3 May 2017

Ms Lill Healy
Deputy Secretary, Programs, Small Business & Employment
Department of Economic Development, Jobs, Transport and Resources
121 Exhibition Street
MELBOURNE VIC 3000

Dear Ms Healy

I would like to thank the staff of Small Business Victoria for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed appointment of Christmas Day as a public holiday when it falls on a weekend.

Under Section 12 of the Subordinate Legislation Act 1994 (the Act), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RIS prepared in Victoria. The Commissioner’s role is to advise on the adequacy or otherwise of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal’s expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 3 May 2017 meets the adequacy requirements of the Act.

The Department states that the objective of the proposal is ‘providing fair pay to those working on Christmas Day’, ‘irrespective of whether it is a weekend or weekday’ (p.6). The Department notes that the impacts of this proposal limited by the fact that the majority of businesses are not open on that day, and ‘only a subset of employers and essential services typically operate’ on Christmas Day’ (p.5).

The RIS states that there are other means of achieving this objective such as:

* a non-regulatory approach of encouraging employers to voluntarily pay public holiday rates, perhaps through new or existing award arrangements; or
* providing government subsidies to businesses that open on any Christmas Day on a weekend to pay public holiday rates.

The Department does not analyse these alternatives in detail because, as it explains:

* the first of these would be unlikely to achieve the objective of ensuring all employees working on Christmas Day receive public holiday rates; and
* the second of these would ultimately have the same effects as the proposal, but with the additional costs of administering the subsidy scheme.

The analysis of the impacts of the proposal has accounted for variation between the impacts on a Saturday and a Sunday. The impacts assessed include:

* those cases where employers close on Christmas Day as a result of the requirement to pay public holiday rates, a reduction in economic output and an increase in leisure time; and
* those cases where employers open on Christmas Day and pay public holiday rates, a transfer from employers to employees.

The quantified benefits of the proposal include an estimated $2.66 million to $9.75 million on a Saturday or $2.66 million to $7.80 million on a Sunday. The unquantified benefits of the proposal include the additional value for individuals of being able to coordinate their leisure time with friends and family. The costs of the proposal include an estimated $4 million to $14 million on a Saturday or $4 million to $11 million on a Sunday.. There is a quantified net cost of $1.38 million to $4.19 million on a Saturday or $1.38 million to $3.35 million on a Sunday. The Department invites public submissions regarding whether the unquantified social benefits outweigh these net costs as part of the consultation process (p.4).

The estimated scale of the transfer from employers to employees is $43.07 million to $48.01 million on a Saturday or $37.89 million to $41.70 million on a Sunday.

The assumptions and method used to estimate these impacts are clearly stated in the RIS, and the Department has invited public submissions regarding these and the resulting estimates (p.18). The Department also notes its intention to verify its understanding of the proposal’s impacts both through the consultation process and through an evaluation of the impacts of the next example of a weekend Christmas Day in 2021 (p.19).

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely

Anna Cronin

Commissioner for Better Regulation