

ALPINE RESORTS AWARD 2014 – AM 2014/198
FOUR YEARLY REVIEW OF MODERN AWARDS
AUSTRALIAN SKI AREAS ASSOCIATION
SPECIALLY CONSTITUTED FULL BENCH

1 Introduction

- 1.1 This submission is made by the Australian Ski Areas Association (“**Association**”).
- 1.2 We refer to the Full Bench hearing on 7 October 2015, and thank the Commission for the opportunity to file written submissions in relation to the request to have matters regarding the Alpine Resorts Award (“**Award**”) referred to a specially constituted Full Bench.
- 1.3 The Association sought to make this submission in circumstances where various matters regarding the Award had been referred to a separate Full Bench considering casual and part-time employment common issues.
- 1.4 Since that time, and with the assistance of the Commission, the Association and the Australian Workers’ Union (“**AWU**”) reached a consent position with respect to all outstanding matters regarding the Award, except those concerning coverage and higher duties (items 2 and 23 respectively in the Revised Summary of Submissions). A copy of that consent position has been provided to the chambers of Deputy President Bull. The parties are continuing communication with the Australian Industry Group with a view to resolving item 23.
- 1.5 Given the consent position between the Association and the AWU, this submission is limited to the referral of the coverage submissions to a specially constituted Full Bench.

2 Specially constituted Full Bench

- 2.1 The Association respectfully submits that the coverage submissions (item 2 in the Revised Summary of Submissions) should be referred to a specially constituted Full Bench. The basis for this submission is that it is the Association’s respectful view that a specially constituted Full Bench will be best placed – appreciating the multitude of matters that are before the Group 2 Full Bench – to consider the coverage submissions, in view of the following:
- (a) The parties agree that it is a substantive claim regarding the Award.
 - (b) The unique nature of the snowsports industry, which was concisely summarised by his Honour Justice Watson, when in 1989 the Ski Industry (State) Award was formed. In deliberating the terms and conditions within the Ski Industry (State) Award, his Honour took into account:
 - (i) the seasonal nature of the industry – with the majority of employees being engaged only during the ski season (which runs

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- from early June to early October, depending on the snow conditions);
- (ii) the amount of work depending on the snow conditions on any particular day;
 - (iii) that weekends are the busiest times at the resorts; and
 - (iv) that the work is often undertaken by snowsports enthusiasts who wish to have the flexibility to work on weekends (when it is busiest) and ski on weekdays;
- (c) The Award is unique, in that it derives predominantly from the NSW Ski Industry (State) Award, which was a consent award that involved the striking of demarcation agreements which resulted in approximately 14 unions agreeing not to press for their rights with respect to this specific part of the snowsports industry, recognising that its extremely flexible conditions were limited to a small number of named ski lift operating employers;
 - (d) The necessity to traverse and understand that detailed history in order to properly deal with the coverage issue;
 - (e) The flexibilities in the Award, which do not appear in other modern awards;
 - (f) The weather dependency of the snowsports industry; and
 - (g) The significant costs incurred by the Alpine Resorts in order to operate alpine lifting facilities, including the significant capital and operational costs required to install and operate alpine lifts and snowmaking facilities.
- 2.2 All of the above are unique features requiring detailed evidence, submissions and analysis as part of the coverage case.

3 Further matters

- 3.1 Whilst this submission is limited to the referral of the coverage submissions to a specially constituted Full Bench, in circumstances where a consent position has been reached between the Association and the AWU with respect to all outstanding matters regarding the Award except those concerning coverage and higher duties, the Association reserves its right to make further submissions in this regard in the event that the Commission does not accept the terms of the consent position between the Association and the AWU.
- 3.2 The Association would be happy for the consent position between the Association and the AWU and the higher duties matter (item 23 in the Revised Summary of Submissions) to be considered by the Group 2 Full Bench.

Harmers Workplace Lawyers

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