



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Establishing Easter Sunday as a public holiday in Western Australia

Summary Decision Regulatory Impact Statement

June 2021

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Policy proposal

The State Government made an election commitment for Easter Sunday to be a public holiday in Western Australia from 2022.

Statement of issue

The *Public and Bank Holidays Act 1972* (PBH Act) prescribes 10 public holidays in Western Australia. Easter Sunday is not appointed as a public holiday, although Good Friday and Easter Monday are public holidays.

Easter Sunday is a day of cultural and religious significance for many Western Australians. As Easter Sunday is not currently a public holiday, Western Australians who work on this significant day do not receive the employment benefits that flow from a public holiday.

Currently the lack of an Easter Sunday public holiday means there are negative implications for Western Australians in that:

- there is no official recognition of the special significance of Easter Sunday; and
- if employees work on Easter Sunday, they do not receive pay rates equivalent to the other significant days that are public holidays, including Easter Monday.

Easter Sunday is observed as a public holiday in Victoria, New South Wales, Queensland and the Australian Capital Territory. All of these jurisdictions also observe Easter Saturday as a public holiday, as well as South Australia and the Northern Territory.

Objective of proposal

The State Government made an election commitment for Easter Sunday to be a public holiday throughout Western Australia from 2022 onwards.

The media statement¹ announcing the commitment states:

- *“Employees who are required to work on Easter Sunday will benefit from an increased penalty rate, rising from the ordinary Sunday rate to a public holiday penalty rate”;*
- *“An Easter Sunday public holiday will ensure shift workers who need to work on Easter Sunday are paid fairly”;*
- *“It will also ensure that hardworking Western Australians have more time to spend with their families and friends, with three public holidays to be included in the Easter holiday weekend”.*

These statements indicate that the Government’s intention in making Easter Sunday a public holiday is to provide for paid time off work on Easter Sunday, and for those employees who do work, to facilitate the payment of public holiday penalty rates of pay on Easter Sunday.

This Decision Regulatory Impact Statement summarises the impacts of the regulatory changes and options for implementation are assessed. Feedback from consultation is also

¹ Available at: www.markmcgowan.com.au/2021/03/11/re-elected-mcgowan-government-to-introduce-a-new-public-holiday/

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summarised, noting a formal Consultation Regulatory Impact Statement was not required due to the changes being clearly open for public discussion with the proposal an election commitment.

Options

There are two options by which Easter Sunday could be made a permanent public holiday in Western Australia.

Option 1 – Amendment of the PBH Act to prescribe Easter Sunday as a permanent public holiday

The PBH Act can be amended to prescribe Easter Sunday as a public holiday.

Option 1 is that an amendment be made to the PBH Act to include Easter Sunday as a permanent public holiday. This would increase the number of permanent public holidays prescribed in the PBH Act from 10 to 11, and would be accompanied by an amendment to the *Minimum Conditions of Employment Act 1993* (MCE Act) to add Easter Sunday to the holidays listed in Schedule 1 to the MCE Act.

Option 2 – Amendment of the PBH Act to prescribe Easter Sunday as a permanent public holiday, accompanied by additional legislative amendment to implement the change in State awards and agreements

Option 2 is similar to Option 1, but would be accompanied by additional legislative provisions to insert the new Easter Sunday public holiday into State awards and agreements, and to ensure that Easter Sunday entitlements applied only on Easter Sunday, with no substitution of other days possible. The need for these additional provisions is explained further below.

Consideration of options

Industrial relations considerations

Two industrial relations systems operate in Western Australia – the State system and the national ‘Fair Work’ system. Which system applies to a particular business or organisation and its employees depends on the type of business arrangement under which the employer operates. The State industrial relations system covers businesses that operate as sole traders, unincorporated partnerships and unincorporated trusts, while the national system covers all businesses that are constitutional corporations, which includes proprietary limited businesses.

Around two-thirds of private sector employees in Western Australia are covered by the national industrial relations system. The remaining one-third of private sector employees are covered by the State industrial relations system.

The two systems have different legislative and award frameworks. As such, the capacity for a Western Australian worker to immediately enjoy the employment entitlement benefits of a new Easter Sunday public holiday will depend on which system covers the particular employer and their employees.

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National industrial relations system

Employees covered by the national system would automatically receive the employment entitlement benefits of an Easter Sunday public holiday, whether implemented by means of Option 1 or 2.

This is because the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) (FW Act) recognise public holidays declared by a State or Territory. As a result, national system employees would:

- have a prima facie entitlement to be absent from work on the public holiday;²
- be entitled to payment if they do not work on the public holiday but would have normally worked ordinary hours on the day; and
- be entitled to any public holiday penalty rates under an award or agreement if they do work on the public holiday.

State industrial relations system

Minimum entitlements

Under section 30 of the MCE Act, the minimum employment entitlement is that full time and part time employees who are not required to work on a day solely because that day is a public holiday are entitled to be paid as if they were required to work on that day. Part time employees also receive public holidays if the day falls on a day they would normally work.

There is no entitlement under the MCE Act to be absent from work on a public holiday. For employees required by their employer to work on a public holiday, there is no minimum entitlement under the MCE Act to additional rates of pay (penalty rates). Many employees have an entitlement to be paid public holiday pay rates under the relevant State award or industrial agreement, or under a contract of employment.

Schedule 1 to the MCE Act lists the 10 public holidays in the PBH Act. If the PBH Act was amended to prescribe Easter Sunday as a public holiday (whether Option 1 or 2), the MCE Act would be amended to include Easter Sunday in Schedule 1 to the MCE Act, and this amendment would extend the public holiday employment entitlements in the MCE Act to apply on the new permanent Easter Sunday public holiday.

State awards and agreement entitlements

Many private sector employees in the State system are covered by State awards and some are covered by registered industrial agreements. State awards are issued by the Western Australian Industrial Relations Commission (WAIRC) and set the minimum pay rates and employment arrangements for specific industries or occupations.

² Under the FW Act, an employer can ask an employee to work on a public holiday, if the request is reasonable. An employee may refuse a request to work if they have reasonable grounds. Issues that must be considered as part of this process are further defined in the NES.

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The majority of State awards and agreements in both the public and private sectors contain provisions which require the payment of a penalty rate to employees working on the public holidays recognised in the relevant instrument.

Most awards list individual public holidays rather than automatically incorporating holidays prescribed under the PBH Act, and as such would **not** automatically recognise Easter Sunday as a public holiday if the PBH Act was amended to include Easter Sunday as a public holiday.

If Option 1 was implemented, most employees covered by a State award or agreement who worked on Easter Sunday would not have an entitlement to public holiday penalty rates, and would instead continue to be entitled to the Sunday pay rates applicable under their industrial instrument.³

This reduces the benefit of the new holiday for these employees and creates a disparity of entitlements between State and national system employees who work on Easter Sunday.

For Easter Sunday to be recognised as a public holiday under State awards, one of the following actions would need to occur:

- a) award parties successfully apply to the WAIRC to vary their relevant award to recognise Easter Sunday as a public holiday;
- b) the WAIRC Commission in Court Session makes a General Order under section 50 of the *Industrial Relations Act 1979* (IR Act) varying some or all awards to recognise Easter Sunday;⁴
- c) legislation is passed to insert Easter Sunday as a public holiday in State awards and agreements.

Both individual award variations and a new General Order varying some or all State awards ((a) and (b) above) to recognise a new Easter Sunday public holiday would necessitate proceedings in the WAIRC involving employer, union and in some cases, government representatives,⁵ and would likely require a considerable investment in resources by the parties involved. These types of cases can be lengthy, and it is unlikely that any such proceedings would be completed before Easter Sunday in 2022. It is also likely that any matter of this type would be contested, and there is no guarantee that the WAIRC would ultimately decide to recognise Easter Sunday in an award or awards at the conclusion of any such proceedings.

³ For State public sector employees, the Government could direct agencies to immediately treat Easter Sunday as a public holiday for the purposes of relevant industrial instruments, and in the longer term seek to amend these instruments to incorporate the new public holiday.

⁴ Pursuant to section 50 of the IR Act, the WAIRC Commission in Court Session may make General Orders varying awards of its own motion, or on the application of UnionsWA, the Chamber of Commerce and Industry of WA, the Australian Mines and Metals Association or the Minister for Industrial Relations.

⁵ Officers from the Department of Mines, Industry Regulation and Safety customarily represent the Minister for Industrial Relations in WAIRC proceedings pursuant to section 50 of the IR Act, and would also be involved in any award variation matters pertaining to government sector employers.

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State industrial agreements would need to be varied to incorporate an Easter Sunday public holiday by consent of all parties,⁶ or updated as part of negotiations for a replacement industrial agreement.

Option 2 provides a significant advantage in definitively providing for prompt recognition of the new Easter Sunday public holiday in all State awards and agreements, which may not occur under Option 1.

It should also be noted that many State awards provide for substitution of public holidays that fall on a weekend. For example, the *Hairdressers Award 1989* provides that a public holiday which falls on a weekend is observed on “the next succeeding Monday”. This means that only the Monday is treated as a public holiday, and there is no entitlement to public holiday rates for working on the weekend public holiday. Given that Easter Monday is already a public holiday under the PBH Act, this type of substitution would negate the benefit of a new Easter Sunday public holiday.

Most State awards would require amendment to overcome the public holiday substitution issue. This could occur through applications to vary individual awards or through a General Order but as outlined above, legislation would be the most efficient and certain means of giving effect to the new Easter Sunday public holiday in State awards in 2022. Legislation could require the Easter Sunday public holiday to be observed on the day itself and prevent substitution to an alternative day.

Such legislation would also prevent State awards from being amended in the future to include new clauses which could, for example, substitute an Easter Sunday public holiday for the next succeeding Tuesday. Substitution of this type would effectively extend Easter Sunday public holiday entitlements in an award beyond the day itself, and in doing so, go beyond the Government’s stated intentions in establishing the new public holiday. It would also increase the cost of the new public holiday, by extending it to more employees.

Legislation to prevent substitution of the Easter Sunday public holiday would be the only effective means of ensuring that any applicable public holiday entitlements arising from the establishment of an Easter Sunday public holiday are confined to the day itself.

Administrative considerations

Options 1 and 2 both involve an administrative impact in 2021, with the drafting and passage of legislation to amend the PBH Act and the MCE Act to establish the new Easter Sunday public holiday. This work would be undertaken as part of the Industrial Relations Legislation Amendment Bill, for which the Government made an election commitment to reintroducing after it lapsed with the proroguing of State Parliament on 7 December 2020.

The legislative work required would be slightly greater in Option 2, which includes additional legislation to amend State awards and agreements to recognise the new public holiday and address substitution issues. However, as noted above under Option 1, the options for applying to the WAIRC to seek variations to State awards or a General Order to recognise the new public holiday would create a significant administrative and time burden for Government, and for employee and employer associations, if such applications were

⁶ A State industrial agreement may be varied by a subsequent agreement made by the parties.

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progressed. Legislating to address these issues as per Option 2 would be significantly quicker and more efficient, and reduce ongoing administrative impacts.

Certainty for business, employees and the community

It is important, particularly in the current environment that businesses, employers and the community are provided with certainty and security in employment rights and obligations.

If Option 1 was implemented, there would be no certainty as to whether, when or how State awards and agreements would recognise the new Easter Sunday public holiday.

Option 2 would have the advantage of providing clarity for employers regarding their ongoing employment obligations and assuring employees that they would benefit from public holiday employment entitlements in State awards and agreements on Easter Sunday from 2022 onwards.

Summary of benefits of Options 1 & 2

Option 1	Option 2
Implements new Easter Sunday public holiday. May not achieve Government's stated objective for employees in State industrial relations system.	Achieves dual objectives of implementing new public holiday and ensuring that it is recognised in both State and national industrial relations systems.
Does not address possible substitution issues for State industrial relations system.	Addresses possible substitution issues for State industrial relations system.
Potentially higher costs for government, employer and employee representatives in managing any WAIRC proceedings to recognise Easter Sunday in State industrial instruments.	Legislation obviates need for WAIRC proceedings to recognise Easter Sunday in State industrial instruments.
Uncertainty as to when or if the Easter Sunday public holiday would be recognised in State industrial instruments.	Certainty for employers, employees and the community.

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Impact assessment

Benefits for employees

Access to public holiday rates of pay for work on Easter Sunday would represent a benefit to eligible employees, and would result in higher compensation for work done on a day of religious and cultural significance. These increased wages would boost the disposable income of employees who work on that day. This could potentially benefit the broader economy through increased spending, although that would depend on the extent of any reduced employment as a result of the higher pay rates.

Costs implication for employers

There will be wage cost implications for employers who operate on Easter Sunday arising from the requirement to pay eligible employees public holiday penalty rates rather than Sunday pay rates.

There will be a particular impact on those industry sectors which commonly trade on Sundays including retail, cafes and restaurants, and other hospitality and accommodation services. Other industries with seven-day operations would also be impacted by higher wage costs, including health services, aged/disability care, tourism, transport and mining.

The cost estimate for the proposed Easter Sunday public holiday is **\$28.88 million** per year. This cost estimate covers both the public and private sectors, and assumes that the new Easter Sunday public holiday is recognised in State awards via implementation of Option 2.

Details of the methodology and calculations for the cost estimate are at Appendix A.

The overall cost of making Easter Sunday a public holiday is minimised by the fact that Sunday work attracts penalty rates in many industries, albeit these are lower than public holiday penalty rates. As such, the cost estimate is based on the difference between penalty rates for working on a Sunday and penalty rates for working on a public holiday.

It can also be expected that some employers, particularly in the hospitality industry, may offset the increased wage costs through a public holiday surcharge to customers. This practice would reduce the cost impact for those businesses, but represent an increased cost to consumers. This may in turn discourage some consumers from going to cafes and similar venues.

There may be some businesses which opt not to trade on Easter Sunday as a result of the new public holiday. This may reduce the cost impact of the proposal, however, there will continue to be cost implications for business, as some employers would still be required to pay employees who would have otherwise worked on that day. In this situation, some employees, particularly casual employees, may also be impacted by reduced wages due to not working on Easter Sunday.

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If Option 1 was implemented rather than Option 2, most private sector employees covered by a State award would not be entitled to public holiday penalty rates on Easter Sunday unless or until relevant awards were varied to recognise the new public holiday, whether by means of a General Order issued by the WAIRC or successful applications to vary individual awards.

In this scenario, the overall cost implications would be somewhat reduced. However, this reduction is difficult to quantify, as it is expected that some employers may pay public holiday rates regardless of their specific legal obligations, and the exact number of State system employees covered by a State award is not able to be determined.⁷

Public sector cost impacts

The establishment of Easter Sunday as a public holiday would generate increased labour costs for the public sector in the form of payment of public holiday penalty rates for most public sector employees who work on Easter Sunday.

While implementing Option 1 would not automatically result in State awards and agreements in the public sector recognising Easter Sunday as a public holiday, it is expected that the Government could administratively implement treating Easter Sunday as a public holiday for the purposes of relevant industrial instruments, and in the longer term update these instruments to incorporate the new public holiday. This would ensure that public sector employees who work Easter Sunday would receive appropriate public holiday penalty rates. It is anticipated that any extra cost for public sector agencies arising from increased wage costs on Easter Sunday would be met from existing budgets.

The Department of Treasury has estimated the cost of an extension of public holiday penalty rates to State public sector employees working on Easter Sunday to be \$2.6 million per annum. It is noted these costs do not cover some government agencies, such as government trading enterprises.

Retail trading implications

General retail shops in the Perth metropolitan area are required to be closed on a public holiday under the *Retail Trading Hours Act 1987* (WA), unless allowed to open by Ministerial variation order. There is a standing variation order that allows general retail shops to trade between 11am and 5pm on public holidays (other than for Anzac Day, Good Friday and Christmas Day when shops must be closed). As such, general retail shops in the metropolitan area would be able to trade on an Easter Sunday public holiday.

General retail shops outside the metropolitan area may not trade on Sundays or public holidays unless this is varied by Ministerial order. The Minister for Commerce will usually issue a variation order if there is community support for trading on Sundays and public holidays.

⁷ It is estimated that private sector State system employees, including employees covered by State awards and award free employees, account for approximately 15 to 20 per cent of the Western Australian workforce.

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There are no restrictions on trading hours for any retail shop above the 26th parallel and on Rottnest Island. Similarly, small retail shops and filling stations have no restrictions on trading hours. Special retail shops (e.g. pharmacies and hardware shops) may trade from 6am to 11.30pm every day of the year.

Consultation

The Private Sector Labour Relations (PSLR) division of the Department of Mines, Industry Regulation and Safety (DMIRS) has consulted key industrial relations stakeholders regarding the options available for implementing a new Easter Sunday public holiday.

UnionsWA is the State's peak trade union body and represents most unions. UnionsWA is in favour of Easter Sunday being made a public holiday in Western Australia, and supports Option 2 as the option for implementation which will allow for timely recognition of the new holiday in State system awards and agreements.

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak organisation advancing trade and commerce in Western Australia. CCIWA is opposed to both Options 1 and 2, in that it opposes making Easter Sunday a public holiday, and also opposes legislation which would insert a new Easter Sunday public holiday into State awards and agreements.

CCIWA believes that the introduction of a new Easter Sunday public holiday will have the greatest impact on those businesses that operate on a seven-day basis including retail, tourism and hospitality, and health, aged care and community service organisations that deliver essential services to the community. CCIWA says that the Government has provided no justification for this commitment other than following the lead of some other jurisdictions, and this does not provide a sound reasoning for making this change.

CCIWA is particularly concerned by the potential impact of the new public holiday on employers in the national industrial relations system:

... the commitment to increase the number of public holidays to 11 fails to recognise that the employers who will be affected by this change currently face paying workers for up to 14 public holidays in any year as a result of the interaction between the *Fair Work Act 2009* (Cth) and the *Public and Bank Holidays Act*. As a consequence, when New Year's Day, Anzac Day, Christmas Day or Boxing Day falls on a weekend the following Monday or Tuesday is also recognised as an additional public holiday. Over the course of 2021 and 2022, WA employers face the prospect of additional public holidays on:

- Anzac Day – Sunday 25 April and Monday 26 April 2021
- Christmas Day – Saturday 25 December and Monday 27 December 2021;
- Boxing Day – Sunday 26 December and Tuesday 28 December 2021;
- New Year's Day – Saturday 1 January and Monday 3 January 2022;
- Christmas Day – Sunday 25 December and Monday 26 December 2022 (Boxing Day is recognised on Tuesday 27 December in this year).

This is an unintended consequence of the interaction between the state and federal legislation, noting that employers covered by the State industrial relations system are not similarly affected. CCIWA believes that the WA Government should amend the *Public and Bank Holiday Act* to provide for the substitution of a

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public holiday where New Year's Day, Anzac Day, Christmas Day or Boxing Day falls on a weekend, rather than the creation of an additional day.⁸

CCIWA argues that an additional public holiday will negatively affect employment levels and availability of services, stating:

An increase to the number of public holidays will also have an impact on service delivery within affected industries as they adjust labour requirements to offset the increased costs associated with operating on that day. Research undertaken by the Fair Work Commission has previously identified that in managing changes to labour costs, 72.7 per cent of award reliant retailers and 85.1 per cent of award reliant hospitality employers would implement strategies to manage or reduce the wage bill. The most commonly cited means for achieving this are:

- a) reducing the hours of casual staff in the case of 76.4 per cent of retailers and 84.7 per cent of hospitality employers;
- b) reducing the number or length of shifts in the case of 59.8 per cent of retailers and 71.9 per cent of hospitality employers;
- c) increasing the number of hours worked by the owners of the business in the case of 68.2 per cent of retailers and 77.5 per cent of hospitality employers;
- d) increasing the number of hours worked by family members or volunteers in the case of 38.2 per cent of retailers and 47.2 per cent of hospitality employers; and
- e) reducing the number of employees through natural attrition in the case of 67.4 per cent of retailers and 65.8 per cent of hospitality employers.⁹

In these situations neither the employer, employees or community benefit from the establishment of an additional public holiday.¹⁰

CCIWA is also opposed to legislation to ensure that a new Easter Sunday public holiday is recognised in State awards, arguing:

... The establishment of penalty rates and other entitlements remains a matter for awards and industrial instruments, which is recognised in s31 of the MCE Act. It would therefore be inconsistent with the established operation of the state industrial relations system for the Government to mandate a particular outcome, and in doing so remove the independent role of the WAIRC. It is open to the relevant parties to make application to vary the penalty rate provisions in awards to reflect any changes to the prescribed public holidays, taking into account the individual provisions of the award. The fact that the Government is considering options to either mandate the WAIRC to vary awards in response to the proposed public holiday, or legislate minimum entitlements for work performed on that day, is a clear recognition that the State industrial relations system is no longer relevant for the private sector. This reinforces CCIWA's view that the WA Government should follow the lead of the other states in referring their private sector industrial relations powers to the Commonwealth.¹¹

Preferred option

Based on a consideration of the issues identified in this assessment, Option 2 is the preferred option to implement the Government's election commitment to make Easter Sunday a public holiday.

⁸ CCIWA statement supplied to PSLR, 4 June 2021.

⁹ Reference supplied by CCIWA as follows: Fair Work Commission, (2016) *Industry Profile – Retail trade*, pp.58-59 and Fair Work Commission (2016) *Industry Profile – Accommodation and food services*, pp. 47-48.

¹⁰ CCIWA statement supplied to PSLR, 4 June 2021.

¹¹ CCIWA statement supplied to PSLR, 4 June 2021.

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Option 2 has a number of significant benefits over Option 1. In particular:

- it implements the Government's intention of creating a permanent Easter Sunday public holiday to mark the ongoing significance of this day;
- it provides certainty for business, workers and the community about the ongoing status of Easter Sunday;
- it allows the employment entitlement benefits of the Easter Sunday public holiday to immediately flow to all Western Australian employees who work on Easter Sunday; and
- it provides an efficient means of addressing the issue of possible substitution of other days for the new Easter Sunday public holiday in State awards.

Implementation

PSLR, in conjunction with the Parliamentary Counsel's Office, would progress the drafting of amendments to the PBH Act and the MCE Act to recognise the new Easter Sunday public holiday and to address substitution issues. These amendments will be included as part of the Industrial Relations Legislation Amendment Bill.

It is desirable that employers, employees and the community have as much lead-in time as possible to prepare for the proposed Easter Sunday public holiday.

PSLR will develop a communication strategy and undertake an extensive range of communication and education initiatives to raise awareness in the Western Australian community of the new public holiday and, for State system employers and employees, the employment rights and obligations that would apply on Easter Sunday.

This will include distribution of information to employee and employer associations, and other stakeholder and community groups, as well as website and social media promotion and provision of information through the Wageline website and contact centre.

PSLR would also notify the relevant Commonwealth agency, being the Fair Work Ombudsman (FWO), of the new public holiday. FWO has responsibility for informing national system employers and employees of their employment rights and obligations.

Appendix A: Costing Methodology

This appendix outlines the methodology used to calculate the increased aggregate wage cost associated with making Easter Sunday a public holiday in Western Australia.

Many employees are entitled to receive a wage premium for working on Sundays and public holidays, and in most cases, the premium for working on a public holiday is higher than the premium for working on a Sunday. In simple terms, the cost to employers of making Easter Sunday a public holiday is the difference between public holiday pay rates and Sunday pay rates.

To calculate the premiums payable for Sunday and public holiday work, a baseline estimate of median hourly earnings for Western Australian employees has been obtained from the Australian Bureau of Statistics (ABS) publication *Characteristics of Employment, Australia*.¹² The latest figure (for August 2020) is \$38.00 per hour. This is shown in **Column A** of Table 1 below.

To calculate median hourly earnings for Sunday work, it has been necessary to estimate the current 'premium' paid for work performed on a Sunday. Base median hourly earnings have been increased by **50 per cent** for this purpose (**Column B** of Table 1).

A 50 per cent premium for Sunday work has been adopted as many of the national modern awards applicable to employees who work on this day provide for time and one half to be paid for ordinary hours performed on Sundays.¹³ As most employees paid under enterprise agreements and common law employment contracts are entitled to receive rates of pay that are at least equal to (and in most cases higher than) relevant award wages, it is reasonable to assume that a similar premium for Sunday work is also applicable to many of these employees.

Some industrial instruments provide a wage premium that is higher than 50 per cent for work performed on a Sunday, such as time and three quarters (a 75 per cent premium) or double time (a 100 per cent premium). However, there are instruments that provide for Sunday premiums lower than 50 per cent.¹⁴ There will also be a cohort of employees who are not entitled to any additional premium for working on a Sunday, including a variety of salaried employees and some award free employees.¹⁵ Assuming a 50 per cent wage premium for Sunday work is therefore considered reasonable for the purposes of this exercise.

¹² ABS (2020), *Characteristics of Employment, Australia*, Cat. No. 6333.0, Table 1a.2. The use of median hourly earnings was recommended by the Economic Business Unit at the Department of Treasury, as it will more accurately reflect the distribution of earnings of employees who are likely to work on a Sunday. Data for median hourly earnings at the State level is also readily available. This figure incorporates the earnings of full time, part time and casual employees combined, for male and female employees across all skill levels, ages and industries.

¹³ Examples include the *General Retail Industry Award 2020*; *Pharmacy Industry Award 2020*; *Restaurant Industry Award 2020*; *Hospitality Industry (General) Award 2020*; and the *Amusement, Events and Recreation Award 2020*.

¹⁴ For instance, the national *Fast Food Industry Award 2010* contains a 25 per cent wage premium for work performed on a Sunday.

¹⁵ A few awards also provide no premium for working on a Sunday. For instance, the national *Horticulture Award 2020* contains no additional rates for working on a Sunday.

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To calculate median hourly earnings for public holiday work, it is necessary to estimate the current premium paid for work performed on a public holiday. Base median hourly earnings have been increased by **125 per cent** for this purpose (**Column C** of Table 1). This figure has been used as a number of the national modern awards applying to employees who work on public holidays provide for double time and one quarter to be paid for ordinary hours on a public holiday.¹⁶

As with Sunday wage premiums, there will be some employees who are entitled to receive premiums exceeding 125 per cent for work performed on a public holiday, while others will be entitled to a lower premium, or no premium at all. Overall, a 125 per cent wage premium is considered appropriate for the purpose of this exercise.

Once the median hourly earnings for Sunday and public holiday work have been determined, the hourly wage cost per employee associated with making Easter Sunday a public holiday can be calculated by subtracting the median Sunday rate from the median public holiday rate. This figure is shown in **Column D** of Table 1.

To calculate the aggregate wage cost of making Easter Sunday a public holiday, it is necessary to determine the number of employees who usually work on Sunday in Western Australia, and the average number of hours such employees work.

Available data indicates there were **1,141,000** employees working in Western Australia in August 2020 (**Column E** of Table 1).¹⁷ However, limited information is available on the proportion of employees who regularly work on a Sunday.

Research commissioned for the Victorian Department of Economic Development, Jobs, Transport and Resources in 2017 found that 14.8 per cent of all Australian employees regularly work on Sunday.¹⁸ While this is national level data it is considered suitable for use in these costings, as it is one of the few readily available data sources measuring the incidence of Sunday work in Australia. Sunday working patterns are also unlikely to vary significantly between states and territories. It is therefore assumed that 14.8 per cent of the 1,141,000 employees in Western Australia (**168,868 employees**) will be working on Easter Sunday.¹⁹ This figure is shown in **Column F** of Table 1.

¹⁶ Examples include the *General Retail Industry Award 2020*, *Pharmacy Industry Award 2020*, *Restaurant Industry Award 2020*, *Hospitality Industry (General) Award 2020* and the *Amusement, Events and Recreation Award 2020*.

¹⁷ ABS (2020), *Characteristics of Employment, Australia*, August 2020, Cat. No. 6333.0, Table 1a.3. This figure is for employees only, and excludes owner-managers of businesses and independent contractors.

¹⁸ Peetz, D. (2017), *The impact of the penalty rates decision on Australian and Victorian workers in retail and hospitality industries*. Research commissioned for the Victorian Department of Economic Development, Jobs, Transport and Resources.

¹⁹ While it is known that hospitality and retail will have a higher incidence of Sunday work, there are also a range of other industries and occupations where Sunday work is likely to be prevalent. Examples include mining, health care, aged and disability care, police, emergency services, utilities, security, transport and storage, some local government functions and some civil construction work.

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To complete the costing process, an estimate of the average number of hours worked by employees on Sunday is also needed. While there is a paucity of data examining this issue, in 2008 the ABS released a publication entitled “How Australians use their time”, which amongst other things, measured the incidence of working hours on Sundays.²⁰ While this is also national level data, it is also considered suitable for use in Western Australia, particularly given the limited range of published data on this issue.

Relevant data in the *How Australians use their time* publication reveals that employees spent an average of 54 minutes (0.9 hours) working in their main job on Sundays. As this figure relates to all employees (including those who do not work any hours on Sundays), a further refinement is needed to estimate the average number of hours worked on Sundays by those employees who actually work on Sunday. Assuming that 14.8 per cent of the employees in this sample regularly worked on a Sunday, those employees would have worked for an average of 6.08 hours $[(100/14.8) \times 0.9 \text{ hours}]$. For the purpose of this costing it has therefore been assumed that Western Australian employees working on Sunday perform an average of **6 hours** work.²¹ This is shown in **Column G** of Table 1.

The aggregate wage cost across Western Australia of making Easter Sunday a public holiday is calculated by multiplying the additional hourly wage cost per employee for making Easter Sunday a public holiday (Column D) by the number of employees working on Sundays (Column F) and the average number of hours worked on Sundays (Column G).

Table 1: Aggregate wage cost of making Easter Sunday a public holiday in Western Australia

A	B	C	D	E	F	G	H
Median WA hourly earnings (base)	Median WA hourly earnings on Sundays	Median WA hourly earnings on public holidays	Additional hourly wage cost for Easter Sunday public holiday	Total number of WA employees	Estimated number of WA employees working on Sundays	Average number of hours worked on Sunday	Estimated additional cost of making Easter Sunday a public holiday in WA
\$38.00	\$57.00	\$85.50	\$28.50	1,141,000	168,868	6.0	\$28,876,428

As can be seen, the total aggregate wage cost of making Easter Sunday a public holiday in Western Australia is estimated to be around **\$28.88 million**. While this figure incorporates the public and private sectors, it is restricted to wage costs only and does not incorporate on costs such as superannuation, workers’ compensation premiums or payroll tax. This would increase costs approximately 15 per cent.

²⁰ ABS (2008), *How Australians Use Their Time, 2006*, Cat. No. 4153.0, Table 5.

²¹ This figure has been rounded for simplicity.

Summary Decision Regulatory Impact Statement for Western Australia

Assumptions

- All businesses that currently operate on Sunday will also operate on Easter Sunday, including if it becomes a public holiday.²²
- All employees who currently work on Sunday will continue to work on Easter Sunday if it becomes a public holiday.
- All employees who are entitled to receive penalty rates or a higher rate of pay for working on Sundays and public holidays are currently receiving their correct entitlements, and will continue to do so if Easter Sunday becomes a public holiday.
- Additional on-costs associated with higher wages are not included.
- No allowance has been made for full time or part time employees who may be absent on paid leave on Easter Sunday.
- No allowance has been made for the fact that some hospitality businesses may impose a surcharge if Easter Sunday is made a public holiday (partially offsetting the cost of higher wages on this day).

Importantly, two key assumptions above work in the opposite direction. Because employment is likely to fall (mainly as fewer casual workers are rostered on), the financial costs of the proposal similarly fall. Offsetting this is that on-costs (such as superannuation), which are typically around 15 per cent, would increase these direct financial costs.

²² In practice, some businesses may choose to close on Easter Sunday if it is made a public holiday, if they do not consider it to be financially worthwhile to open. Such businesses would generally have to pay full time and part time employees for the day if the employee would otherwise have worked it, however casual employees would not receive payment for the day.