

**IN THE FAIR WORK COMMISSION
AT MELBOURNE**

Matter No: AM2014/198

Four Yearly Review – Alpine Resorts Award 2010

Mount Hotham Alpine Resort Management Board

OUTLINE OF SUBMISSIONS

Introduction

- 1 The Mount Hotham Alpine Resort Management Board (**the Board**) makes the following submissions with respect to its application to seek coverage under the *Alpine Resorts Award 2010* (**the Award**) pursuant to directions issued by Vice President Hatcher on 23 November 2016 as part of the Fair Work Commission's (**FWC**) 4 yearly review of modern awards.
- 2 The Board relies on its submissions to the FWC on 27 February 2015 and 15 July 2015. The Board also relies on the witness statement of Jon Hutchins, Chief Executive Officer of the Board, filed in this proceeding on 31 March 2017.

Coverage of the Award

- 3 Clause 4.1 of the Award states that the award covers employers throughout Australia who operate an alpine resort and their employees in the relevant classifications in Schedule B to the Award. Alpine resorts are defined in clause 3.1 of the Award to mean establishments 'whose business, among other things, includes alpine lifting'. The Exposure Draft of the Award as last revised on 4 November 2016 (**the Exposure Draft Award**) expresses the same coverage, albeit as contained in clauses 3.1 and 3.2 of the Exposure Draft Award.
- 4 The Board seeks a variation to the Award's coverage. The Board has filed its Draft Determination on 30 November 2016 which provides for the Board's proposed variation to the Award's coverage as follows:

The words "alpine resort means an establishment whose business, among other things, includes alpine lifting" to be deleted from Clause 3.1

Clause 3.1 to be amended to read:

alpine resort means:

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

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

3.2 Clause 4.1 to be amended to read:

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.

- 5 The variation set out above is the sole variation the Board is seeking in relation to the Four Yearly review of the Award.

Current position of the Board

- 6 The Board is currently covered by the *State Government Agencies Administration Award 2010* (Cth) on the basis that it is a state public sector body that is established under a law and/or for a public purpose¹. Prior to this, the Board was covered by the *Victorian Alpine Resorts Award 1999* (Cth) which was terminated by the Fair Work Commission on 10 August 2011².
- 7 Since the termination of the *Victorian Alpine Resorts Award 1999* (Cth), the Board has been of the view that, despite not being covered by it, the most appropriate award for the Board's employees is the Award. This is because the Award most fully and appropriately covers the Board's employees' classifications and the Board operates in the Alpine Resorts Industry.
- 8 The Board is of the view that the Award is the most appropriate for the environment the Board's employees operate in. In this regard, the Board's current

¹ See clause 4.1 of the *State Government Agencies Administration Award 2010* (Cth)

² See *Victorian Alpine Resorts Award 1999* [AP802224] PR512951

enterprise agreement – the *Mount Hotham Resort Management Board Enterprise Agreement 2013 (the Board’s enterprise agreement)* states at clause 1.1(b) that the Board’s enterprise agreement was matched against the Award and the *State Government Agencies Administration Award 2010 (Cth)* for the purposes of the Better Off Overall Test (**BOOT**).

- 9 It is the evidence of Jon Hutchins that the use of ‘matched against’ at clause 1.1(b) of the Board’s enterprise agreement means ‘assessed against for the purpose of ensuring that the terms of the Award are reflected in the Board’s enterprise agreement’³. Mr Hutchins’ evidence is that the clause was added to the Board’s enterprise agreement in recognition that it was appropriate the MHARMB employees’ terms and conditions were at least as favourable as the terms and conditions of workers employed by the MHSC who did similar work⁴.
- 10 We respectfully submit that the FWC varying the coverage clause of the Award as pressed by the Board will resolve this current situation where by the Board is not covered by the most appropriate award for its employees’ classifications and the industry it operates in.

History of the Award

- 11 The Board was not a party to the award modernisation process that took place in 2009 before the Australian Industrial Relations Commission (**AIRC**) (**the Award Modernisation Process**). For this reason, the Board did not provide submissions nor give evidence to the AIRC during the Award Modernisation Process. No other Alpine Resort Management Board made submissions or gave evidence during the Award Modernisation Process. As a result, the AIRC did not hear nor determine the matters that the Board is now submitting, and has not considered the evidence Mr Hutchins currently has before the FWC.
- 12 The Board respectfully submits that the 2009 Award Modernisation Process should not now preclude the Board from seeking to be included in the coverage of the Award as a part of the four yearly review.
- 13 The Board submits that the FWC should neither rely substantially on the material that was presented before the AIRC during the Award Modernisation process, nor

³ Paragraph 50 of the Witness Statement of Jon Hutchins

⁴ Paragraph 51 of the Witness Statement of Jon Hutchins

on material the FWC considered in the context of the Falls Creek Oversnow Pty Ltd and DPSI General Pty Ltd's application to expand coverage on 21 May 2014, to exclude the Board from being covered from the Award, but instead primarily consider the Board's current application and supporting evidence and submissions.

Reasons supporting the Board's coverage under the Award

- 14 The Board makes its submissions for coverage under the Award on the following basis:
- (a) By reason of the function and activities of the Board, it operates in the Alpine Industry and for that reason the Award is the most appropriate Industry Award for the Board. In particular, as is the case of ski lift operators, it manages alpine resort infrastructure, rather than other non-infrastructure related activities such as retail;
 - (b) While the Board does not operate an alpine ski lift, it is responsible for and conducts many activities that are directly related to alpine lifting;
 - (c) The Board is directly impacted by the high level of variability of snow and weather in the same manner that the snowsports industry is; a
 - (d) The Board undertakes significant capital expenditure to capital works projects that directly benefit alpine lifting and the Alpine Resorts industry;
 - (e) The Board's workforce most appropriate fits within the classifications under the Award and the flexible nature of the Board's workforce supports the Board most appropriately being covered by the Award.

Functions and activities of the Board

- 15 The Board is established under section 34(5) of the *Alpine Resorts (Management) Act 1997* (Vic) (**the Act**). Section 1A of the Act provides that Alpine Resorts exist for the development, promotion, management and use of the resorts on a sustainable basis and in a manner that is compatible with the alpine environment having regard to environmental and ecological considerations, economic considerations and cultural heritage considerations.

- 16 Pursuant to section 38 of the Act, the Board has responsibility for among other things, development, management, maintenance, operation and promotion of an alpine resort, being the Mount Hotham Alpine Resort.
- 17 Under section 39(1) of the Act, the Board has the power to do anything necessary or convenient to enable it to carry out its functions. The Board has power to enter into contracts, agreements or arrangements and carry them out under section 39(3) of the Act.
- 18 The Board undertakes a broad remit of activities to carry out its functions under the Act. The activities are aimed at ensuring the consistent and reliable delivery of core services to maintain the ongoing daily operation and viability of the Resort, and to provide the foundation on which the other businesses operating in the Resort rely. For example, the Board undertakes:
- (a) Utilities functions including provision of water, sewerage, drainage, waste management, snowmaking infrastructure, plant/vehicle and workshops;
 - (b) Land management and environmental services including property development, stewardship, leading, licenses, planning, building, capital works and operations;
 - (c) Corporate services including business and resort master planning, administration, stakeholder management, emergency management, human resources, board administration, compliance, corporate governance, risk management facilitation, OH&S, financial management and information technology;
 - (d) Risk management services including maintaining a risk register and asset maintenance;
 - (e) Gas supply;
 - (f) Running the Victorian Alpine Nursery;
 - (g) Business and product development service including tourism and marketing, website development and weather and snow reporting; and
 - (h) Public access and safety including ski patrol, public infrastructure, guest safety, village maintenance, car parks and roads, resort entry and guest

information, traffic control, transport, trails and snow play, snow clearing, cross country trails and public liability insurance.

- 19 Given these functions and activities of the Board, it is unequivocal that despite not operating an alpine lift the Board is part of the Alpine Resort Industry.
- 20 On this basis, precluding the Board from coverage under the Award for the sole reason that it does not operate an alpine lift, is illogical and causes an anomaly whereby the Award which is aimed at providing the conditions for the Alpine Resorts industry does not cover the Board which carries out a range of functions and activities as an Alpine Resort.

Responsibility for and activities in support of alpine lifting

- 21 While the Board does not operate an alpine lift, it is responsible for and conducts many activities that are directly related to alpine lifting.
- 22 The Board is an appointed Committee of Management under the *Crown Land Reserves Act 1978* (Vic) (**the Crown Land Reserves Act**) for the management of the Crown land which makes up the Mt Hotham Alpine Resort. The Crown Land Reserves Act allows the Board as a Committee of Management to, with the consent of the Governor in Council, to grant leases for the purposes of providing facilities and services for the public. In accordance with this power, the Board issues leases to various commercial operators on the Resort. Under the Act, the Board retains ultimate responsibility for all activities conducted on crown land within the Alpine Resort's limits.
- 23 The Board entered into a lease with the Mt Hotham Skiing Company Pty Ltd (**MHSC**) on 22 December 1992 so that the MHSC could lease the land from the Board to operate ski lifts. The Board does not operate a ski lift itself. However, under the MHSC's lease with the Board, in the event that the MHSC fails to meet obligations under the lease, the Board must either find an alternative operator of the ski lifts or operate the ski lift itself.
- 24 The MHSC operates 13 lifts on the resort. In particular the MHSC performs the following functions:
- (a) Operation of the ski lifts;

- (b) Ski instruction by instructors;
 - (c) Ski hire and rental; and
 - (d) Food and beverage and accommodation services to guests.
- 25 The Board performs a number of functions that supports the activities of the MHSC and the operation of the 13 ski lifts on the Mt Hotham Alpine Resort. Under the lease between the MHSC and the Board, the Board retains sole responsibility for the use of the ski slopes to ensure public safety and is required to carry out the functions of ski patrol including but not limited to:
- (a) the opening and closure of ski slopes and trails;
 - (b) the marking of all hazards on ski slopes to ensure public safety
 - (c) the erection and maintenance of ski area boundary fences and signs;
 - (d) the policing of ski slopes to prevent reckless and hazardous skiing;
 - (e) the provision of first aid to and transportation of injured members of the public; and
 - (f) the search for and rescue of missing members of the public.
- 26 While the MHSC performs snow grooming for the ski areas near the lifts, the Board undertakes snow grooming for approximately 100 kilometres of cross country trails in the Mt Hotham Alpine Resort. The Board provides the MHSC with water in accordance with the Act to operate man-made snowmaking machines to produce snow at the Mt Hotham Alpine Resort.
- 27 The Board is responsible for convening the required response to manage an emergency as the prescribed authority on the Resort under the *Emergency Management Act 2013* (Vic). As a result if an emergency was to occur during winter season, the Board would be responsible for evacuating the lifting area and infrastructure with assistance from the lifting company.
- 28 The Board and the MHSC are also jointly responsible and invest jointly in the promotion and marketing of the resort. This includes maintaining the website and developing and commissioning of promotional material. Both of these activities are

aimed at attracting patrons to the resort which is a critical activity as it impacts greatly on the revenue of the Board and the other companies operating on the Mt Hotham Alpine Resort.

- 29 In summary, despite not operating a ski lift, the Board retains responsibility for the operation of the ski lifts under its obligations under the Act. We submit that excluding the Board from coverage under the Award not operating a lift in circumstances where it continues to be responsible for ski lifting and also undertaking a number of activities to support alpine lifting are not appropriate, is an error that respectfully the FWC must correct.

Impact of the high variability of snow and weather

- 30 We note that the Australian Ski Areas Association (**the ASAA**) has made various submissions about the 'unique nature of the snowsports industry' in their submissions filed on 22 December 2016. The Board submits that the factors that the ASAA submits makes the snowsports industry 'unique' equally apply to the Board as part of the Alpine Resorts Industry. We set out these factors in paragraphs 26-34 of Mr Jon Hutchins' witness statement. By way of summary these factors include:
- (a) The snow season is very variable and runs anywhere from the around the second week of June to the last weekend in September;
 - (b) In good snow conditions including high snowfall and low wind, the Board has a higher number of guests enter the resort and the Board is able to schedule its operations with more certainty;
 - (c) The variability of winter weather conditions creates difficulties for the Board to match employee numbers and roster employees to meet operational needs;
 - (d) If there are poor snow conditions, this has a direct impact on the Board's resort entry which forms approximately 30% of the Board's yearly revenue. In addition, the Board's other income sources are also impacted by poor snow conditions as if the other operators on the Mt Hotham Alpine Resort are not doing well due to poor weather, the amount of revenue the Board can earn from them reduces; and

- (e) Regardless of how many visitors attend the Mt Hotham Alpine Resort, the Board is still required to expend a consistent amount of money in expenditure because the Board need to undertake numerous steps in preparation for the season including maintenance of the Village, water, sewerage and gas costs to supply the Resort and ensuring sufficient numbers of workers are engaged to prepare the resort for the season and to ensure that sufficient staff are available for the winter operations. If revenue is down due to poor snow conditions and resulting low patronage, the Board bears these costs.

31 The Board therefore submits that the fact that it is similarly impacted by snow and weather variability as the lifting companies that are covered by the Award, supports the Board's coverage under the Award.

Capital expenditure to capital works projects

32 The Board undertakes significant capital expenditure to capital works projects that directly benefit alpine lifting and the Alpine Resorts industry. The details of the Board's capital expenditure are set out in paragraphs 35-39 of Mr Jon Hutchins' witness statement.

33 The Board's capital investment either through its own income sources or through securing Government funding is essential to ensuring the viability and profitability of the Resort, including the maintenance and viability of alpine lifting at the Resort. As a result, if the FWC considers the lifting companies' capital investment a reason for their coverage under the Award, the Board's capital investment should also favour its coverage under the Award.

The Board's workforce

34 The Board's workforce most appropriately fits within the classifications under the Award and the flexible nature of the Board's workforce supports the Board most appropriately being covered by the Award.

35 The Board employs a large number of occupational groups including the following:

- (a) Clerical employees;
- (b) Mechanic employees;

- (c) Ski patrol employees;
- (d) Bus operators;
- (e) Garbage operators;
- (f) Trades people including those qualified to assist with gas supply; and
- (g) Labourers.

36 While a proportion of the Board's classification of employees fit within the classifications under the *State Government Agencies Award 2010*, not all of the Board's employees are covered by the *State Government Agencies Award 2010*. In this regard, the mechanics and general construction hand/ labourer positions employed by the Board neither fit within the classifications of the *State Government Agencies Award 2010* nor any other award. This has resulted in these positions being award free in circumstances where the MHSC employs largely similar positions and the MHSC's mechanics and general construction hand/labourers would be covered under the Award.

37 The Board submits that the majority of its employees, save for positions that are traditionally not award covered by reason of their seniority, would fall within the classifications under the Award.

38 The FWC's task when considering the various competing interests outlined in the modern awards objectives is to ensure that the modern awards provide '*a fair and relevant minimum safety net of terms and conditions*'⁵. The Board submits that the modern awards objective will be met by the FWC's variation of the Award to cover the Board.

39 Further, the conditions provided under the Award are better suited to the seasonal and flexible nature of the Board's workforce.

40 The majority of the Board's staff is seasonal. While the Board employees around 25 full time staff year round, this number significantly increases by 80-100 more employees during the Winter Snow season.

⁵ Section 134(1) of the Fair Work Act 2009 (Cth)

41 The Board's workforce is not only seasonal, it is also specialised. The skills the Board's employees have are specific to the hazardous snow environment in which they operate. The Board's workforce is also largely multi-skilled in that the Board's employees can be deployed 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. While these employees might perform certain functions during the Winter season, the nature of their work if they continue to be engaged, might change in summer. Due to the seasonal nature of employment, some of the Board's employees are only able to be rostered on for [do you mean seasonal] work. For this reason, most seasonal employees favour flexibility in how their shifts are rostered including having longer and more frequent shifts during the peak season and they prefer not to have an obligation to be tied down during the low season when they might pursue other work.

42 All of these factors support the Board's position that the Award is the most appropriate award for the Board given the nature of the work undertaken by the Board's employees and the environment the Board's employees undertaken this work in.

Conclusion

43 The FWC should approve the Board's proposed draft determination to provide for the Board's coverage under the Award on the reasons set out above.



Norton Rose Fulbright Australia

31 March 2017

**IN THE FAIR WORK COMMISSION
AT MELBOURNE**

Matter No: AM2014/198

Four Yearly Review – Alpine Resorts Award 2010

Mount Hotham Alpine Resort Management Board

WITNESS STATEMENT OF JON HUTCHINS

I, Jon Hutchins of Mount Hotham Alpine Resort Management Board, Great Alpine Road, Hotham Heights in the State of Victoria, state as follows:

- 1 I make this statement from my own knowledge, except where I state otherwise. Where I have expressed an opinion on matters, I do so based on my qualifications and experience set out below. Where I state matters based on information provided to me, I have set out the source of that information and I believe such information to be true.
- 2 I am the Chief Executive Officer (**CEO**) of the Mount Hotham Alpine Resort Management Board (**MHARMB**). I have been employed in the role of CEO with the MHRMB since 19 January 2015.
- 3 Prior to my current role, I was the chief financial officer between January 2008 and January 2013 for the MHARMB. From 2013 to 2014, I was the chairman of the Victorian Teachers' Mutual Bank.
- 4 From 2004 to 2009, I was working for the Mt Buller Race Club. In 2003 and 2004, I was the executive officer of the Mt Stirling Board. Between 1998 and 2002 I was the business manager for the Mt Buller Resort Management Board.
- 5 I have been working in the resort management board sector since 1998 save for a short stint at the Mt Buller Race Club and the Victorian Teachers' Mutual Bank.

The MHARMB, its functions and activities

- 6 The MHARMB was established under section 34(5) of the *Alpine Resorts (Management) Act 1997* (Vic) (**the Act**). Under section 35 of the Act, the MHARMB

acts on behalf of the Crown in carrying out its functions and powers. Section 1A of the Act provides that Alpine Resorts exist for the development, promotion, management and use of the resorts on a sustainable basis and in a manner, that is compatible with the alpine environment having regard to environmental and ecological considerations, economic considerations and cultural heritage considerations. Under section 1A, the MHARMB also exists to make use of the resorts primarily for alpine recreation and tourism in all seasons of the year and by people from varied cultural and economic groups.

- 7 The functions of the MHARMB are set out under section 38 of the Act to include the following:
- (a) Plan for the development, promotion, management and use, of the Resort in accordance with the Act;
 - (b) Develop and promote or facilitate the development or promotion by others of the use of the Resort in accordance with the Act;
 - (c) Manage the Resort in accordance with the object of the Act;
 - (d) Expend or apply revenue of the Board in accordance with a direction of the Minister under section 36(1A) of the Act;
 - (e) Manage the Crown land within Mt Hotham Resort by acting as a Committee of Management under the *Crown Land (Reserves) Act 1978*;
 - (f) Contribute, together with Visit Victoria (formerly Tourism Victoria), to the overall promotion of Alpine Resorts;
 - (g) Develop a tourism and marketing strategy and to promote the Resort;
 - (h) Provide services in the nature of: garbage disposal, water supply, gas, drainage, sewerage, electricity, roads, fire protection, transport for the Resort and to charge on a user pays basis as contributions for the provision of those services;
 - (i) Provide transport services in the Resort;
 - (j) Collect fees;

- (k) Attract investment for the improvement of the Resort; and
 - (l) Carry out any other function conferred on the Board by or under this or any other Act.
- 8 Under section 39(1) of the Act, the MHARMB has the power to do anything necessary or convenient to enable it to carry out its functions. The MHARMB has the power to enter into contracts, agreements or arrangements and carry them out under section 39(3) of the Act.
- 9 The MHARMB empowers the CEO and officers of MHARMB to carry out the functions and exercise the powers conferred on the Board under the Act and other relevant legislation.
- 10 As the CEO, I am ultimately responsible for all day-to-day management decisions and for implementing the MHARMB's long and short term plans. As part of my role:
- (a) I act as a direct liaison between the Board and the management employees of the MHARMB. I also communicate on behalf of the MHARMB to non-management employees, Government authorities, lessees, other stakeholders and the public; and
 - (b) I advise the Board and stakeholders on the MHARMB's capital investment and funding.
- 11 The MHARMB undertakes a broad remit of activities to carry out its functions under the Act. The activities are aimed at ensuring the consistent and reliable delivery of core services to maintain the ongoing daily operation and viability of the Resort, and to provide the foundation on which the other businesses operating in the Resort rely. For example, the MHARMB undertakes:
- (a) Utilities functions including provision of water, sewerage, drainage, waste management, snowmaking infrastructure, plant/vehicle and workshops;
 - (b) Land management and environmental services including property development, stewardship, leading, licenses, planning, building, capital works and operations;
 - (c) Corporate services including business and resort master planning, administration, stakeholder management, emergency management, human

- resources, board administration, compliance, corporate governance, risk management facilitation, OH&S, financial management and information technology;
- (d) Risk management services including maintaining a risk register and asset maintenance;
 - (e) Gas supply;
 - (f) Running the Victorian Alpine Nursery;
 - (g) Business and product development service including tourism and marketing, website development and weather and snow reporting; and
 - (h) Public access and safety including ski patrol, public infrastructure, guest safety, village maintenance, car parks and roads, resort entry and guest information, traffic control, transport, trails and snow play, snow clearing, cross country trails and public liability insurance.
- 12 The MHARMB is an appointed Committee of Management under the *Crown Land Reserves Act 1978* (Vic) (**the Crown Land Reserves Act**) for the management of the Crown land which makes up the Resort.
- 13 The Crown Land Reserves Act allows the MHARMB as a Committee of Management to, with the consent of the Governor in Council, to grant leases for the purposes of providing facilities and services for the public.
- 14 In accordance with this power, the MHARMB issues leases to various commercial operators in the Alpine Resort. Under the Act, the MHARMB retains ultimate responsibility for all activities conducted on crown land within the Alpine Resort's limits. However, over time certain entities have been granted leases to conduct their own activities. The provision of leases remains subject to statutory requirements under the Act, planning and permit conditions and directions by the Minister. The entities including accommodation houses, ski hire, hotels and lifting companies.

Activities that the MHARMB performs that relate to ski lifting

- 15 The MHARMB entered into a lease with the Mt Hotham Skiing Company Pty Ltd (**MHSC**) on 22 December 1992 so that the MHSC could lease the land from the MHARMB to operate ski lifts. The MHSC has had the lease to operate ski lifts at the Resort since I have worked at the MHARMB.
- 16 Under the MHSC's lease with the MHARMB, in the event that the lift company fails to meet obligations under the lease, it would be at the discretion of the Board to either find an alternative operator of the assets or operate the assets themselves.
- 17 The MHSC operates 13 lifts on the resort. In particular, the MHSC performs the following functions:
 - (a) Operation of the ski lifts;
 - (b) Ski instruction by instructors;
 - (c) Ski hire and rental; and
 - (d) Food and beverage and accommodation services to guests.
- 18 Despite the activities of the MHSC, the MHARMB also performs a number of functions that supports the activities of the MHSC and the operation of the 13 ski lifts on the Resort.
- 19 Under the lease for the ski fields, the MHARMB retains sole responsibility for the use of the ski slopes to ensure public safety and is required to carry out the functions of ski patrol including but not limited to:
 - (a) the opening and closure of ski slopes and trails;
 - (b) the marking of all hazards on ski slopes to ensure public safety
 - (c) the erection and maintenance of ski area boundary fences and signs;
 - (d) the policing of ski slopes to prevent reckless and hazardous skiing;
 - (e) the provision of first aid to and transportation of injured members of the public; and
 - (f) the search for and rescue of missing members of the public.

- 20 The MHARMB is also allowed to build improvements and undertake operations necessary to comply with this obligation.
- 21 At some Alpine Resorts, such as Mt Buller, this ski patrol function is undertaken by the lifting company. However, the MHARMB undertakes this function at the Mt Hotham Alpine Resort.
- 22 While the MHSC performs snow grooming for the ski areas near the lifts, the MHARMB undertakes snow grooming for the approximate 100 kilometres of cross country trails on the Mountain.
- 23 The MHSC operates man-made snowmaking machines to produce snow at the Resort. The MHARMB provides the MHSC water for the snowmaking functions which is a function of the MHARMB under the Act.
- 24 Under the *Emergency Management Act 2013 (Vic)*, the MHARMB is the prescribed authority in the Resort. The Board is responsible for convening the required response to manage an emergency. For example, if an emergency was to occur during winter season, the MHARMB would be responsible for evacuating the lifting area and infrastructure with assistance from the MHSC.
- 25 The MHARMB and the MHSC are jointly responsible and invest jointly in the promotion and marketing of the resort. This includes maintaining the website and developing and commissioning of promotional material. Both of these activities are aimed at bringing in patrons to the resort which is a critical activity and impacts greatly on the revenue of the MHARMB and the other companies operating in the resort.

The MHARMB's dependency on snow weather conditions

- 26 The MHARMB is very dependent on good weather conditions in order to perform its activities, and because of the impact good or bad weather can have on the revenue and expenditure of the MHARMB. The snow season is very variable and runs anywhere from around the second week of June to the last weekend in September.

- 27 In good snow conditions including high snowfall and low wind, the MHARMB has a higher number of guests enter the resort and the MHARMB is able to schedule its operations with more certainty.
- 28 However, the variability of winter weather conditions creates difficulties for the MHARMB to match employee numbers and roster employees to meet operational needs. For example weather, can have the following impacts on the MHARMB's operations:
- (a) In harsh weather conditions, we are required to roster on additional staff to groom the snow and patrol the ski area to ensure that the resort is safe for patrons to utilise;
 - (b) In good snow conditions, we need to roster on more employees to assist guests to the resort as there is a higher number of guests. This means more bus drivers to transport guests to the snow fields and longer periods of operation.
- 29 For example, in the 2016 ski season, there were periods of high snowfall and good skiing conditions as well as several significant rain and warming events which resulted in a snow base that fluctuated dramatically, on an almost weekly basis, and which saw many areas of the Resort open and close several times throughout the winter. The total accumulated snowfall was 351 cm (52 cm above the 10-year average), however this was eclipsed by the total rainfall, which was approximately 470 mm (which is more than double the usual amount). The season was notable for its less than ideal weather, which saw very few sunny days and many days of poor visibility, wind and damp conditions. There were considerably more personnel hours spent preparing and packing up the on-slope equipment, in comparison to a normal winter, due to the opening and closing of many areas and runs several times throughout the season. The above average precipitation also caused digging and de-icing to consume more personnel hours than usual. There were several days of a potential high avalanche hazard during the early season storms and prolonged warm periods of the spring. Avalanche control work was conducted during these times, with several mornings which resulted in the mitigation of significant hazard.
- 30 The Board has a number of income sources including:

- (a) resort entry which makes up about 30% of the MHARMB's yearly revenue;
- (b) rates and charges to site holders include tenants under section 13 of the Act which makes up about 40% of the MHARMB's yearly revenue;
- (c) site rent which makes up about 15% of yearly revenue; and
- (d) the remaining 15% of the MHARMB's yearly income is made up of other income sources such as charges for gas supply to site holders.

31 If there are poor snow conditions, this has a direct impact on the resort entry therefore impacting this revenue source. However, the other income sources are also impacted by poor snow conditions as if the other operators on the Resort are not doing well due to poor weather, the amount of revenue the MHARMB can earn from them reduces. For example, the MHARMB charges gas on consumption. If there is low patronage on the Resort, the amount of gas used by businesses supplied by the MHARMB drops and therefore less revenue from this source is raised. Further, snowsports are a vital part of the Mt Hotham resort, and when snowsports are impacted from bad weather this is directly felt by a reduction in resort patronage and the failure of other commercial entities in the Resort.

32 For example, overall in 2016, the number of visitors to the Resort during the year was 120,508 visitors. This is lower than the average number of visitors that attend the resort each year of 128,056 calculated over a ten-year period. Several factors impacted on the number of visitors that the Resort received during the year, including the snow season not receiving consistent and heavy snowfall. The gate revenue was therefore based on how many visitors attended the Resort.

33 However regardless of how many visitors attend the Resort, the MHARMB is still required to expend a consistent amount of money in expenditure because the MHARMB needs to in preparation for the season still take the following steps:

- (a) Ensure sufficient numbers of workers are engaged to prepare the resort for the season and to ensure that sufficient staff are available for the winter operations;
- (b) Ensure waste collection services are ready to be used;
- (c) Water, sewerage and gas costs to supply the Resort;

- (d) Maintenance and running of the bus services; and
- (e) Maintenance of the Village.

34 Therefore the MHARMB is required to expend a consistent amount of costs each season to prepare for and resource the Resort during the Winter season regardless of whether there is good or poor snow weather , and if revenue is down due to poor snow conditions and resulting low patronage, the MHARMB bears this cost.

MHARMB's expenditure on capital works

35 As part of its responsibility for the maintenance of the Alpine Resort under the Act, the Board invests heavily into capital works projects to maintain and upgrade the resort and assist the operation of the lifts. Over half of this funding is through the MHARMB's own revenue earned through the income sources set out above. From 1998-2016, the MHARMB has invested a total of \$42,080,000 into capital works projects. Of this amount, \$23,878,929 was from the MHARMB's own revenue. The MHARMB also applied for funding from Government bodies and was successful in obtaining \$18,201,701 which was directed solely to capital works projects.

36 The MHARMB applies for specific capital works funding or grants from the Government in relation to specific capital works projects that need to be undertaken at the Resort. If the MHARMB is successful in obtaining this funding, the MHARMB directs this funding solely to the capital works project. The amount received does not go into the MHARMB's general revenue.

37 The MHARMB is otherwise self-funded through the income sources set out above.

38 The MHARMB has invested in significant capital projects over the past five years including the following projects on the ski field and the areas that the MHSC has a lease over:

- (a) Swindler's Valley Pipe Replacement;
- (b) Slalom Gully Inlet Structure;
- (c) Big D Fence; and

(d) Wall of Death pipes.

39 The capital works investment the MHARMB makes either through its own income sources or through securing Government funding is essential to ensuring the viability and profitability of the Resort. The capital works project the MHARMB has invested in have directly assisted the MHSC in operation of the lifts and maintaining the areas around the lifts.

The MHARMB's workforce

40 The Board employs a large number of occupational groups including the following:

- (a) Clerical employees;
- (b) Mechanic employees;
- (c) Ski patrol employees;
- (d) Bus operators;
- (e) Garbage operators;
- (f) Trades people including those qualified to assist with gas supply; and
- (g) Labourers
- (h) Resort Workers.

41 The MHARMB's workforce is made up of about 25 full time staff who are employed all year around and the remaining 80 to 100 employees are only employed during the snow season during Winter. The majority of these seasonal employees are as follows:

- (a) ski patrollers,
- (b) traffic controllers,
- (c) bus operators,
- (d) bus cleaners,

- (e) cross country snow groomers
- (f) snow clearers
- (g) snow farmers
- (h) carpark snow clearers
- (i) snow mobile trainer,
- (j) weather and snow reporter,
- (k) winter tourism information officers
- (l) resort entry ticket sellers,
- (m) car parkers,
- (n) vehicle accountability officers,
- (o) roadside assistance,
- (p) snowplay and toboggan operators
- (q) indoor ski/board instructor,
- (r) snow events and activities coordinator,
- (s) winter community information and activity coordinator,
- (t) snow safety community officers

42 Of the seasonal employees, the MHARMB engages, it is a noticeable trend that a number of the employees are new staff every year. This results in significant additional costs including the recruitment and training of new staff.

43 The workforce is seasonal and it is also specialised. The skills that MHARMB employees are required to undertake require a specific skill set. For example, in order to undertake ski patrol, staff must ASPA qualified, be able to operate heavy equipment and over-snow vehicles in hazardous conditions. Also, bus operators need to have a special license for operating buses in the snow.

- 44 Further due to the seasonal nature of employment, some employees are only able to be rostered on for work during an approximate 17-week period from June to September. For this reason, most seasonal employees favour flexibility in how their shifts are rostered including having longer and more frequent shifts during the peak season and they prefer not to have an obligation to be tied down during the low season when they might pursue other work.
- 45 The need for flexibility from our workforce is also shown through the multiskilling of some of our employees. Office staff, for example, have been trained to drive heavy equipment, buses, over-snow vehicles and 4WDs in very hazardous conditions. Some are trained as searchers, and others have full SES training, which is called on when necessary. Bus drivers are trained as parking controllers, snow clearers and garbage collectors. During the Winter season, the MHARMB directs where necessary its employees who do not normally perform snow-based duties to snow-based duties in the event of heavy snowfall or an emergency or a bad weather event in order to provide support to its usual snow-based staff. For example, staff who are office or workshop based may be allocated to duties including directing traffic, driving buses and addressing visitor enquiries in the case of a bad weather event. The MHARMB does this to ensure that it meets its obligations to provide for the safety of visitors at the Alpine Resort. Further, while the MHARMB's employees might perform certain functions during the Winter season, the nature of their work if they continue to be engaged might change in summer. In the summer these same people work as painters, construction and capital works employees, and trail and village maintenance crew.
- 46 40% of the MHARMB's expenditure is in wage costs. Therefore, there is real impact on how the Board can roster, employ and pay its employees on the Board's overall financials.
- 47 I have made enquiries with the General Manager at MHARMB, Jenny Molloy, who reports directly to me about the MHARMB's current coverage by modern awards. I have set out the results of those enquiries below.
- 48 I understand that part of the MHARMB's workforce is covered by the *State Government Agencies Award 2010* (**State Government Agencies Award**) to the extent that some of the MHARMB's employees fall within the classifications within the State Government Agencies Award. However, I am aware that not all the

MHARMB's employees fit within the classifications of the State Government Agencies Award including the following:

- (a) General Manager,
- (b) Chief Financial and Accounting Officer,
- (c) Manager Environment and Technical Services,
- (d) Manager Resort Operations,
- (e) Information Technology Officer,
- (f) Accountant,
- (g) Vehicle Accountability Officer,
- (h) Ski Patrol Director,
- (i) Mechanics, and
- (j) General construction hands the MHARMB employs. These employees are not award covered.

49 The MHSC employs a number of mechanics and general constructions hands. These employees essentially perform the same work that the MHARMB mechanics and construction hands as they work on similar machinery in a similar mountain environment.

50 There is an enterprise agreement in operation which applies to all MHARMB employees other than those on Government Sector Executive Remuneration Panel contracts. The *Mount Hotham Resort Management Board Enterprise Agreement 2013 (the Board's enterprise agreement)* provides at clause 1.1(b) that '*For the purpose of the Better Off Overall Test (BOOT) only, the agreement has been matched against the Alpine Resorts Award 2009 and the State Government Agencies Administration Award 2010*'. I have made enquiries with the General Manager, Jenny Molloy, who was involved in the enterprise agreement bargaining process in 2013 and as a result of these enquiries, I confirm:

- (a) the reference to Alpine Resorts Award 2009 is a reference to the Award;
and

- (b) the words 'matched against' means assessed against for the purpose of ensuring the terms of the Award are reflected in the Board's enterprise agreement.

51 This clause was added to the Board's enterprise agreement in recognition that it was appropriate that the MHARMB employees' terms and conditions were at least as favourable as the terms and conditions of workers employed by the MHSC who perform similar work. In particular, during the Summer season, some workers who are employed by the MHSC during Winter will come and work for the MHARMB performing work that falls within the classification of the Award. The MHARMB wanted to ensure that these workers' conditions were maintained when they performed work for the MHARMB.

Witness Statement of Gavin Girling

52 I have read the witness statement of Gavin Girling filed by the Australian Ski Areas Association in this matter.

53 In reply to paragraph 3.2 of Mr Girling's witness statement, I say in poor weather conditions, the overall patronage of the Resort is impacted therefore impacting on the revenue the MHARMB obtains from gate entry and other sources. I do not agree that visitors are simply channelled to non-lifting facilities in the Resort.

54 In relation to paragraph 3.13 of Mr Girling's witness statement, I say the MHARMB's operations are also significantly different during Summer as opposed to during the Winter Season. They include:

- (a) Strategic Planning and Management for the future of the resort,
- (b) Undertaking capital works;
- (c) Maintenance of the Resort;
- (d) Marketing and other office based duties; and
- (e) Planning for the next winter season,

- 55 In reply to paragraph 3.26(f) of Mr Girling's witness statement, I say the potential impact of climate change on the snow season is likely to have a similar impact on the MHARMB as it does to MHSC.
- 56 In reply to paragraph 4.18 of Mr Girling's statement, I say the majority of the MHARMB's dealings with unions have also been with the Australian Workers' Union. In past negotiations of the MHARMB's enterprise agreement, its employees have been represented only by the Australian Workers' Union.
- 57 In reply to paragraph 8.3 of Mr Girling's statement, I deny that all employees of MHARMB are public servants. The employees of MHARMB are public sector employees but not public servants on the basis that MHARMB is not a public service body, but a state government statutory authority.
- 58 In reply to paragraph 8.8 of Mr Girling's statement, I deny that the difference in employee numbers between the seasons is not as significant for the MHARMB. I rely on the above paragraph 41 above in making this statement.
- 59 At paragraph 8.9 of the witness statement, Mr Girling states information that the MHARMB's Annual Report for the year ending 31 October 2014 includes. I respond as follows:
- (a) The funding that the MHARMB secured was for investment in various capital works projects including the major project of Swindler's Valley Pipe replacement. This project that the MHARMB invested in via Government funding was to assist the MHSC's ability to operate lifts in the ski field;
 - (b) The MHARMB engaged 57 contractors and consultants for projects in 2013-2014 to provide a range of services including specialist services that the MHARMB did not have the in-house capacity to perform such as masterplan drafting services, removal of trees, surveying, leasing and property, electrical works on the sewerage treatment plan and website hosting; and
 - (c) The MHARMB had 21 full-time employees during the year, This was supplemented by approximately 60 seasonal staff during the Winter season.

60 In reply to paragraph 8.16 of Mr Girling's statement, I was not employed by the MHARMB in December 2013. However, I had made enquiries and I confirm that the MHARMB filed with the Fair Work Commission an application for the creation of a State public sector modern enterprise award. I have been informed that this was mistakenly undertaken as the MHARMB at the time was not aware that it was a constitutional corporation. The MHARMB later received advice to the effect that it was a constitutional corporation and not a state public sector reference body. As a result, the MHARMB withdrew this application.

Jon Hutchins

31 March 2017