

CLAUSE NOTES

Statutory Holidays Amendment Bill 2010

- Clause 1** A formal provision specifying the title of the proposed Act. The Act amends the *Statutory Holidays Act 2000*, by inserting provisions ensuring that employees transferred to coverage under the *Fair Work Act 2009* continue to receive the entitlements that they traditionally enjoyed; ensuring that no other employees are disadvantaged or advantaged by these new arrangements; honouring the commitment made at the Council for the Australian Federation that Tasmania would introduce the agreed national harmonised arrangements for the observance of Anzac Day; and ensuring proper remuneration for those employees who have to work on Saturday 25 December.
- Clause 2** A formal provision specifying the commencement date of the Act.
The Act will commence on the day it receives Royal Assent.
- Clause 3** A formal provision, specifying the name of the Act to be amended (the *Statutory Holidays Act 2000*), which is referred to throughout the Bill, and these Clause Notes, as the “Principal Act”.
- Clause 4** This amends the Long Title of the Principal Act to reflect that it now creates public holidays throughout Tasmania and that Easter Tuesday is not a generally observed public holiday.

Clause 5

Section 4(a) This subsection inserts a provision that makes specific days, public holidays throughout Tasmania. Additionally it facilitates the operation of the following provision of the National Employment Standards made under section 115(1)(b) of the *Fair Work Act 2009*.

s 115(1) The following are public holidays:

(b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

Section 4(b) This amendment omits the reference to Easter Tuesday so that it does not become a statutory holiday that is a generally observed public holiday.

Section 4 (c)

New section (g)(i) This subsection substitutes the reference to the Anzac Day statutory holiday and provides for that day to be observed on the following Monday when 25 April is a Sunday.

(g)(ii) This subsection substitutes the reference to the Anzac Day statutory holiday and provides for that day to be observed on the following Tuesday when 25 April is Easter Monday.

Section 4(d)

New section (i) This amendment is effectively the same that existed in the Principal Act. It provides for Christmas Day to be observed on the 25th

December unless that day falls on a Sunday in which case the day of observance is substituted by the following Tuesday.

(ia) This subsection provides for an additional holiday on the following Monday when the 25th December is a Saturday.

It needs to be read in conjunction with section 5(d)(i) which provides for Christmas Day to be observed on the 25th December when that day is a Saturday (or any other day of the week except Sunday).

Clause (6)

Section 5(a) This subsection inserts a provision that makes specific days, full day public holidays in specific areas of Tasmania. Additionally it facilitates the operation of the following provision of the National Employment Standards made under section 115(1)(b) of the *Fair Work Act 2009*.

s 115(1) The following are public holidays:

(b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

A general observation provision has not been included to ensure that those statutory holidays are only observed in the areas specified.

Section (5)(b) This subsection inserts a provision that makes specific days, part day public holidays in specific areas of Tasmania. Additionally it facilitates the operation of the following provision of the

National Employment Standards made under section 115(1)(b) of the *Fair Work Act 2009*.

s115(1) The following are public holidays:

(b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

A general observation provision has not been included to ensure that those statutory holidays are only observed in the areas specified.

Clause 7 Section 6 of the Principal Act is repealed however due to the provisions in this Bill the provisions that were contained at s6(a) are now redundant. The previous section 6(b) is repealed as this Bill creates entitlements.

Note that section numbers in Clause 7 of these clause notes refer to new section numbers to be inserted in the Principal Act.

Section 6(1) This subsection specifies the persons who are entitled to observe Easter Tuesday by reference to section 6 of the *Industrial Relations (Commonwealth Powers) Act 2009*. It includes: public sector employees, police officers, Ministers, Members of Parliament, judicial officers and their personal staff. It also includes other classes of persons and employment arrangements.

Section 6(2) This subsection creates a statutory entitlement to observe the Easter Tuesday holiday for those persons specified by section 6(1).

Section 6(3) This subsection makes it clear that those persons who do not normally work on Easter Tuesday are not entitled to compensation as a result of the provisions of this Bill.

Section 6(4) This subsection prohibits the application of any law or legal instrument from annulling the application of the Easter Tuesday entitlement.

Section 6(5) This subsection enables terms and conditions to be established for those persons who work on Easter Tuesday.

Section 6A (1) For the avoidance of doubt, this subsection reiterates that existing entitlements previously enjoyed under the Principal Act are not extinguished by this Bill.

Section 6A (2) For the avoidance of doubt, this subsection reiterates that:

- section 27(2)(j) of the *Fair Work Act 2009* prohibits the state and territories from creating entitlements for any specific class of persons referred under the *Industrial Relations (Commonwealth Powers) Act 2009*; and
- that it would be constitutionally invalid for Tasmanian legislation to attempt to override Commonwealth legislation.

Clause 8 This section amends section 8(a) of the Principal Act and reflects the previous provision that Easter Tuesday is a bank holiday for the purposes of reckoning of time under the *Bills of Exchange Act 1909*. Despite it being a bank

holiday for this purpose, Easter Tuesday, while being as statutory holiday, is not a public holiday that is generally observed in Tasmania.

Clause 9 This is a standard repeal provision to remove the empty shell of the Bill after all its provisions have been transferred and come into effect in the Principal Act.