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Sent: Tuesday, 24 October 2017 2:17 PM
To: 'djmacken@macken.com.au'; AMOD; Chambers - Dean DP; Chambers - Hatcher VP
Cc: Kyle Scott; Emily Slaytor
Subject: RE: Modern Awards Review - Alpine Resorts Award 2010 - AM2016/30

Dear Ms Wong and Ms Hamberger


We **attach** ABI/NSWBC/TCC's response to the unresolved objections filed by the SDA.

We would be happy to address these matters orally at a convenient time during the hearing scheduled for next week.

Yours sincerely

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**IN THE FAIR WORK COMMISSION
AM 2016/30
4 YEARLY REVIEW OF MODERN AWARDS
ALPINE RESORTS AWARD**

ABI/NSWBC/TCC RESPONSE TO SDA OBJECTIONS

1. INTRODUCTION

- 1.1 Australian Business Industrial, the New South Wales Business Chamber and the Thredbo Chamber of Commerce (**the Coverage Applicants**) have resolved a number of the SDA's objections in relation to the Coverage Applicants' witness statements.
- 1.2 There is one significant category of objections that has been raised by the SDA which remains outstanding, namely objections regarding evidence of employee preferences to work on weekends.
- 1.3 We respond to this category of objections directly below, before providing a table outlining the Coverage Applicants' response to each individual objection.

2. EVIDENCE OF EMPLOYEE WORKING PREFERENCES

- 2.1 The Coverage Applicants contend that the terms of the Alpine Resorts Award 2010 (**the Award**) are better aligned to the working conditions of the alpine tourism businesses than the awards otherwise applicable in the hospitality, retail and restaurant industries.
- 2.2 One of the unique features of the Award is that there are no penalty rates payable on weekends. Given the underlying purpose of penalty rates is to compensate for the "*social disabilities*" associated with working at particular times, it is reasonable to conclude that, when making the Award, the Australian Industrial Relations Commission (**AIRC**) had regard to the fact that, unlike in most industries, there is little to no social disability associated with weekend work for employees covered by the Award. Submissions were certainly made to this effect by the ASAA during the award modernisation proceedings.¹
- 2.3 The evidence filed by the Coverage Applicants directly addresses the social disability associated with weekend work for employees covered by alpine tourism businesses. It demonstrates an alignment in weekend working conditions between employees of alpine tourism businesses and employees of alpine resorts. The evidence is accordingly directly relevant to the facts in issue in these proceedings.
- 2.4 The evidence filed by the Coverage Applicants also places the Fair Work Commission in a substantially better position to assess the terms of the Award than the AIRC was in 2009, as the AIRC did not have the benefit of any evidence being filed in 2009 when it first made the Award.
- 2.5 The SDA has had an opportunity file witnesses statements in reply to the Coverage Applicant's evidence, but elected not to do so.
- 2.6 In all of these circumstances, should the Commission determine not to accept the evidence filed by the Coverage Applicants regarding the impact of weekend work on employees, the Commission will be in the invidious position of having no evidence before it regarding the unique nature of weekend work in alpine areas and the nature of the social disability (if any) attaching to such work.

¹ The submissions made by the ASAA to this effect are addressed extensively in the ASAA submissions filed in these proceedings, as well as the Coverage Applicants' own submissions

2.7 For the above reasons, the Coverage Applicants maintain that the Commission should admit the Coverage Applicants' statements on this issue into evidence. Naturally, the SDA is able to:

- (a) cross-examine the witnesses on these matters; and
- (b) make submissions as to weight.

3. TABLE OF INDIVIDUAL OBJECTIONS

3.1 The Coverage Applicants respond to the SDA objections as follows:

PARA(S)	PART	GROUND	ABI/NSWBC/TCC RESPONSE
Gregg Quinn			
18	Second sentence beginning "As a result, my employees often prefer to work weekends ... "	Relevance, speculation	This is relevant to the applicability of the Alpine Award weekend penalty rates. It is also evidence derived from direct interactions with employees.
39(c)	Whole sentence	Hearsay	As above
John Leggett			
12	Second sentence 'Their number one priority tends to be to go riding...'	Relevance, speculation, opinion	As above
13	Whole paragraph	Hearsay	As above
14	All of the first sentence and beginning of the second sentence until the words "ride on the mountain as much as possible"	Hearsay, speculation, opinion	As above
15	Second sentence from the words 'so that they can...' to the end of sentence`	Relevance, speculation	As above
16	Whole of fourth sentence beginning 'This then allows them to go skiing on Monday and Tuesday...'	Relevance, speculation	As above
18	Second sentence from the words 'so they can work fewer hours...'	Relevance, speculation	This is a direct observation about when staff attend work.
Nick Cook			
16	Third sentence commencing 'In my experience...'	Relevance, speculation	This is relevant to the applicability of the Alpine Award weekend penalty rates. It is also evidence derived from direct interactions with employees.
19	First sentence from the words 'so that they can take advantage...'	Hearsay, speculation, opinion	As above
20	Second sentence	Relevance, speculation	As above

PARA(S)	PART	GROUND	ABI/NSWBC/TCC RESPONSE
Jason Moon			
20	Whole paragraph	Relevance, Hearsay, speculation	As above
21	Second sentence including quote	Hearsay	As above
22	First sentence	Relevance, speculation	As above
24	Whole paragraph	Relevance, speculation	As above
25	First sentence, particularly reference to staff working preferences	Relevance, speculation	First sentence not pressed. Balance of paragraph pressed for reasons stated above.
Ian Foster			
43	Whole paragraph	Relevance, speculation	This is relevant to the applicability of the Alpine Award weekend penalty rates. It is also evidence derived from direct interactions with employees.
Narelle Therese Clarke			
46	Second sentence 'Essentially they are in Falls Creek ...	Relevance, speculation	As above
Rob Aivatoglou			
34	Paragraph (f)	Speculation, relevance, hearsay	As above
Stephen Pennington			
19	From the words 'so that they can utilise time, during the mid week'	Relevance, speculation	As above
20-21	All paragraphs	Relevance, speculation	As above
23	Whole paragraph	Relevance, hearsay, speculation	As above

Luis Izzo
Legal Representative for the Coverage Applicants

24 October 2017