

ALPINE RESORTS AWARD 2014 – AM2016/30

FOUR YEARLY REVIEW OF MODERN AWARDS

AUSTRALIAN SKI AREAS ASSOCIATION

OUTLINE OF SUBMISSIONS IN REPLY

1 Introduction

1.1 This outline of submissions in reply is made by the Australian Ski Areas Association (“**Association**”), pursuant to direction 6 of the directions issued by the Fair Work Commission (“**Commission**”) on 24 November 2016 and amended by the Commission on 6 April 2017.

2 Private Entities Submissions

2.1 The Association refers to the submissions and/or evidence made by or on behalf of a number of private entities seeking to change the coverage of the *Alpine Resorts Award 2010* (“**Award**”):

- (a) the Australian Hotels Association, filed with the Commission on 31 March 2017;
- (b) the Australian Business Industrial, the NSW Business Chamber Ltd, and the Thredbo Chamber of Commerce, filed with the Commission on 31 March 2017; and
- (c) the Australian Small Business and Family Enterprise Ombudsman, filed with the Commission on 29 March 2017.

(together the “**Private Entities’ Submissions**”)

2.2 The Association opposes the Private Entities’ Submissions and maintains its position with respect to the points raised in its outline of submissions (“**Association’s December 2017 Submission**”) and Gavin Girling’s witness statement, both filed with the Commission on 21 December 2016 (“**Statement of Gavin Girling**”).

2.3 The Association reiterates that the coverage of the Award was set by the Full Bench of the Australian Industrial Relations Commission (“**AIRC**”) to only apply to businesses that carry on alpine lifting. The Full Bench decision was made following extensive oral and written submissions on the issue of coverage (see paragraphs 6.1 to 6.8 of the Association’s December 2017 Submission).

2.4 The decision of the Full Bench with respect to the coverage of the Award was made in recognition of the unique nature of the snowsports industry and how it relates to the unique exigencies of Alpine Lifting Companies. These unique features have been

outlined in detail in paragraphs 4.1 to 4.2 of the Association's December 2017 Submission and paragraphs 3.1 to 3.26 of the Statement of Gavin Girling.

- 2.5 The Private Entities' Submissions attempt to draw comparisons between the various businesses surrounding the alpine resorts that are not covered by the Award and the Alpine Lifting Companies themselves. This comparison is misplaced in light of the key factor that distinguishes these entities from the Alpine Lifting Companies: the operation of and reliance upon alpine lifting facilities.
- 2.6 The primary purpose served by the extensive tailored flexibility in the Award and its coverage, is to address the unique combination of ski lifting/snowsports related activity being both the major source of revenue, and the predominant activity to which the vast majority of the workforce of Alpine Lifting Companies are allocated, with the need to cope with not only seasonal, but daily significant weather exigencies. The private entities referred to in paragraph 2.1 above do not coincide with any aspect of that primary purpose and overlap only with ancillary aspects of the businesses of Alpine Lifting Companies.
- 2.7 The Alpine Lifting Companies invest significantly in the installation, maintenance and operation of alpine lifting facilities and derive the majority of their annual revenue from alpine lifting related activities. As such, the Alpine Lifting Companies are disproportionately affected by the adverse weather that often inhibits the operation of these alpine lifting facilities (see paragraphs 3.15 to 3.23 of the Statement of Gavin Girling).
- 2.8 The unique flexibilities and broad classifications in the Award were, in part, incorporated into the Award to ameliorate the financial impact of adverse weather on the Alpine Lifting Companies by enabling them to transfer staff within operational entities from snowsports related work and to ancillary businesses, such as hotels, shops and restaurants during periods of adverse weather (see paragraphs 5.1 to 5.11 of the Association's December 2017 Submission).
- 2.9 The private entities referred to in paragraph 2.1 have filed draft determinations in these proceedings that seek to vary the coverage of the Award along geographic lines (see paragraph 3.3 of the Association's December 2017 Submission). The Association repeats that these draft determinations are misplaced in that modern awards are industry based and not geography based.
- 2.10 If the Commission were to vary the coverage of the Award along geographic lines then it would be faced with the anomalous situation whereby it may be forced to continue extending coverage to all resort towns with significant active ski resort service industries and whose seasonal and daily levels of tourism vary as a result of the snow season. These resort towns lie far beyond the 10km and 2km demarcation zones proposed in the draft determinations referred to in paragraph 2.8 above, and include:
- (a) Mansfield
 - (b) Merrijig

- (c) Bright
- (d) Myrtleford
- (e) Dinner Plain
- (f) Omeo
- (g) Mount Beauty
- (h) Marysville
- (i) Jindabyne
- (j) Lake Crackenback
- (k) Sponars Chalet
- (l) Wilsons Valley
- (m) Cooma
- (n) Berridale
- (o) Tumut
- (p) Adaminaby
- (q) Bredbo
- (r) Michelago

2.11 An extension of coverage along geographic lines would not align with the history underpinning the Award, the decision of the Full Bench in the creation of the Award, nor the unique nature of the Award as it relates to the specific exigencies faced by Alpine Lifting Companies.

3 Mount Hotham Alpine Resort Management Board Submission

3.1 The Association refers to the submissions of the Mount Hotham Alpine Resort Management Board ("**Board**") regarding coverage ("**Board March 2017 Submission**") and the witness statement of Jon Hutchins ("**Statement of Jon Hutchins**"), filed with the Commission on 31 March 2017

3.2 In opposition to the Board March 2017 Submission the Association refers to and relies upon:

- (a) Part 6 and 7 of the Association's outline of submissions in reply filed with the Commission in the present proceedings on 4 March 2015;

- (b) Part 3 of the Association's outline of submissions in reply filed with the Commission in the present proceedings on 21 August 2015 ("**Association's August 2015 Submissions**"); and
- (c) Part 8 of the Statement of Gavin Girling.

3.3 The Association opposes the extension of the coverage of the Award to cover the Board as it is distinct from the Alpine Lifting Companies for the following reasons:

- (a) the Board does not perform the same functions as Alpine Lifting Companies (see paragraphs 8.3 to 8.4 of the Statement of Gavin Girling and paragraphs 6 to 14 of the Statement of Jon Hutchins);
- (b) the Board is not revenue dependent on alpine lifting facilities (see paragraph 8.9 of the Statement of Gavin Girling and paragraph 30 of the Statement of Jon Hutchins);
- (c) there is a difference between the Alpine Lifting Companies and the Board with respect to total employee numbers and seasonal employment numbers (see paragraph 8.8 of the Statement of Gavin Girling and paragraph 59(c) of the Statement of Jon Hutchins);
- (d) the industrial regulation of the alpine resort management industry (within which the Board operates), including the Victorian Alpine Resorts Award 1999 (Vic), is distinct from that of the snowsports industry and the Award (see paragraph 3.7 of the Association's August 2015 Submissions and paragraphs 8.4 to 8.6 of the Statement of Gavin Girling);
- (e) the Board does not coincide with the primary purpose of the Award and its limited coverage as identified at 2.6 above.

4 Further matters

4.1 In accordance with the consent orders made by the Commission on 6 April 2017, the Association reserves its rights to make further submissions in response to any submissions or witnesses statements filed in response to matters addressed in the confidential affidavit of Gavin Girling filed in the Commission on 10 April 2017.

Harmers Workplace Lawyers

12 April 2017