

AUSCRIPT AUSTRALASIA PTY LTD

ABN 72 110 028 825

Level 10, MLC Court, 15 Adelaide St BRISBANE QLD 4000

PO Box 13038 George St Post Shop BRISBANE QLD 4003

Tel:1300 308 420 Fax:(07) 3503-1199

Email: [orders@auscript.com.au](mailto:orders@auscript.com.au) Website: [www.auscript.com.au](http://www.auscript.com.au)

**AUSCRIPT**

**TRANSCRIPT OF PROCEEDINGS**

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O/N 100616

**TASMANIAN INDUSTRIAL COMMISSION**

**COMMISSIONER J.P. McALPINE**

**T No 13363 of 2009**

**MISCELLANEOUS (PUBLIC SECTOR) AWARD**

**Application pursuant to the provisions of section 23(2)(b)  
of the Industrial Relations Act 1984 lodged by the Liquor,  
Hospitality and Miscellaneous Union – Tasmanian Branch  
to vary the above award re Launceston Cup Day**

**HOBART**

**10.30 AM, MONDAY, 16 FEBRUARY 2009**

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THE COMMISSIONER: Can I have appearances, please?

MR P. TULLGREN: If the commission please, my name is Tullgren, and I appear for the applicant, the Liquor, Hospitality and Miscellaneous Union.

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THE COMMISSIONER: Thank you.

MR M. WATSON: May it please the commission, Mark Watson. I appear on behalf of the Minister administering the State Service Act.

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THE COMMISSIONER: Thank you. I guess you gentlemen are as surprised to see me this morning as I am to see you. Mr Tullgren?

MR TULLGREN: Yes, thank you, Commissioner. Commissioner, this is a matter to vary the Miscellaneous Workers (Public Sector) Award to insert Launceston Cup Day as a holiday with pay in clause 16 of the award. Now, up until this point it has not been inserted as a holiday with pay. However, when Launceston Cup Day has occurred, relevantly in relation to the Department of Education, schools have not been open on that day and therefore there has been no requirement for employees, covered by the scope of the award, to work.

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However, as a result I'm instructed of industrial negotiations last year with the Australian Education Union. Some provision was agreed, the effect of which is that schools will be open on Launceston Cup Day and therefore school attendants, among others, would be required to attend, and that has given rise to the application, because clearly, as the circumstances have now changed and school attendants will be required to attend, then the award does need to be amended to insert Launceston Cup Day so that the other provisions of the clause, particularly where employees are required to work on a holiday with pay, that the relevant rates apply.

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Now, the Launceston Cup Day is provided for in section 5 of the Statutory Holidays Act which effectively prescribes for local statutory holidays, one or two arrangements. Firstly, that people get – this covers the full day, or in some restricted areas, it starts at 11 o'clock in the morning, and schedule 1 of the Statutory Holidays Act provides that Launceston Cup Day is a public holiday for all of the day in effectively all of the area covered by the schedule, excluding Launceston City centre and suburbs, wherein Part II of the schedule it specifically provides that Launceston Cup Day is a public holiday only from 11 am in Launceston and areas, and it lists all of the relevant suburbs of Launceston.

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The public holiday is observed as a full day throughout the northern midlands and the southern midlands, but not including Oatlands and a number of other municipalities, so that is what has given rise to it and clearly while negotiations took place between the department and the Australian Education Union which has resulted in a modification for working conditions for people covered by that agreement, it has a collateral effect on employees under the Miscellaneous Workers (Public Sector) Award, and the application simply seeks to address that and to ensure that such

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employees are not disadvantaged if they are required to work, which is effectively what will happen in all of the schools in the area described in schedule 1 of the Statutory Holidays Act.

5 We would submit that it clearly is not contrary to any of the wage-fixing principles. It is in the public interest and there is no bar jurisdictionally to the commission varying the award in the terms sought.

THE COMMISSIONER: Mr Watson?

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MR WATSON: Commissioner, I concur with the submissions of Mr Tullgren. You might recall that the Teachers Agreement, which you approved last year, provided for Launceston Cup Day being a teacher and student attendance day for the full day. The difference here is that teachers will not receive any extra remuneration for that  
15 day, but school attendants, school admin and other support staff who do work the day will actually receive either time in lieu or penalty rates, and this application will ensure that those provisions are there for school attendant staff.

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Cup day is a provision in the Tasmanian State Service Award, which covers all support staff except for school attendants. It is somewhat of an anomaly that it hasn't appeared in the Miscellaneous Workers (Public Sector) Award for some time. It has been discovered and I think the application is sound in that it will, I suppose, amend an anomaly. It's not providing a new condition, Commissioner, because cup day has been observed in the past for these employees in the greater Launceston area,  
25 and also the greater northern area. With those comments in mind we support the application.

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THE COMMISSIONER: Okay. Well, doesn't leave me much to say then if you both support it, does it?

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MR TULLGREN: Just one point, Commissioner. In the application we refer to it as Launceston Cup Day, which is how it is described in the schedule to the Statutory Holidays Act, but my friend has pointed out to me that in that Tasmanian State Service Award it is referred to as Cup Day and I do agree with my friend, that on the  
35 basis of trying to reduce confusion, perhaps the order could be amended to just refer to Cup Day, so that there is a consistent description of the day through all the relevant awards.

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THE COMMISSIONER: Now, if we just put Cup Day will that be – okay, so it does refer to schools in the Launceston area?

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MR TULLGREN: Yes, because according to the section in the Statutory Holidays Act the only Cup Day shown is that for Launceston. The second Monday in February is the Royal Hobart Regatta. The first Monday in November is Recreation Day, which applies to Launceston, and the others all relate to things agricultural,  
45 such as the show on King Island - - -

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MR WATSON: Doesn't it have Devonport Cup there, Peter?

MR TULLGREN: Yes. No, there is Devonport Show but – I'm sorry, Devonport Cup is shown as a part holiday but they are the only two cups that are mentioned.

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THE COMMISSIONER: So would then we get the same argument for Devonport?

MR WATSON: The Devonport Cup, Commissioner, is in school holiday period.

10 THE COMMISSIONER: Oh, is it? Okay.

MR WATSON: So we don't have the same issue arising, and a lot of – because it's early January, a lot of school support staff would actually be off on leave during that time. Traditionally that's the way it's gone. But I support Mr Tullgren's amendment to just simply have Cup Day.

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THE COMMISSIONER: Just have Cup Day.

MR WATSON: And as he said, it is then consistent with all other awards.

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THE COMMISSIONER: Well, if you are both comfortable with the wording I see no reason not to approve the amendment and we will get that done as soon as we can, like today. All right? Thank you.

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**MATTER ADJOURNED at 10.35 am INDEFINITELY**