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**AUSCRIPT**

## TRANSCRIPT OF PROCEEDINGS

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O/N 109733

**TASMANIAN INDUSTRIAL COMMISSION**

**DEPUTY PRESIDENT P.C. SHELLEY**

**T No. 13443 of 2009**

**TASMANIAN STATE SERVICE AWARD**

**Application pursuant to section 65(A)(4) of the Industrial Relations Act 1984 lodged by the Transport Workers Union of Australia (Victorian/Tasmanian Branch) for determination of an interest in the above award**

**HOBART**

**2.30 PM, THURSDAY, 25 JUNE 2009**

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THE DEPUTY PRESIDENT: Thank you. I'll take appearances, please.

MR H. SMITH: If the commission pleases, Howard Smith. I appear on behalf of the Transport Workers Union of Australia and behind me is Mr Steve Moszko and  
5 Mr Leroy Doble and you'll notice I didn't forget their names today. If the commission pleases.

THE DEPUTY PRESIDENT: Thank you.

10 MS J. FITTON: Yes, Deputy President. Jane Fitton representing the Minister administering the State Service Act.

THE DEPUTY PRESIDENT: Okay. Thank you. A notice of hearing went out to any number of parties to the award and the non-appearance of a number of unions  
15 leads me to believe that they've got no objections to the application. But I have correspondence from the Community and Public Sector Union, which I will read into the record. It's from Tom Lynch, who is the General Secretary of that organisation:

20 *I write regarding the above matter listed for hearing at 2.30 pm on 25 June 2009. It was not the intention of the CPSU to appear in this matter, as we understand the TWU meets both the requirements to have members and a coverage rule and they are relevant to this award.*

25 *For the record, the CPSU does not believe it is in the collective interests of ministerial drivers for their membership to be split between two unions. However, that is effectively irrelevant in this application. On behalf of both the CPSU (SPSFT) Inc and HSU Tasmania Number 1 Branch, we accept the application to proceeding without further submission. If you'd like to discuss this further please contact my office.*

30 So from that, I take it that the CPSU is not happy, but it's not putting forward any submissions opposed to the TWUs application. So having said that, we'll begin with you, Mr Smith.

35 MR SMITH: And just before I go to the formal submission, I thank the State Commission for listing this matter today, along with some other matters that we have listed for the Federal Commission which obviously averted a number of trips down here, so I'd just like to place that on the record.

40 This is an application pursuant to section 65A of the Act. The union wrote to the President on 12 May 2009. During the second half of 2008, the TWU signed into membership 11 of the 17 ministerial drivers. On 11 March an agreement was approved by the State Commission between the Minister administering the State Service Act, the CPSU and the TWU in T Number 13371 of 2009. The agreement is  
45 known as the Ministerial Drivers Industrial Agreement 2009. The underpinning award is the Tasmanian State Service Award, an award of the Tasmanian Industrial Commission.

The Union sent copies of its application on 12 May to Mr Kerryl Gray, representing the Minister, and Ms C. Serra representing the CPSU. At this stage, no objections have been received. The union's rules allow the TWU to sign up people in this job category. If the commission requires I can hand up a copy of the relevant rule.

5

THE DEPUTY PRESIDENT: Yes, that would be helpful to make the file complete. Thank you. We'll mark that A1

10 **EXHIBIT #A1 COPY OF UNION'S RELEVANT RULE**

MR SMITH: In particular, I take you in annexure A to the end of that paragraph (a) where it begins with, "And". It talks about the industry of chauffeurs, conductors and attendants. And then if you go over the page and you'll see (c) chauffeurs, conductors and attendants. I don't intend to read it all out but clearly these people would fall into that category "and all driving" it says.

THE DEPUTY PRESIDENT: Well, the Ministers may not want to have them characterised as such. I think they prefer the term "drivers".

MR SMITH: All driving – I'm not going to push a particular point. The award has classifications that fall within our constitutional coverage. In particular, band 1 range 2 of Part 2 clause 3 Salaries of the Award. the classifications of the agreement broadly reflect those of the award. And this is probably an important bit. In light of the likelihood that the Tasmanian Government will refer its industrial relations powers to the Commonwealth Government and these employees are unlikely to be subject to such a referral, is of special importance that the TWU is granted award interest. We have members in the industry, in particular, this employer. I will provide you with proof, if required. Therefore we respectfully ask, effective from today's date, the 25<sup>th</sup> of the sixth, that the TWU be granted award interest, if the commission pleases.

THE DEPUTY PRESIDENT: I think, subject to hearing from Ms Fitton, I think that I am satisfied that you do have members. I've in fact met them at a previous hearing which was the registering of the agreement and they certainly identified themselves as members of the TWU. Unless Ms Fitton requires me to view membership records, I think I can take it as being satisfied. I'll just briefly look at the Act and make sure that I'm not actually required to sight membership cards. I just have to satisfy myself, and I'm satisfied. Okay. Thank you, Ms Fitton.

MS FITTON: Thank you, Deputy President. The Minister neither supports nor objects to this application. The Minister does not support one union over another and doesn't prevent employees or occupational groups from being members of a particular association that is capable of providing coverage. It is noted that the Minister is currently a party to the Ministerial Drivers Agreement, together with the CPSU, and that agreement covers employees represented by the Transport Workers

Union, who are then subject to the Tasmanian State Service Award. So subject to the commission's satisfaction that this application meets the requirements of the Act, I have no further submissions.

- 5 THE DEPUTY PRESIDENT: Okay. Well, in that case, all the tests having been met, the application to include the TWU, as in clause 5(a), award interest of the Tasmanian State Service Award is granted and a written decision will follow in due course. And the effective date will be from today and the award will be varied accordingly. The matter is adjourned.
- 10

**MATTER ADJOURNED at 2.40 pm INDEFINITELY**

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EXHIBIT #A1 COPY OF UNION'S RELEVANT RULE

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