

FOUR YEARLY REVIEW OF MODERN AWARDS

PAYMENT OF WAGES (AM2016/8)

AUSTRALIAN SKI AREAS ASSOCIATION

OUTLINE OF SUBMISSIONS RE: ALPINE RESORTS AWARD

- 1 These submissions are made by the Australian Ski Areas Association (“**Association**”) in relation to the provisional view formed by the Fair Work Commission that the *Alpine Resorts Award 2010* (“**Award**”) (among others) should be varied to insert the model “Payment on termination of employment” term (“**Model Term**”)¹.
- 2 The Association acknowledges that the form and content of the Model Term has been well-ventilated throughout the Modern Award Review process. However, having regard to the unique circumstances that exist in the alpine resorts industry, the Association respectfully opposes the insertion of the Model Term in the Award in its proposed form.
- 3 Specifically, the unique nature of the alpine resorts industry is demonstrated by the following factors which are relevant to the present issue:
 - (a) the vast majority of employees working within the alpine resorts industry are engaged only to perform work during the winter snowsports season²;
 - (b) the alpine resorts industry is weather-dependant and highly vulnerable to changing climatic conditions³; and
 - (c) the length of the snowsports season is unpredictable and varies from year to year depending on factors such as snow-conditions, patronage, and business demand⁴.
- 4 As the vast majority of employees engaged at alpine resorts are employed on a seasonal basis, it is common for hundreds of staff to finish their employment within a three to four-week period at the end of the snowsports season. This presents a significant administrative challenge for the Association’s members insofar as:
 - (a) uniforms and equipment must be returned by staff;
 - (b) staff accommodation must to be vacated; and
 - (c) final performance reviews must be completed,all in a relatively short period of time.
- 5 The Association submits that, given these unique circumstances, the insertion of a seven-day payment term into the Award as contemplated by the Model Term would require a large volume of employees to have their termination payments processed outside of their employer’s ordinary pay-cycle. The Association submits that this would place considerable, and possibly insurmountable, strain on its members’ payroll arrangements.

¹ *4 Yearly Review of modern awards – Payment of wages* [2018] FWCFB 3566 at [156].

² Witness statement of Gavin Girling (dated 21 December 2016) filed in proceeding AM2016/30 at [3.12].

³ *Ibid* at [3.1] to [3.2].

⁴ *Ibid* at [3.11].

6 Further, the administrative challenges presented by “offboarding” hundreds of seasonal staff in a short period of time are compounded by the variable and unpredictable length of the snowsports season. For example, it is not uncommon for the snowsports season to be extended or reduced by several weeks, at short notice, as a direct consequence of local weather conditions. When this occurs, the alpine resorts necessarily require greater flexibility to make termination payments to affected staff so that the termination payments align with the alpine resorts’ ordinary pay-cycle.

7 In light of the above, and to avoid any unintended disadvantage which would be suffered by employees engaged at resorts which already pay employees in a seven day pay-cycle, the Association respectfully requests that the following amended Model Term (“**Amended Term**”) be inserted into the Award:

X. Payment on termination of employment

(a) The employer must pay an employee no later than whichever is the earlier of either 14 days after the day on which the employee’s employment terminates or the employer’s next usual pay cycle:

(i) the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of the termination; and

(ii) all other amounts that are due to the employee under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under clause X. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee’s employment terminates or shortly after.

8 The Association submits that the insertion of the Amended Term into the Award will not offend the modern award objectives. Rather, it will decrease regulatory burden on the Association’s members, reduce employment costs, and limit any adverse impact on the efficient and productive performance of work⁵.

Harmers Workplace Lawyers

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⁵ *Fair Work Act 2009* (Cth) s 134(d) and (f).