

**From:** Dominic Macken [mailto:djmacken@macken.com.au]

**Sent:** Tuesday, 16 July 2019 9:37 AM

**To:** AMOD

**Subject:** Modern Awards Review - 4 yearly review - Alpine Resorts Award 2010 - AM2016/30

Dear AMOD,

We refer to the above matter and to directions made by the Full Bench on 21 June 2019.

We enclose submissions filed on behalf of the Shop, Distributive and Allied Employees' Association and would be grateful if you would enter the same upon the relevant Commission file.

Please note that the SDA does not intend to appear on the return of this matter for further argument and is content to solely upon its written submissions herewith filed.

Yours faithfully,

A J MACKEN & CO.

IN THE FAIR WORK COMMISSION  
*Fair Work Act 2009*  
*s 156 – 4 yearly review of modern awards*

**4 yearly review of *Alpine Resorts Award 2010***

(AM2016/30)

**SUBMISSIONS OF THE SHOP DISTRIBUTIVE AND ALLIED  
EMPLOYEES' ASSOCIATION**

1. These submissions are filed pursuant to the directions made by the Full Bench on 21 June 2019 in these proceedings.
2. The Shop Distributive and Allied Employees' Association (**SDA**) continues to express significant concerns with the *Alpine Resorts Award 2010 (Award)* insofar as it covers employees who perform work which is otherwise covered by the general industry awards (*General Retail Industry Award 2010, Fast Food Industry Award 2010 and Hair and Beauty Industry Award 2010*).
3. It remains the case that employees covered by the Award, who perform exactly the same work as those covered by the general industry awards, receive inferior overall pay and other conditions of employment.
4. The SDA continues to submit that this remains inherently unfair. In this regard, the SDA reserves its position in respect of any future application it may bring to vary the Award.
5. For present purposes, the SDA expresses its opposition to both options to vary the coverage term of the Award as outlined by the Australian Ski Areas Association (**Association**) at paragraphs 3.1 and 3.4 of its submissions dated 10 July 2019 (**Association's submissions**).<sup>1</sup>
6. The SDA submits that both variation options proposed by the Association seek to expand coverage beyond that which was contemplated by the Full

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1. The SDA notes that the Full Bench has ruled that it will not consider the Association's submission of 19 September 2018 concerning the calculation of overtime for casual employees under the Award since this issue is before the Overtime for Casuals Full Bench. Accordingly, the SDA does not address this issue in these submissions.

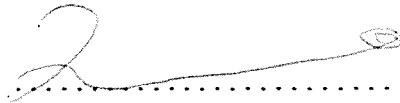
Bench at paragraph [5] of its decision published on 14 May 2019 ([2019] FWCFB 3347) (**May 2019 Decision**).

7. As the Full Bench stated at paragraph [78] of the decision of 27 August 2018 ([2018] FWCFB 4948),

*... if the operator of an alpine resort purchases a hotel which is located entirely outside of that alpine resort, clause 4.1 would permit the application of the Alpine Award, which contains a large range of classifications covering hospitality functions, to the hotel's employees merely because of the fact that the employer was the operator of an alpine resort. That is clearly not what was intended by the Full Bench in making the Alpine Award, and would not conform with the modern awards objective. We do not suggest that the evidence before us demonstrates that this has actually occurred, but nonetheless it should not be permitted to occur. The general industry award which would otherwise operate in that situation would be the award providing the appropriate coverage.*

8. The SDA submits that both variation options proposed by the Association are also inconsistent with these remarks.
9. Both variation options seek to 'bring within' the Award, employees who perform work which may have no connection, or at best may only have an indirect connection, with the operation of an alpine resort.
10. The Association seeks to do this by classifying such work as being part of the 'ancillary' functions of an alpine resort. However, what is apparent from both variation options proposed by the Association, is that such ancillary functions need not have any connection with the operation of the alpine resort.
11. The Association submits at paragraph 2.1(e) of the Association's submissions, that the alpine resorts have not sought to apply the Award to any of its off-slope functions or activities, including those situated outside the geographical area that constitutes their alpine resort, *that they do not consider has any connection to their core activities.*

12. However, both variation options proposed by the Association would permit an alpine resort to apply the Award even if the work of the employee does not have any connection with its core activities of alpine lifting. The alpine resort could apply the Award if it considered that the work of the employee was work performed as an ancillary function to its core functions.
13. Where such an 'ancillary' function has no connection, or has only an indirect connection, with the operation of an alpine resort, there is simply no justification, consistent with the modern awards objective, for the Award to apply to the employees who would otherwise be captured by the general industry awards.
14. The SDA submits that the Full Bench ought to implement the Draft Determination set out in the Full Bench's Draft Determination attached to the May 2019 Decision.



**D A Bruno**  
Counsel for the Shop Distributive &  
Allied Employees' Association

16 July 2019