged in seven day industries such as retail.

The Public Holidays Act 2010 recognises 11 named occasions of such significance each year. These are: Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and New Year's Day.

Since the review that led to the creation of the Public Holidays Act 2010, these days continue to constitute significant cultural and religious occasions in the life of the New South Wales and broader Australian community.

## **The importance of retaining the additional day mechanism**

One important outcome of the Riley review was the adoption in the Act of a statutory mechanism for the automatic creation of additional public holidays, where Christmas, Boxing or New Year's Day coincides with a weekend, and for Sundays to be declared public holidays. The Unions strongly urge to NSW Government to make no change to this important arrangement.

The previous arrangement of substituting (not adding) a public holiday that falls on a weekend, privileged employees who work standard Monday to Friday hours over those who work rosters covering weekends. Whilst approximately 70% of workers work a standard Monday to Friday roster, a large proportion of workers in the services industry work weekends. Any reversion to the antiquated model of substituting (and not adding) a public holiday when it falls on a weekend would be extremely unfair to the significant group of NSW workers, including retail workers, who do not work a standard Monday to Friday roster.

By ensuring that on which ever calendar day Christmas, Boxing or New Year's Day falls is observed as the actual public holiday, the Act continues to fulfil its objective of supporting community values for all workers. This is an arrangement that ensures retail and other service workers do not miss out on the benefit of the public holiday, as was the case prior to the enactment of the Public Holidays Act. Retail is a seven day a week industry. Sunday is now a busy trading day. Retaining the actual day and the additional day when public holiday falls on a weekend is fair and consistent with modern values.

For most retail workers, public holidays are the only guaranteed days in the year they can plan to make leave arrangements. This is due to expansive employer rostering discretion, the use of annual leave "blackout periods" and the increasing span of trading hours directly associated with the sales which occur at these times of the year.

These days also commonly, if not exclusively, fall on days in the midst of school holidays when working parents, particularly the high proportion of working mothers in the industry, depend upon the practical effect of voluntary work arrangements on public holidays to ensure they can spend guaranteed time with their children.

Maintaining the additional day mechanism will ensure that both standard and non-standard workers are able to enjoy the original intent of the legislation, which was to provide respite from the normal working week to commemorate specific holidays.

### **Easter Sunday**

The Unions strongly urge the NSW Government to retain Easter Sunday as a public holiday in NSW.

The Parliament adopted the Riley review's recommendation of naming Easter Sunday as a public holiday. It was for reasons of history that Easter Sunday was not originally a named public holiday, as originally, all Sundays were "close bank days" and retail trading was not permitted. Making Easter Sunday a public holiday was consistent with the fact that Sunday has now become a normal working day for many workers.

In her report, Professor Riley noted that recognising Easter Sunday as a public holiday would be counter to the objective of achieving harmony with other States and Territories. However, this point is no longer applicable. Since the commencement of the Public Holidays Act 2010, both Victoria and the Australian Capital Territory have declared Easter Sunday to be a public holiday. It is anticipated that over time, other States will follow suit.

### **Local Public Holidays and Local Event Days**

The Unions support the retention of Sections 5 and 8 of the Public Holidays Act 2010 which empower the Minister to declare additional public holidays "for a specified part of the State"<sup>1</sup> and to declare local event days.

The Unions note, however, that "local event days" are essentially meaningless to the vast majority of workers because federal industrial legislation<sup>2</sup> and modern awards<sup>3</sup> and enterprise agreements<sup>4</sup> provide no entitlement to any time off on local event days. They are in essence "Clayton's holidays" – the public holiday you have when you are not having a public holiday.

The decision of the Minister to declare a "local event day" in lieu of a local public holiday means that retail, fast food and warehouse workers derive no benefit, miss out on the event and must attend work consistent with their contractual obligations. Often on a local event day school children have the day off school, however if their parents cannot have the day off work it creates practical problems of trying to arrange temporary child care arrangements and also prevents families enjoying the time together. This defeats the whole purpose of the day.

Only those who can afford to take time off work will get to share the event with others. This leads to a two tiered society which where those on low and middle incomes are excluded and unable to participate in important community celebrations.

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<sup>1</sup> Section 5(2) of the Public Holidays Act 2010

<sup>2</sup> Section 114 of the Fair Work Act 2009

<sup>3</sup> For example, Clause 34 of the General Retail Industry Award 2010 refers back to the National Employment Standards and provides no additional benefit.

<sup>4</sup> For example, Part 7 of the Woolworths National Supermarket Agreement 2012 provides no entitlement for "local event days".

Whilst supporting the maintenance of the existing provisions the Unions note that they are not working efficiently for two reasons:

- (i) there have been numerous instances where the Minister has failed or refused to declare a local public holiday notwithstanding the relevant local council has made application for a local public holiday with the support of the local community following consultation with local residents and businesses.<sup>5</sup>
- (ii) recent declarations of part-day local public holidays for 9am to 5pm<sup>6</sup>, 12pm to 5pm<sup>7</sup>, 12pm – 5:30pm<sup>8</sup> and 1pm to 5pm<sup>9</sup> may make sense to event organisers but create practical difficulties for workers and rostering / payroll challenges for employers which operate or trade outside of these hours.

For example, a worker rostered to work in a supermarket in the Coffs Harbour City Council area on 4 August 2016 from 10am to 6pm will be required to attend work from 10am – 12pm, they will subsequently be entitled to time off with pay or to work at the appropriate rate from 12pm – 5:30pm and then be required to re-attend work from 5:30pm – 6pm. This is complex and patently absurd.

The Unions respectfully suggest that where a local council makes application for a part-day public holiday declaration then half-day declarations from 12 midday onward (until midnight) should be adopted to reduce the difficulties and confusion caused by the issues described above.

## **Conclusion**

The Public Holidays Act continues to fulfil the objectives that gave rise to its implementation. Workers and businesses have certainty of when public holidays will fall throughout the year. Retail and other service workers receive the benefit of the actual public holiday when it falls on a weekend. As far as possible, the Act maintains national consistency with the observance of public holidays in other States and Territories. This national consistency now extends to the observance of Easter Sunday in Victoria and the Australian Capital Territory.

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<sup>5</sup> See applications by Lake Macquarie Council for a local public holiday from 2011-2015 and by Newcastle City Council in 2016

<sup>6</sup> Kangaroo Valley Show 2016

<sup>7</sup> Maclean Show 2016

<sup>8</sup> Coffs Harbour Gold Cup 2016

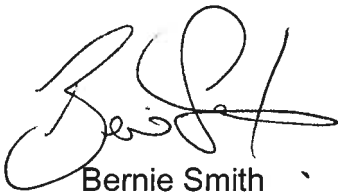
<sup>9</sup> Ramornie Race Day 2016

As the Act continues to fulfil the purpose and objectives for which it was made, the Unions strongly urge the NSW Government to not diminish the current arrangements.

The Unions also support the submission of Unions NSW to this review.

The Unions would be pleased to provide additional comment. If you have any questions or would like to discuss this submission, please do not hesitate to contact me in the NSW Branch Sydney office on 02 9281 7022.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bernie Smith', with a large, stylized initial 'B' and 'S'.

Bernie Smith  
BRANCH SECRETARY-TREASURER