

From: Dominic Macken [mailto:djmacken@macken.com.au]
Sent: Friday, 20 October 2017 4:40 PM
To: AMOD; Chambers - Dean DP
Cc: Luis.izzo@ablawyers.com.au
Subject: Modern Awards Review - Alpine Resorts Award 2010 - AM2016/30

Dear Ms Wong

Pursuant to the directions made by Deputy President Dean on 9 October 2017, we attach on behalf of our client, the Shop, Distributive and Allied Employees Association, the SDA's list of unresolved objections to the witness evidence filed by Australian Business Industrial, the New South Wales Chamber and the Thredbo Chamber of Commerce. A brief submission is also attached which explains the objections by category.

During the process of conferring, we are pleased to advise the Commission that a number of objections have been resolved.

The parties are in the Commission's hands about the resolved objections. Would the Commission be assisted by a table which lists the resolved objections by reference to the paragraphs of the witness statements which are no longer pressed? Alternatively, would the Commission be assisted if Australian Business Lawyers and Advisors provide redacted versions of the witness statements, which remove reference to the paragraphs which are no longer pressed?

We await the further advices of the Commission in the above regard.

Yours faithfully,

Dominic Macken
A J MACKEN & CO.

IN THE FAIR WORK COMMISSION
Fair Work Act 2009
s 156 – 4 yearly review of modern awards

4 yearly review of *Alpine Resorts Award 2010*

(AM2016/30)

**OBJECTIONS TO EVIDENCE
SHOP DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION**

1. This submission is filed pursuant to paragraph 3 of the directions given by the Commission on 9 October 2017.
2. The Shop Distributive and Allied Employees' Association (**SDA**) raises objections to parts of the evidence filed by Australian Business Industrial, the New South Wales Chamber and the Thredbo Chamber of Commerce (the **coverage applicants**).
3. The SDA has conferred with the coverage applicants in respect of the objections. Many of the objections have been resolved.
4. The unresolved objections are listed in the Table attached to this submission.

Objection categories

5. The unresolved objections are identified, in the attached "Table 1", by the following categories:
 - a. hearsay;
 - b. relevance; and
 - c. opinion and speculation.
6. The hearsay objections are objections taken to evidence of statements made, or opinions attributed to, persons other than the deponent. The hearsay objections are predominantly taken to attributions to employees of preferences concerning trading and working hours' arrangements. Such evidence is highly prejudicial. The best evidence is from the makers of such statements. Further, hearsay evidence of this nature has very little, if any, probative value at all.



7. A number of relevance objections are taken. Objection is taken to proposed evidence which is not directed to the resolution of any fact in issue in the review. Objections as to relevance are also taken where a witness provides their 'belief' or 'speculates' about employee motivations with regard to working hours' arrangements and their preferences generally. A belief or speculation by one person about the motivations or preferences of another person, is not relevant to any fact or issue in this proceeding, and further has no probative value.
8. As to opinion and speculation in each case the objection is taken when the witness appears to depart from giving evidence as to matters within his or her own direct knowledge and perception.
 - a. Objection is taken to 'opinion' evidence where an opinion is offered on a subject by a witness whose qualification to express an expert opinion has not been asserted or demonstrated. None of the employer lay witnesses are advanced as "expert witnesses". Objection is also taken where no basis for the opinion has been provided.
 - b. Objections as to 'speculation' is taken where a witness seeks to explain the motivations or preferences of their employees.

Dated: 20 October 2017

Darren A Bruno



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A J Macken & Co
Solicitors for the Shop Distributive &
Allied Employees' Association

Table 1: Unresolved objections to evidence filed on behalf of ABI/NSWBC and TCC

Paragraph(s)	Part	Ground
Gregg Quinn		
18	Second sentence beginning "As a result, my employees often prefer to work weekends ... "	Relevance, speculation
39(c)	Whole sentence	Hearsay
John Leggett		
12	Second sentence 'Their number one priority tends to be to go riding...'	Relevance, speculation, opinion
13	Whole paragraph	Hearsay
14	All of first sentence and beginning of second sentence until the words 'ride on the mountain as much as possible'	Hearsay, speculation, opinion
15	Second sentence from the words 'so that they can...' to the end of sentence`	Relevance, speculation
16	Whole of fourth sentence beginning 'This then allows them to go skiing on Monday and Tuesday...'	Relevance, speculation
18	Second sentence from the words 'so they can work fewer hours...'	Relevance, speculation
Nick Cook		
16	Third sentence commencing 'In my experience...'	Relevance, speculation
19	First sentence from the words 'so that they can take advantage...'	Hearsay, speculation, opinion
20	Second sentence	Relevance, speculation
Jason Moon		
20	Whole paragraph	Relevance, Hearsay, speculation
21	Second sentence including quote	Hearsay
22	First sentence	Relevance, speculation
24	Whole paragraph	Relevance, speculation
25	First sentence, particularly reference to staff working preferences	Relevance, speculation
Ian Foster		
43	Whole paragraph	Relevance, speculation
Narelle Therese Clarke		
46	Second sentence 'Essentially they are in Falls Creek	Relevance, speculation
Rob Aivatoglou		
34	Paragraph (f)	Speculation, relevance, hearsay

Stephen Pennington

19	From the words 'so that they can utilise time, during the mid week'	Relevance, speculation
20-21	All paragraphs	Relevance, speculation
23	Whole paragraph	Relevance, hearsay, speculation