



APEC Public Holiday Bill 2007

Paula Pyburne
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Basis of policy commitment.	2
Financial implications	3
Main provisions.	3

APEC Public Holiday Bill 2007

Date introduced: 8 August 2007

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: on the day of Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet at: <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To deem 7 September 2007 a public holiday for the purposes of certain federal industrial instruments under the *Workplace Relations Act 1996* (the WR Act) but only in respect of employment in the local government areas in which the public holiday is to be observed.

Background

From January to September 2007 Australia is hosting a series of Asia-Pacific Economic Co-operation (APEC) meetings, culminating with the APEC Economic Leaders Meeting which commences on 2 September 2007. During APEC Leaders Week, [meetings](#) will take place at venues in and around Sydney's CBD, including the Sydney Opera House, the Sydney Exhibition & Convention Centre and Government House. Throughout the week parts of the city will operate under 'event time' traffic controls and access arrangements, similar to those in place during the Sydney 2000 Olympic Games. A detailed traffic and transport plan will be implemented throughout parts of the CBD during the week of 2–9 September by the NSW Police. Some short-term traffic disruption is expected and will include the closure of roads, the implementation of clearways and public transport diversions.

Basis of policy commitment

The NSW Government declared a public holiday to coincide with the APEC Summit to be held in Sydney in September 2007. The public holiday on 7 September 2007 has been

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

declared for the Sydney metropolitan area within specified local government areas.¹ Legislation was introduced to ensure the workplace entitlements for Sydney workers so that where NSW state awards and agreements provide for public-holiday entitlements, these have now been extended to cover the APEC holiday.

The NSW Minister for Industrial Relations, the Hon. John Della Bosca, requested that the Federal Minister for Employment and Workplace Relations make similar amendments to federal legislation to take into account the public holiday on 7 September 2007.²

The arrangements will cover people who would normally work in the Sydney metropolitan area who have been asked to keep away to assist with the smooth operation of the APEC event.³

Financial implications

The Explanatory Memorandum states that the measures in the Bill would have no significant impact on Commonwealth expenditure.⁴

Main provisions

Section 612 of the WR Act provides that an employee is entitled to a day off on a public holiday, subject to some qualifications. Section 611(b) of the WR Act provides that 'public holiday' means, amongst other things, any day (apart from a day specified in subsection 611(a) of the WR Act) which is declared by or under a law of a state or territory to be observed as a public holiday by people who work within the state or territory.

The NSW Government declared that 7 September 2007 would be a public holiday for those persons working in the Sydney metropolitan area within specified local government areas. Those persons who are employed under the terms of the WR Act (as amended by the *Workplace Relations Amendment (Work Choices) Act 2005*) within the specified local

-
1. Office of Industrial Relations, 'APEC Public Holiday', <http://www.industrialrelations.nsw.gov.au/holidays/apec+public+holiday.html>, accessed on 9 August 2007.
 2. *ibid.*
 3. E. Tadros, 'If you want to make the plane, take the train, police advise', *Sydney Morning Herald*, 2 August 2007, p. 5.
 4. *Explanatory Memorandum*, p. 1.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

government areas will receive public holiday entitlements for that day in accordance with section 611(b) of the WR Act.

The statutory public entitlement does not apply to employees covered by a range of industrial instruments made prior to Work Choices.⁵ The Bill is directed at those employees who are bound by these pre-reform industrial instruments.

Clause 4 defines the relevant terms. In particular, the definition of ‘pre-reform industrial instrument’ means:

- a transitional award within the meaning of subclause 2(1) of Schedule 6 of the WR Act
- a pre-reform AWA within the meaning of clause 1 of Schedule 7 of the WR Act
- a pre-reform certified agreement within the meaning of clause 1 of Schedule 7 of the WR Act
- a section 170MX award within the meaning of clause 1 of Schedule 7 to the WR Act
- an old IR agreement within the meaning of clause 1 of Schedule 7 of the WR Act to the extent that it binds an excluded employer
- a preserved state agreement within the meaning of subclause 1(1) of Schedule 8 to the WR Act.

The Bill is directed at employees who are employed under these arrangements.

In addition, **clause 4** defines the ‘APEC public holiday’ as 7 September 2007.

Clause 5(1) provides that a reference in any of the ‘pre-reform industrial instruments’ to a ‘public holiday’ is deemed to include a reference to the APEC public holiday, but only in respect of employment in the local government areas that have been specified. This ensures that the APEC public holiday is treated in the same way as any other public holiday under a pre-reform industrial instrument.⁶

Clause 7(1) of the Bill provides a broad authority to make regulations for matters arising out of the Act. **Clause 7(2)** provides that the regulations may provide that for a specified law of the Commonwealth, the APEC public holiday is taken either to be or not to be a public holiday. The subsection has been included to allow regulations to be made to remedy any unforeseen or unintended consequence that may arise.⁷

5. *ibid.*, p. 1.

6. *ibid.*, p. 3.

7. *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

In addition, **clause 7(3)** provides that the regulations:

- may be expressed to take effect from a date before the regulations are registered under the Act and
- even if the regulations are made after 7 September 2007 they may provide that the APEC public holiday is taken always to have been or not to have been a public holiday.

The reason for this inclusion is that any anomalous outcomes that arise after the APEC public holiday would only be capable of being remedied through law with retrospective effect.⁸

8. *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2784.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.