

**STRONGER  
TOGETHER**

**NATIONAL OFFICE**

Level 10, 377-383 Sussex Street Sydney NSW 2000

T: (02) 8005 3333 F: (02) 8005 3300

E: [members@awu.net.au](mailto:members@awu.net.au) W: [www.awu.net.au](http://www.awu.net.au)

Members Hotline: 1300 885 653

Daniel Walton National Secretary



ABN 28 853 022 982

**IN THE FAIR WORK COMMISSION**

**AM2016/30 – ALPINE RESORTS AWARD**

**Section 156 – Fair Work Act 2009 – 4 yearly review of modern awards**

**SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION**

**AUSTRALIAN SKI AREAS ASSOCIATION DRAFT DETERMINATION**

**Lodged by:** Zachary Duncalfe  
The Australian Workers' Union, National Office  
**Address for service:** Level 10, 377-383 Sussex  
Street, Sydney NSW 2000

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Telephone: (02) 8005 3333  
Fax: (02) 8005 3300  
Email: [zach.duncalfe@nat.awu.net.au](mailto:zach.duncalfe@nat.awu.net.au)

## BACKGROUND

1. These submissions of The Australian Workers' Union (**AWU**) are made pursuant to Directions from the Chambers of Vice President Hatcher on 30 November 2017, which directed parties to make submissions concerning the Draft Determination filed on behalf of the Australian Ski Areas Association (**ASAA**) by 8 December 2017.
2. The AWU submissions are below.

## SUBMISSIONS

3. The AWU notes that the Draft Determination filed on behalf of ASAA accurately reflects the agreement reached between ASAA and The AWU.
4. However, it would be remiss of The AWU not to mention that The AWU agreed that the casual loading would not be paid in addition to overtime rates before the Casual and Part-Time Full Bench Decision<sup>1</sup> on 5 July 2017.
5. In that Decision, the Full Bench determined:
  - 5.1. A general principle that the 25% casual loading does not include compensation for working overtime<sup>2</sup>; and
  - 5.2. The normal approach to calculating overtime rates for casuals should be to include the casual loading but not on a compounding basis<sup>3</sup>.
6. The AWU may have approached this issue differently if the principles established by the Full Bench in the Casual and Part-Time Full Bench Decision had been known at the time the package of variations was negotiated.
7. The AWU accepts that it reached agreement with ASAA, and the Full Bench is entitled to hold The AWU to this agreement.
8. However, the Full Bench is ultimately required to determine an appropriate safety net, and the conditions of employment for award-reliant employees should not be impacted upon by timing issues arising from what grouping of the award review a particular award falls into.
9. The AWU requests that the Full Bench considers applying the general principles of the Casual and Part-Time Full Bench Decision regarding the calculation of overtime rates for casual employees as stated above to the ASAA Draft Determination.



Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**

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<sup>1</sup> [2017] FWCFB 3541

<sup>2</sup> [2017] FWCFB 3541 at [667]

<sup>3</sup> [2017] FWCFB 3541 at [550], [677]