

27 February 2015

Justice Iain Ross AO
President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: chambers.ross.j@fwc.gov.au

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 15, RACV Tower
485 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line
+61 3 8686 6802

Email
sarah.ralph@nortonrosefulbright.com

Your reference: **Our reference:**
2823197

Dear Justice Ross

AM2014/198: 4 yearly review of modern awards - Alpine Resorts Award 2010

We act for Mount Hotham Resort Management Board (**Board**) in relation to the 4 yearly review of the Alpine Resorts Award 2010 (**Award**).

The Board wishes to make the following submissions in reply to the submissions filed in this matter to date.

1 Coverage of the Award (Clause 3.2)

- 1.1 The Award (as it currently stands and in the exposure draft) is expressed to apply to establishments whose business "includes, among other things, alpine lifting" .
- 1.2 The Board is established under section 34 of the *Alpine Resorts (Management) Act 1997 (Vic) (Act)* and has the following functions pursuant to section 38 of the Act:
 - (1) to plan for the development, promotion, management and use, of each such alpine resort in accordance with the object of this Act;
 - (2) to:
 - (a) develop and promote; or
 - (b) facilitate the development or promotion by others of;the use of each such alpine resort in accordance with the object of this Act;
 - (3) to manage each such alpine resort in accordance with the object of this Act;
 - (4) to contribute to the development of the Alpine Resorts Strategic Plan and other strategic planning for alpine resorts as a whole;
 - (5) to undertake research into alpine resort issues;

APAC-#25814379-v1

- (6) to contribute to and support the operation of the Alpine Resorts Co-ordinating Council (**Council**);
- (7) to prepare and implement a Strategic Management Plan for each such resort;
- (8) to expend or apply revenue of the Board in accordance with a direction of the Minister under section 36(1A);
- (9) to act as a committee of management of any Crown land deemed to be permanently reserved under the Crown Land (Reserves Act) 1978 in each such alpine resort;
- (10) to contribute, together with Tourism Victoria, established under the Tourism Victoria Act 1992 and the Council, to the overall promotion of alpine resorts;
- (11) to develop a tourism and marketing strategy for and to promote each such alpine resort and to collect and expend voluntary contributions from commercial undertakings in each such alpine resort for this purpose;
- (12) to provide services in the nature of -
 - (a) garbage disposal;
 - (b) water supply;
 - (c) gas;
 - (d) drainage;
 - (e) sewerage;
 - (f) electricity;
 - (g) roads;
 - (h) fire protection;
 - (i) snowmaking;
 - (j) transport -for each such alpine resort and to charge contributions for the provision of those services;
- (13) to collect fees prescribed by the regulations for each such alpine resort;
- (14) to attract investment for the improvement of each such alpine resort in respect of which the Board is established;
- (15) to carry out any other function conferred on the Board by or under this or any other Act.

1.3 Essentially, pursuant to section 38 the Board has responsibility for development, management, maintenance, operation and promotion of an alpine resort, being the Mount Hotham Alpine Resort. This includes provision of essential services and collection of fees. This responsibility, and the Board's workforce, increases significantly during the snow season. Most of the Board's activities require its employees to perform duties within classifications which fall within the scope of the Award, including:

- (1) ski patrolling;
- (2) waste plant operation;

- (3) administrative work;
 - (4) car parking and other guest services;
 - (5) snow grooming and clearing;
 - (6) driving buses around the Mount Hotham Alpine Resort; and
 - (7) walking track maintenance.
- 1.4 Employees may be reassigned from their primary duties to other duties where weather requirements dictate. For example, if there is insufficient snow, a snow groomer or clearer may be reassigned to perform earth works or general maintenance work. A bus driver may be reallocated to car parking or providing other guest services (such as information) to visitors.
- 1.5 The Board was previously covered by the now defunct Victorian Alpine Resorts Award 1999.
- 1.6 However, the Board does not own or operate an alpine lift. The Mount Hotham alpine lift is owned and operated by Mount Hotham Skiing Company. Mount Hotham Skiing Company leases the relevant land from the Crown and the Board acts on behalf of the Crown as lessor. By reason of the fact that it does not operate an alpine lift, it may be arguable that the Board and its employees do not fall within the scope of the Award (either as it currently stands or in the exposure draft released as part of the 4 yearly review).
- 1.7 The Board believes that given its functions and the work performed by its employees, the Award properly applies to it.
- 1.8 Accordingly, the Board submits that the scope of coverage of the Award should be altered such that it is unambiguous that alpine resort **managers and operators** who do not operate alpine lifts as part of their business fall within scope.
- 1.9 The Board has noted the submissions of the Falls Creek and Mount Hotham Chambers of Commerce seeking to be covered by the Award and of the Australian Ski Areas Association (**ASSA**) rejecting the submissions of the Falls Creek and Mount Hotham Chambers of Commerce. The Board understands ASSA's objection to be that coverage should not be extended to a retail or hospitality business or the like which operates **within** an alpine resort but does not operate or manage an alpine resort and which does not have the same revenue pressure and a requirement to have flexibility to, as a result of the vagaries of weather, be able to redeploy staff usually engaged in duties associated with alpine lifting or on the ski slopes across other areas of its operations. This may affect whether the change requested by Falls Creek and Mount Hotham Chambers of Commerce should be made. The Board does not make any submission about the request made on behalf of the Falls Creek and Mount Hotham Chambers of Commerce.
- 1.10 However, the Board submits that, having regard to its functions and activities, in contrast to businesses operating **within** Mount Hotham Alpine Resort, it is apparent from section 38 of the Act that the Board in fact is the manager and operator of Mount Hotham Alpine Resort, notwithstanding that it does not operate an alpine lift and the alpine lift at Mount Hotham is operated by Mount Hotham Skiing Company. The Board therefore submits that its position can be distinguished when considering the objections raised by ASSA. The Board notes that some features identified by ASSA as uniquely characteristic of alpine resort operators also apply to the Board:
- (1) it employs employees in a broad range of occupations to perform activities and provide services associated with management of the Mount Hotham Alpine Resort;
 - (2) the work activities of its employees are highly variable due to prevailing snow and weather conditions and are seasonal in nature; and
 - (3) while it does not operate an alpine lift and does not need to redeploy those who work with an alpine lift, it requires flexibility to deploy its employees to a variety of activities across the Mount Hotham Alpine Resort in order to operate Mount Hotham Alpine Resort effectively and

commercially, particularly in poor weather conditions. For example, as outlined above, those usually engaged in snow clearing or grooming must be able to be redeployed to other work if there is insufficient snow.

1.11 The Board submits that an appropriate amendment to proposed clauses 3.1 and 3.2 of the exposure draft would be as follows (the suggested additional wording appears in bold type):

3.1 *This industry award covers employers throughout Australia who operate **or have statutory responsibility for management and operation of an alpine resort and their employees in the classifications within Schedule A – Classification Definitions to the exclusion of any other modern award.***

3.2 *Alpine resort means:*

(a) *any establishment whose business, among other things, includes alpine lifting; **and/or***

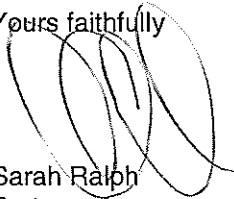
(b) *an establishment which has **statutory responsibility for management and operation of an alpine resort, whether or not that establishment operates an alpine lift.***

2 Other matters

The Board does not wish to make submissions on other matters raised by other parties who have made submissions in relation to this Award.

Please contact me should you have any queries regarding this matter.

Yours faithfully



Sarah Ralph
Partner
Norton Rose Fulbright Australia