

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

28 January 2015

Re: AM2014/198 Exposure Draft for the *Alpine Resorts Award 2014*

AWU submissions

The Australian Workers' Union (AWU) submits the following in relation to the Exposure Draft for the *Alpine Resorts Award 2014*:

1. **General issues:** We have not included submissions on drafting and technical issues already dealt with in the Full Bench Decision on 23 December 2014 on the basis that the Exposure Draft will subsequently be amended so it is consistent with this Decision.
2. **Clause 6.5 (b) (i):** This provision has been substantively changed because clause 10.5 (a) of the current award does not confine the payment of the 25% casual loading to ordinary hours of work. The beginning of clause 6.5 (b) (i) should be amended to read: "For each hour worked, a casual employee must be paid..."
3. **Clause 6.5 (b):** Given this award does not contain all-purpose allowances, the term "ordinary hourly rate" in this clause should read "minimum hourly rate" – this is consistent with clauses 6.4 (a) and 13.1 of the Exposure Draft.
4. **Clause 6.5 (b) (iii):** This provision has been substantively changed because it indicates the casual loading is paid instead of the named provisions and "other entitlements of full-time or part-time employment". Clause 10.5 of the current award is confined to "other entitlements from which they are excluded by the terms of this award and the NES". This wording should be retained.
5. **Clause 6.6 (c) (iv):** The reference to "subject to clause 5 – Facilitative provisions" is an error. The intent of this provision appears to be making the discussions and agreement regarding whether conversion is to full-time or part-time employment subject to the employee's right to elect according to the

hours they worked as a casual employee: see clause 6.6 (c) (i) and (ii). Hence the reference should be amended to “subject to clause 6.6 (c) (i) and (ii)”.

6. Clause 6.7 (b): This provision could be made clearer and consistent with clause 10.6 (b) the current award if it is amended to read: “A casual employee, other than a Snowsport Instructor, is entitled to a minimum payment of two hours’ work each time they are required to attend work”.
7. Clauses 7.5, 13, Schedule C and Schedule D: On 23 December 2014 the Full Bench determined that the payment of an 8.33% loading in lieu of annual leave is inconsistent with the NES. As a result, the hourly rates for seasonal employees will change.
8. As a result, attention will need to be given to what should be the “standard rate” for this award. The standard rate is currently “Resort Worker Level 2 (seasonal) in clause 13.1” – see Schedule H of the Exposure Draft. It appears the main significance of the standard rate in this award is for calculating the Sewerage treatment plant allowance contained in clause 15.2 (a) of the Exposure Draft.

We submit the process of correcting this NES inconsistency should not financially disadvantage employees, particularly those working in the vicinity of sewerage treatment plants. On this basis, we submit the standard rate definition should be amended to “Resort Worker Level 4 in clause 13.2”. This is the closest non-seasonal rate and will only result in the current allowance rate increasing from \$8.79 to \$8.83 per shift.

9. Clause 8: We note this clause will need to be amended in accordance with the apprentice determination issued by the Commission on 23 December 2014 for a number of awards.
10. Clause 10.3: We note the Australian Ski Areas Association correspondence dated 22 October 2014 which seeks the reference to “no more than 35 hours per week over a maximum work cycle of four weeks” be amended to “less than 38 hours per week over a work cycle of four weeks”. We do not currently see the need for this substantive change.
11. Clause 10.4 (b): The award does not have shift work provisions so this provision appears unnecessary.
12. Clause 13.3 (a): The reference to employees 19 years and over getting 100% may create ambiguity given the definition of “junior employee” in Schedule H which is “an employee who is less than 19 years old”.

13. Clause 14.2 (c) and 14.3 (d): It appears the intent of these provisions is to ensure an employee performing a dual role does not receive the higher role rate for all hours worked and an employee performing multiple roles does not receive the highest role rate for all work.

14. However, there does not appear to be any reason why these employees should be excluded from higher duties payments if they perform higher duties within one of their dual or multiple roles. For example, if one of the dual roles is bar service but the employee occasionally supervises other bar staff – a higher rate should be payable.

15. On this basis, we submit clause 14.2 (c) should be amended to read:

Where clause 14.2 applies, clause 14.1 only applies to work within each role.

16. In addition, clause 14.3 should be amended to read:

Where clause 14.3 applies, clause 14.1 only applies to work within each role.

17. Clause 15.3 (d) (ii): The second and third dot points are repetitive and allow too much discretion for an employer. We submit they should be consolidated into one dot point which states: “an employer may make a reasonable deduction for any loss or damage caused through misuse by the employee, provided there will be no deduction for reasonable wear and tear”.

18. Schedule A.3.1: There is an apostrophe missing in the last line which should state” the specific employers’ requirements”.

19. Schedule C.1.3 and clause 17.1 (b): We dispute the interpretation of clause 25.1 of the current award which has been adopted in calculating rates for the Exposure Draft. Clause 25.1 of the current award states:

Other than Snowsports Instructors, all time worked on a public holiday must be paid for at the rate of double time and a half for the hours worked. In the case of casual employees this rate includes the casual loading of 25%.

We interpret this to mean casual employees are paid at double time and a half of their “rate” which includes the casual loading of 25%. This is consistent with clause 10.5 (a) of the current award which requires the casual loading of 25% to be paid on all hours worked.

On this basis, we submit the casual public holiday rates should be:

Level	Public Holiday 250%
Training	\$52.70
Resort Worker Level 1	\$54.25
Resort Worker Level 2	\$56.35
Resort Worker Level 3	\$58.25
Resort Worker Level 4	\$61.35
Resort Worker Level 5	\$63.33
Resort Worker Level 6	\$65.25
Resort Worker Level 7	\$66.98



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