

SECOND READING SPEECH

STATUTORY HOLIDAYS AMENDMENT BILL 2010

Mr Speaker, I move that the Bill now be read a second time.

Mr Speaker, the purpose of this Bill is to amend the *Statutory Holidays Act 2000*, to allow all Tasmanian employees to enjoy equitable and consistent arrangements for the observance of public holidays in Tasmania.

The Bill has four important elements.

1. It ensures that employees transferred to coverage under the *Fair Work Act 2009* continue to receive the entitlements that they traditionally enjoyed;
2. It ensures that as far as possible within constitutional limitations no employees are disadvantaged or receive any new entitlements as a result of these new arrangements;
3. It honours the 2008 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 lastly
4. It ensures proper remuneration for those employees who have to work on Saturday 25 December.

I will deal with these four elements in turn.

Firstly, in 2009 all Tasmanian private sector employees were transferred from coverage under the *Industrial Relations Act 1984* to coverage under the Commonwealth's *Fair Work Act 2009*.

Transitional arrangements meant that those employees who received their Public Holiday and other leave entitlements based on State Awards would continue to do so up until 31 December 2010, the end of the transition period.

However after the transition period ceases there is an issue with Public Holidays.

Under the Fair Work Act an entitlement to a public holiday is based on the Modern Awards and the National Employment Standards, the NES.

Mr Speaker, the NES, in common with the current Statutory Holidays Act specifies the public holidays applicable for all employees but in relation to local holidays the NES relies on the test of a public holiday being generally observed in a jurisdiction before it can become an entitlement. The current Act does not create an entitlement for employees, it simply specifies if there is an entitlement to a holiday, the day and locality for which that entitlement is to be exercised.

Likewise the current Act specifies substitution arrangements which only apply if an entitlement has been established elsewhere and the NES relies on established jurisdictional arrangements for substitution days for when say a public holiday falls on a weekend.

The Bill has been drafted to amend the *Statutory Holidays Act 2000* to make the days cited in this Act days that are generally observed as public holidays in Tasmania. This ensures all Tasmanian employees will continue to receive their rights to observe local holidays and substitution days when holidays fall on a weekend.

Importantly, without this amendment the NES will have no legal reference point following the expiration of the application of the Tasmanian Awards on 31 December this year.

Secondly, Mister Speaker, it was recognised that if Easter Tuesday was left as is in the Act, all private sector employees will gain an entitlement to observe a public holiday on that day. This does not reflect current custom and practice as generally only state public employees along with employees in the finance, insurance and legal sectors not covered by Registered Industrial agreements are entitled to that holiday.

To address this it is proposed to move the reference to Easter Tuesday in the Act so that it is not a day that is to be generally observed. It becomes a day that has specified entitlements for all Tasmanian Government employees regardless of whether they are employed under an award, agreement or contract.

Under the Australian Constitution, Tasmania cannot introduce legislation that purports to maintain an entitlement to Easter Tuesday only for those employees in the finance, insurance and legal sectors that previously were entitled to this holiday, as their rights to this entitlement now flows from the Fair Work Act.

Employees in the finance, insurance and legal sectors who previously observed Easter Tuesday as a holiday will not continue to receive this entitlement under the NES, however the reality is that most, if not all of these employees, will continue to receive this day as these sectors are generally covered by Registered Agreements which have this entitlement and this is not effected by the termination of the transition provisions.

It should also be noted that if the Anzac Day changes are enacted then in 2011 the substitute day for Anzac Day falling

on Easter Monday will be Easter Tuesday so under the NES all employees will receive a Public Holiday on Easter Tuesday for next year.

Notwithstanding this in order to address this matter for the future in respect of a small number of private sector employees who may lose their entitlement to Easter Tuesday, the Government will be raising the issue with the Federal Government seeking legislative change to the Federal arrangements to ensure that no-one loses their previous entitlement.

Thirdly, Mister Speaker, many of those Members present will recall the debate in 2009 when my predecessor introduced a Bill to honour the Government's commitment made at the Council for the Australian Federation Meeting of 12 September 2008.

At this meeting all States and Territories agreed in principle to take steps to harmonise arrangements for the provision of the Anzac Day public holiday as follows:

- a substitute public holiday on the following Monday where Anzac Day falls on a Sunday; and
- a substitute public holiday on the Tuesday when Anzac day falls on Easter Monday.

This measure was supported by Unions Tasmania and not opposed by the RSL and Tasmanian Chamber of Commerce and Industry and other key individuals. It also had the unanimous support of the members all three political parties and of the House of Assembly, however was not supported by the Legislative Council.

As a consequence Tasmania is the only state that does not provide for substitute arrangements for this day as the Act only enables a public holiday to be observed for Anzac Day on 25 April.

I have continued to consult with key groups, including those previously mentioned and the Tasmanian Veterans Advisory Council, and I am confident that the bill continues to have broad support in the community – however I will let those organisations speak for themselves.

I must say that upon reading the Hansard of the debate in the Legislative Council it is apparent that there was significant concern that Anzac Day itself would be affected in terms of the activities that take place on April 25th every year.

I would like to make it absolutely clear that the Government will not allow this to occur. Anzac Day will always be on the 25th and will always be celebrated on the 25th a sentiment that I am sure that all members of the House would support.

It is however time to fix the anomaly whereby Tasmanians and Tasmanian employees specifically are the only employees in the Nation that do not receive a substitute holiday when Anzac Day falls on a Sunday or as happens next year on an Easter Monday.

I would also point out that the current situation has the capacity to

- exacerbate legal confusion and argument over the Bills of Exchange requirements with respect to the number of days for cheque clearances, promissory notes, lodgements and the like;

- also interstate trading and business transactions will not be available for Tasmanian businesses;
- as well as the inequity between Tasmanian and Commonwealth employees covered by National Industrial Agreements such as the Australian Tax Office, Defence, Telstra and the like;

It is my view that ANZAC Day is a time for families to come together to acknowledge and reflect on the efforts of our returned servicemen and women. A long weekend, in those limited circumstances where the 25th falls on a Sunday, would provide more time for veterans to spend time with their sons, daughters, grandchildren and loved ones.

Far from diminishing the service that veterans have provided, it allows more time for reflection on the sacrifices they made.

Lastly, Mister Speaker,

This year, Christmas falls on a Saturday which will result in the situation where employees who have to work on this day will only receive penalty rates applicable for Saturday as the *Statutory Holidays Act 2000* only provides a substitute day.

The workers that work on the substitute day, in this case Monday, will receive penalty rates applicable to Christmas Day.

This is an inequitable situation where employees, who work on Christmas Day, receive lesser remuneration than those who work on the substitute day.

The fundamental issue is that when a public holiday is substituted, due to it falling on the weekend, the applicable penalty rates are likewise transferred and where workers are

required to work on the actual day they are denied the appropriate penalty rates.

The Bill proposes an additional day to be observed as a Public Holiday when Christmas falls on Saturday.

The costs associated with an additional holiday for Christmas for the hospitality and service industries are legitimate, however, it needs to be noted that these costs would have had to be paid if there were no substitution arrangements contained in the Statutory Holidays Act.

Earlier this month the Queensland Government passed legislation to provide employees this year with two additional holidays to compensate for the fact that both Christmas and New Years Day both fall on a Saturday.

These changes brought Queensland into line with New South Wales and Western Australia, which has an additional day.

It also rejects the perverse situation this year where people working on Christmas Day receive Saturday wages, which can often be no penalty rates, and workers on the 27th, when the Christmas Day holiday is observed, receive public holiday rates, which can be as much as triple time.

I believe that this amendment will ensure that workers would receive fair compensation for having to sacrifice special time with family and friends this Christmas.

This Government holds dear family values and respects the needs of families to be together at Christmas time. If this cannot happen, then some degree of penalty rates for workers on Christmas Day is justified.

I commend this Bill to the House.