

## 10.5 Ballina Cup - Half Day Holiday 2012



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NSW IR No: 11DOC0579

Mr P Hickey  
General Manager  
Ballina Shire Council  
PO Box 450  
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<b>RECORDS SCANNED</b> <b>6 OCT 2011</b> Doc No..... Batch No.....
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29 SEP 2011

Dear Mr Hickey

### 2012 LOCAL PUBLIC HOLIDAYS

I am writing in regard to the administrative process for local councils to apply to the Minister for Finance and Services for the declaration of *local public holidays* and *local event days* under the *Public Holidays Act 2010* (NSW).

Under the *Public Holidays Act 2010* all local public holidays and local event days (including half days) must be declared by Order of the Minister and published on the legislation website. Consistent with past practice, it is proposed to have the Ministerial Orders declaring the 2012 local public holidays and local event days published by the end of December 2011.

In determining whether to apply for a local public holiday, it is important that the Council be aware of the legislative changes that have occurred in the last several years that impact on businesses and communities located within designated public holiday areas.

#### Declaration of a Local Public Holiday

Where a local public holiday is declared by the Minister a bank located in the designated holiday area will be required to close unless it holds an approval to open on the day under Part 3A of the *Retail Trading Act 2008*. Shops located within the designated holiday area are free to open without restriction.

The public holiday provisions contained in the National Employment Standards of the *Fair Work Act 2009* (Cth) apply to local public holidays declared under the *Public Holidays Act 2010*. This means that all employees irrespective of their former entitlements and whose place of work is within a local public holiday area will be entitled to be absent from work on the day or half day that is the local public holiday or half holiday. In addition, employees who work on the day or part day may then have an entitlement to penalty rates under a relevant award where previously that entitlement may not have existed.

In considering an application to the Minister for a local public holiday or half day, Council is expected to consult with the affected community and other relevant stakeholders, as to the impact of a local public holiday or half holiday on businesses located within your local government area. As part of that consultation, Council may consider the option of a *local event day* declaration instead of a public holiday or half day.

## Declaration of a Local Event Day

The capacity for the Minister to declare a *local event day* or half day at the request of a local council is also available under the Public Holidays Act. The Minister must be satisfied that the day or part day is, and will be observed as, a day of special significance to the community in the area concerned.

The declaration of a local event day or half day does not preclude banks or shops located within the designated holiday area from opening or trading on the day.

A declared local event day does not automatically mean that employers in the particular locality are compelled to treat the day as a public holiday. Entitlements to paid time off work or penalty rates on a local event day will only arise where they have been agreed at the workplace level usually in the form of an enterprise agreement or a contract. This goes some way to restoring industrial arrangements for the occasion to those that existed prior to changes to Commonwealth workplace laws.

### The application process

Should the Council wish to proceed with a request for a local public holiday or local event day (including a half day) then, following resolution by the Council on the matter, could you please inform me in writing before 25 November 2011 of the desired dates and occasions in 2012 specifying the category of declaration requested. In addition, in support of the Council's request, it would be of assistance if the following information was provided:

- whether the request was approved by resolution of the Council;
- whether consideration was given to the alternative of local event day; and
- the extent of community consultation undertaken in respect of the request.

The receipt of requests for a *local event day* or *local public holiday* (including half days), specific date and defined area information from all councils will allow Notices to be published on the NSW legislation website for most 2012 dates in mid-December of this year. Confirmation of the Minister's approval of your request will be issued in advance of the Notice publication date.

You may be assured that any special day or half day not covered by such an omnibus Notice may continue to be the subject of a one-off Notice.

To assist in the application process, I have attached for the Council's information copies of sections 5 and 8 of the Public Holidays Act relating to the declaration of local public holidays and local event days.

Any inquiries you may have concerning the operation of these administrative arrangements may be directed to Peter Boland, Legal Services Branch, NSW Industrial Relations, on telephone number (02) 9020 4628.

I look forward to your early response in this matter.

Yours sincerely



Vicki Telfer  
Executive Director  
NSW Industrial Relations

## Public Holidays Act 2010 No 115

### 5 Additional public holidays

- (1) The Minister may by order published on the NSW legislation website declare a specified day or part-day in a particular year to be a public holiday. The order must be published at least 7 days before the public holiday.
- (2) The order can declare a public holiday for the whole State or for a specified part of the State.
- (3) The Minister may by order published on the NSW legislation website cancel a public holiday declared under this section. The order must be published at least 7 days before the public holiday.

**Note.** Instead of cancelling an additional public holiday declared under this section, the Minister can decide to substitute a different day for the holiday under section 6.

### 8 Local event days

- (1) The Minister may by order made at the request of the council of a local government area declare a specified day or part-day to be a local event day in the local government area or in a specified part of the local government area.
- (2) The Minister is not to declare a local event day unless satisfied that the day or part-day is, and will be observed as, a day of special significance to the community in the area concerned.
- (3) The order declaring a local event day must be published on the NSW legislation website at least 7 days before the local event day.
- (4) The declaration of a local event day does not make the local event day a public holiday.