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## Climate change impacts on snow in Victoria

Jonas Bhend, Janice Bathols and Kevin Hennessy

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Enquiries should be addressed to:  
Dr Jonas Bhend  
CSIRO Marine and Atmospheric Research  
Private bag 1  
Aspendale, 3195, Victoria  
Australia  
Jonas.Bhend@csiro.au

## **Reviewers**

Neville Nicholls (Monash Uni)

Damien Irving (CSIRO)

Bryson Bates (CSIRO)

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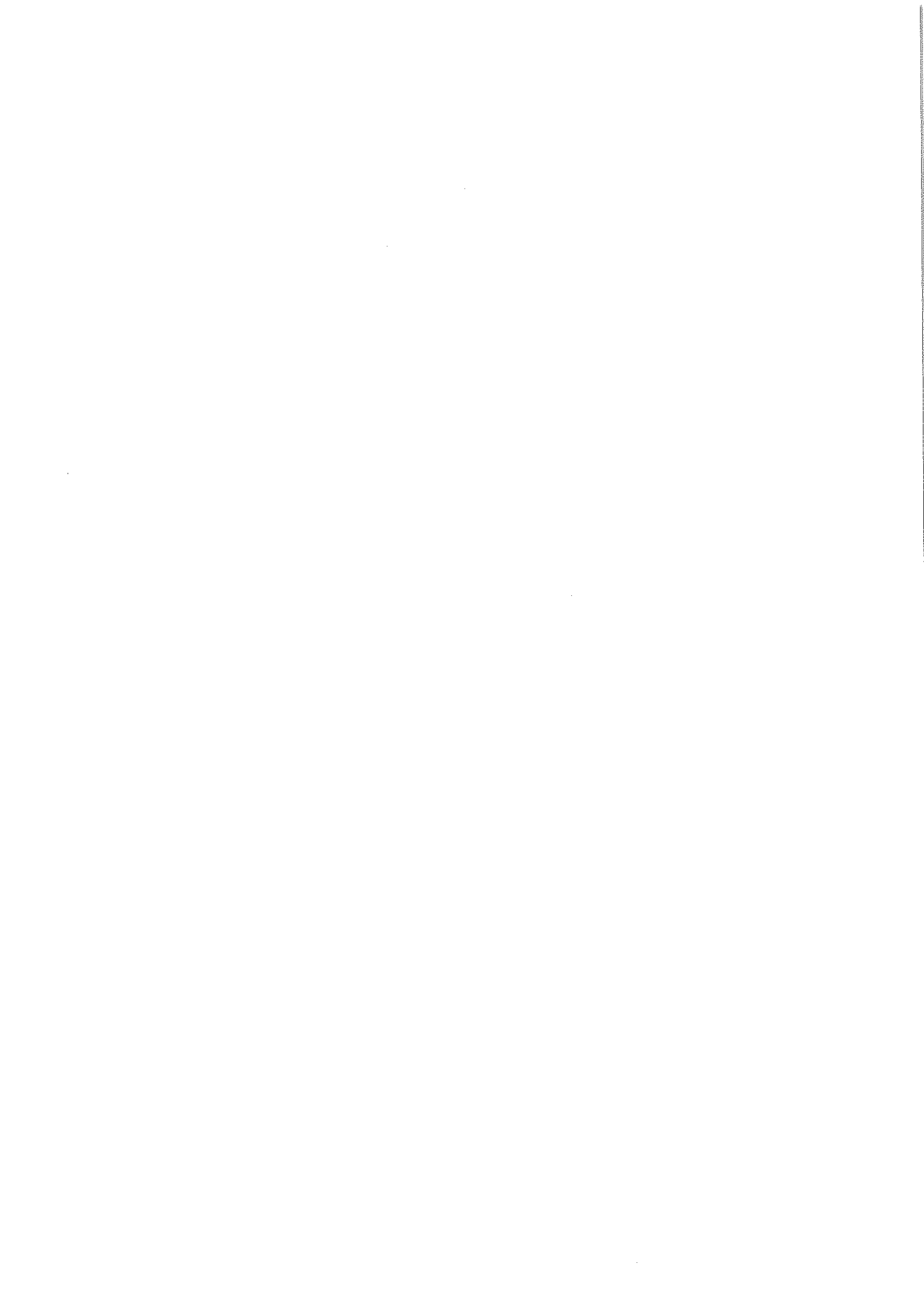
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## EXECUTIVE SUMMARY

In 2003, CSIRO and the Australian National University (ANU) published a report titled "The impact of climate change on snow conditions in mainland Australia". The key findings of this report included:

- Snow depths have declined from the 1950s to 2001;
- When projections from nine global climate models are used as input to a snow model, future decreases in snow depth, cover and duration are simulated;
- By 2020, the average annual duration of snow-cover decreases by between five and 48 days; maximum snow depths are reduced and tend to occur earlier in the year; and the total area covered in snow shrinks by 10-40%;
- Larger impacts are projected by 2050.

The aim of this report is to review and assess the latest evidence for (i) changes in Victorian snow properties up to 2011 and (ii) projected changes in snow properties up to the year 2050 based on 18 climate models. In contrast to the report published in 2003, this report does not cover changes in snow conditions in New South Wales (NSW), but focuses on changes in Victorian snow only.

The updated analysis of snow measurements at Rocky Valley Dam (altitude 1650 m) from 1954-2011 indicates a clear trend to lower maximum snow depths and an earlier end of the snow season. The long-term changes are superimposed on considerable year-to-year variability. The variability in maximum snow depth can be well explained by maximum temperature and precipitation from June to August. The earlier end of the snow season is clearly dependent on changes in temperature.

Temperature and precipitation projections from 18 climate models are used as input to the CSIRO snow model to estimate changes in snow conditions for 20-year periods centred on 2020 and 2050, relative to a 20-year period centred on 1990. Results are given for each climate model and a distinction is made between results for three different greenhouse gas emission scenarios: low (B1), medium (A1B) and high (A1FI).

This update confirms that the end of the snow season is likely to occur earlier in future, with a slightly later start, and lower maximum depths. These trends will be superimposed on large natural year-to-year variability. The number of good snow seasons is likely to decline while the number of poor seasons is likely to increase.

Decreases in maximum snow depth are evident in all simulations, but there is a wide range of uncertainty due to differences in projections between the 18 climate models. For example, at Falls Creek ski resort, the simulated average maximum depth is 150 cm in the 20-year period centred on 1990. By 2020, the average maximum depth decreases to 80-135 cm for the three different scenarios. By 2050, the average maximum depth decreases to 50-105 cm for the low scenario and 20-80 cm for the high scenario.

The area of north-east Victoria covered in snow declines in future. For example, between the 20-year periods centred on 1990 and 2020, the area averaging at least 1 day of snow-cover decreases by 10-40% across the three scenarios. Between the 20-year periods centred on 1990 and 2050, the area averaging at least 1 day of snow-cover decreases by 25-55% for the low scenario and 35-75% for the high scenario.

Across four ski resorts (Falls Creek, Mt Hotham, Mt Buller and Mt Buffalo), by 2020, the average snow season becomes 5-35 days shorter for the three scenarios. By 2050, the average snow season becomes 20-55 days shorter for the low scenario and 30-80 days shorter for the high scenario. Larger changes are likely at lower elevations, such as Mt Baw Baw and Lake Mountain, but projections for these sites were considered to be less robust.

This report has focused on projections averaged over 20-year periods. More attention needs to be paid to daily, monthly and annual variability in snow conditions, rather than 20-year averages. If the CSIRO snow model was upgraded to accept finer-resolution gridded daily data, then snow accumulation and ablation would be better simulated. The scope for adaptation through snow-making should be revisited, allowing for recent and projected improvements in the technology.



## 1. INTRODUCTION

In 2003, CSIRO and ANU published a report titled "The impact of climate change on snow conditions in mainland Australia" (Hennessy *et al.*, 2003). The key findings were:

- The alpine region in Victoria and New South Wales has become warmer and drier from 1950-2001;
- Snow depths have declined at sites with records from the 1950s to 2002;
- Simulations from nine global climate models, driven by a range of greenhouse gas and aerosol emissions scenarios, indicate that Victoria and New South Wales are likely to become warmer and drier in future;
- When these projections are used as input to a snow model, future decreases in snow depth, cover and duration are simulated;
- For a 20-year period centred on 2020, the average annual duration of snow-cover decreases by between five and 48 days; maximum snow depths are reduced and tend to occur earlier in the year; and the total snow-covered area shrinks by 10-40%. All projections were relative to a 20-year period centred on 1990;
- Larger impacts are projected for a 20-year period centred on 2050;
- One option to adapt to these changes is increased snow-making;
- Allowing for the decline in natural snow depths and the reduction in the frequency of temperatures cold enough for snow-making, the number of snow guns required to achieve target snow-depth profiles was estimated. The increase in the number of snow guns required by 2020 is between 11 and 200%, with a mid-range estimate of about 100%.

The aim of this report is to review and assess the latest evidence for changes in Victorian snow properties up to 2011 and projected changes in snow properties up to the year 2050 based on 18 climate models. Changes in other Australian alpine regions, and the scope for adaptation through snow-making, are not addressed.

## 2. OBSERVED TRENDS

### 2.1 Trends in snow properties

Rocky Valley Dam snow course (altitude 1650 m) is the only high-quality snow measurement site in the Victorian Alps with constant long-term measurements free of artificial influences (such as snow-making). These measurements cover the period from 1954 to 2011 with missing data in 1973 due to insufficient snow cover for measurements. Snow depth and snow density have been observed fortnightly (weekly from 1997 onwards). The record of snow depths is compiled from two different sources: from data provided by the State Electricity Commission of Victoria for data up to 1989 and from AGL Hydro from 1969 to 2011. Individual measurements differ slightly in the period with overlap; we use the data provided by AGL Hydro from 1969 due to consistency in the most recent period.

Maximum snow depth at Rocky Valley Dam is highly variable from year to year (Figure 1), ranging from 33 cm in 2006 to 270 cm in 1964. The start and end of the snow season in each year are defined by the date of the first and last snow measurements. The tendency towards lower maxima and an earlier end of the snow season are

evident in Figure 1 and in decadal snow profiles (Figure 2). For example, while the 2011 snow season started fairly early and reached high snow depths in the beginning of the season, lack of precipitation and the warmth in the second half of winter caused the low snow depths observed towards the end of the season.

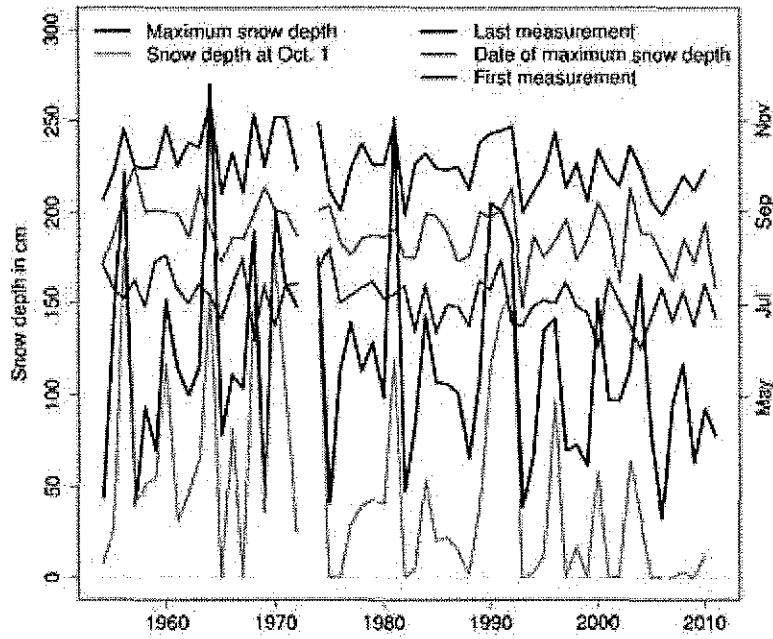


Figure 1: Maximum snow depth (black line) and snow depth at October 1st (grey line) at Rocky Valley Dam from 1954 to 2011, along with the date of the maximum snow depth (green line), first measurement (red line) and last measurement (blue line).

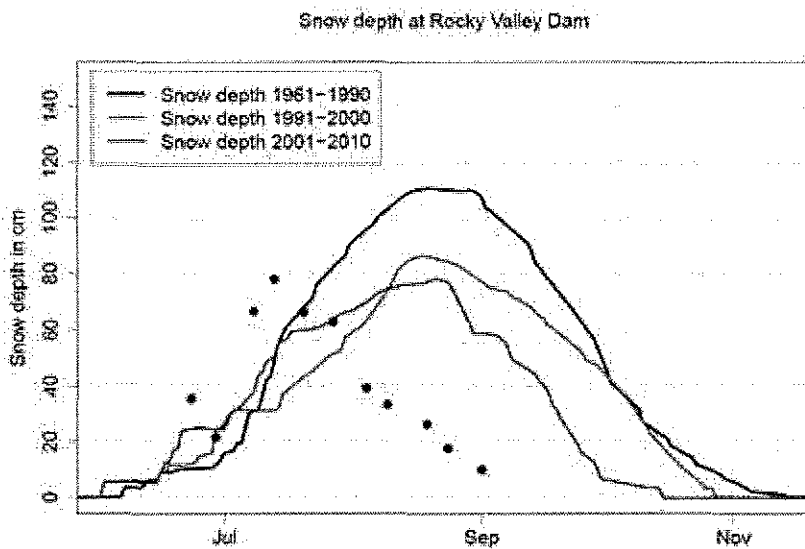


Figure 2: Snow depth profile at Rocky Valley Dam averaged over three periods: 1961-1990, 1991-2000 and 2001-2010. Snow depths have been linearly interpolated in between measurements. The measurements during 2011 are shown as black dots.

Maximum snow depth has declined, with the most recent periods contributing most to the trend from 1954 to 2011 (Table 1). However, the variability in maximum snow depth is large, so short-term trends can be strongly influenced by individual years. It is obvious from the time series in Figure 1 that years with large maximum snow depth are missing in the past two decades. This contributes to the negative trend in maximum snow depth.

The different characteristics of changes throughout the snow season become apparent when looking at changes in snow depths at fixed dates. There is a slight increase or little trend early in the snow season, contrasted with a strong decrease late in the snow season. Changes in snow depth at the beginning of September and October are statistically significant, whereas the slight increase early in the season is not.

Given that the first and last measurements at Rocky Valley Dam provide a good estimate of the duration of the snow season, there is a clear trend to an earlier start and earlier end of the snow season throughout the record (Table 1). As with maximum snow depth, the most recent decades show the strongest change. The rate of change in the end of the snow season is larger than the rate of change in the start of the snow season, indicating a reduction in the duration of the snow season as well.

*Table 1: Trends in snow properties at Rocky Valley Dam for 1954-2011, 1969-2011, 1979-2011 and 1989-2011. Trends are given for maximum snow depth (Max depth) and snow depth at fixed dates during the snow season (Depth Jun01, Depth Jul01, Depth Aug01, Depth Sep01, Depth Oct01) in cm per decade. Also shown are trends in start of season, date of maximum snow depth (Max date), and end of season in days per decade. Trends in June-September mean daily maximum temperature (Tmax JJAS) are in °C per decade and trends in June-September precipitation (Precip JJAS) are in mm per decade. The uncertainty estimates denote  $\pm 2$  standard deviations about the central estimate, corresponding to a 95% confidence interval. Statistically significant trends are marked in bold.*

	1954-2011	1969-2011	1979-2011	1989-2011
Max depth	-5.7 $\pm$ 8.5	-10.9 $\pm$ 12.6	-14.2 $\pm$ 18	<b>-29.8 <math>\pm</math> 28.6</b>
Depth Jun01	0.4 $\pm$ 2	1.3 $\pm$ 2.5	0.8 $\pm$ 4.1	1.9 $\pm$ 8.1
Depth Jul01	1.2 $\pm$ 4.1	0.9 $\pm$ 6.5	-3.9 $\pm$ 9.8	-0.7 $\pm$ 15.7
Depth Aug01	-6.4 $\pm$ 6.5	-6.2 $\pm$ 9.7	-6.5 $\pm$ 13.9	2.6 $\pm$ 23.9
Depth Sep01	<b>-11.4 <math>\pm</math> 9.3</b>	<b>-18 <math>\pm</math> 14.7</b>	-21.4 $\pm$ 21.5	<b>-43.1 <math>\pm</math> 34</b>
Depth Oct01	<b>-11.1 <math>\pm</math> 8.2</b>	<b>-14.7 <math>\pm</math> 12.4</b>	-14.7 $\pm$ 16.9	<b>-42.5 <math>\pm</math> 28.8</b>
Season start	<b>-3.6 <math>\pm</math> 2.2</b>	<b>-4.2 <math>\pm</math> 3.5</b>	-3 $\pm$ 5.1	-5.8 $\pm$ 9.1
Max date	<b>-3.9 <math>\pm</math> 2.7</b>	<b>-4.7 <math>\pm</math> 4.4</b>	-3.4 $\pm$ 6.7	-9.8 $\pm$ 12.7
Season end	<b>-3.4 <math>\pm</math> 2.9</b>	<b>-5.3 <math>\pm</math> 4.6</b>	-5.7 $\pm$ 6.4	<b>-13.6 <math>\pm</math> 11.1</b>
Tmax JJAS	0.1 $\pm$ 0.1	0.2 $\pm$ 0.2	<b>0.3 <math>\pm</math> 0.2</b>	<b>0.6 <math>\pm</math> 0.4</b>
Precip JJAS	-37.5 $\pm$ 41.6	-57.4 $\pm$ 63.4	<b>-104.5 <math>\pm</math> 90.6</b>	<b>-178.4 <math>\pm</math> 147.2</b>

## 2.2 Trends in temperature and precipitation

Monthly precipitation data and mean daily maximum and minimum temperature data were compiled on a 5 km grid as part of the Australian Water Availability Project (AWAP; Jones *et al.*, 2009). It is important to note that very few climate stations at high elevations are available, so temperature and precipitation values in the AWAP dataset at higher altitudes are mainly extrapolated from lower lying stations.

In the period from 1954 to 2011, a decrease in precipitation occurred at Rocky Valley Dam (Table 1) and throughout the Victorian Alps (not shown). While precipitation has increased slightly in July mainly in lower-altitude areas to the northwest of the main Divide, a marked drying is apparent in the latter part of the snow season with a maximum drying in August in the western part of the Victorian Alps (Figure 3).

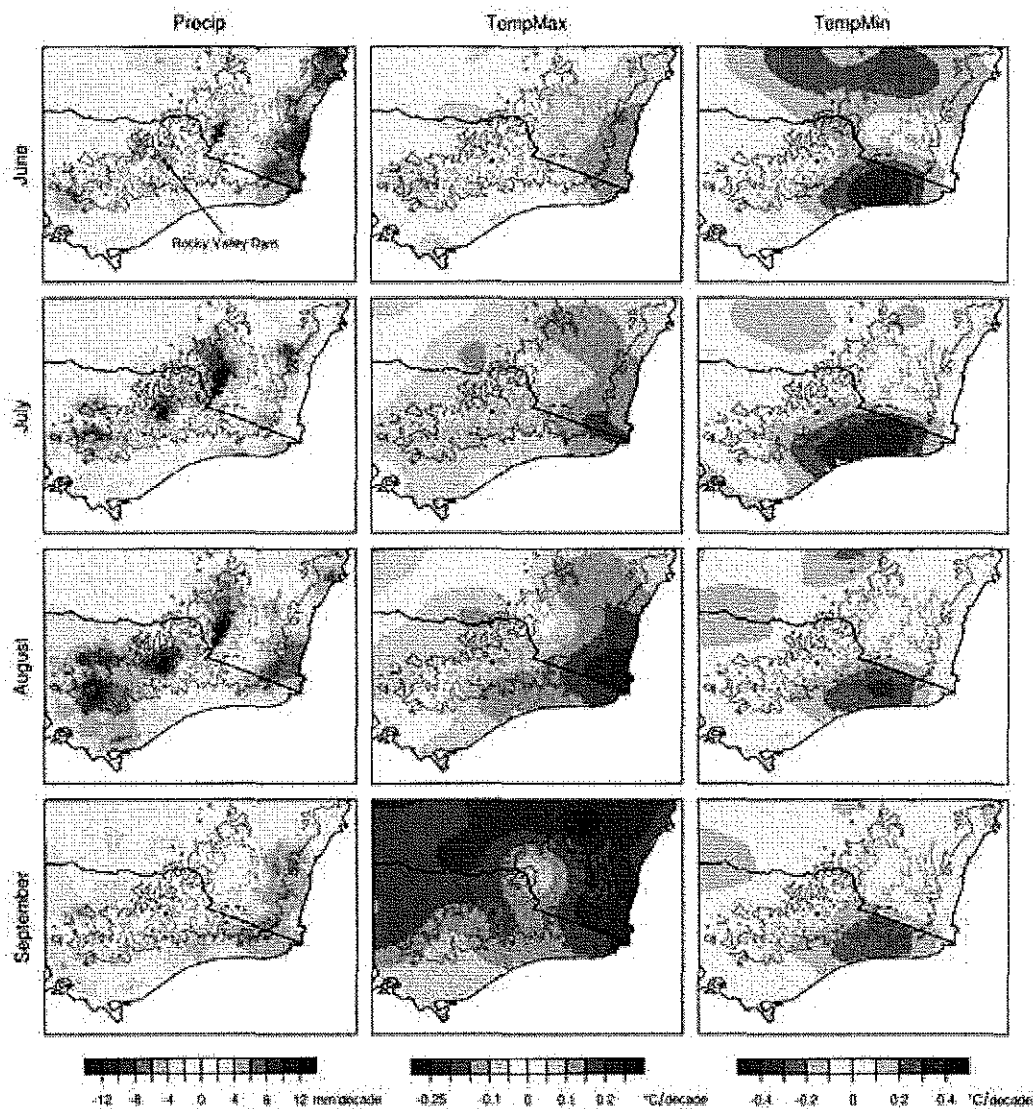


Figure 3: Observed trends from 1954 to 2011 in precipitation and maximum and minimum temperature, based on AWAP data (Jones et al., 2009).

Near-surface mean daily maximum and minimum temperatures show either warming or little change throughout the snow season (Figure 3). The increase in maximum temperatures is strongest towards the end of the snow season in September, whereas changes in maximum temperature in June to August are moderate to small. Minimum temperature shows a strong warming in south-east Gippsland throughout the snow season. Due to the higher spatial correlation for temperature, the trend map is smoother. There is no obvious effect of altitude on temperature trends. Whether

changes in temperature are actually independent of altitude or whether this is an artefact of the AWAP interpolation method is not clear.

In contrast, there is a clear dependence of trends in precipitation with altitude in July and August (Figure 4). The observed drying in lower-lying areas of the Victorian Alps is considerably smaller than at high-elevation sites. Altitude dependency of changes in precipitation in both June and September is rather small.

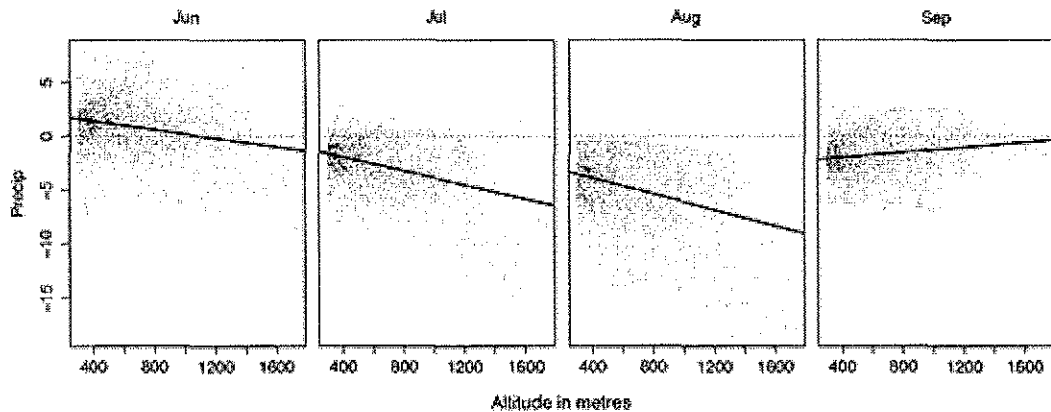


Figure 4: Trends from 1954 to 2011 in precipitation (mm per decade) relative to altitude (metres). The black line denotes a least square fit through the data points and indicates a potential altitude dependency of changes in the respective months (Jun, Jul, Aug, Sep).

### 2.3 Relationships between snow, temperature and precipitation

Both maximum snow depth and the end of the snow season are significantly correlated with both temperature and precipitation during June to August. Furthermore, maximum snow depth correlates strongly with the end of the snow season (as characterized by the last snow measurement). The start of the snow season, in contrast, correlates neither with maximum temperature nor with precipitation. Additional analysis reveals that the start of the snow season is not related to maximum temperature or precipitation in any month in the run-up to the snow season. Whether this is an artefact of measurement practice at the site or a real feature is unclear.

A linear regression model was developed to assess links between maximum snow depth and June to August (JJA) maximum temperature and precipitation. Both temperature and precipitation contribute significantly to explaining variability in maximum snow depth. The two predictors together explain 57% of the variance in maximum snow depth.

Similar to maximum snow depth, we model the end of the snow season using June to September (JJAS) maximum temperature and precipitation. In contrast to maximum snow depth, precipitation is less important in explaining variability in the end of the snow season. Although the end of the snow season strongly correlates with maximum snow depth, snow melt and thus the end of the snow season seem to be more strongly influenced by temperature. The two predictors explain 64% of the variance in the end of the snow season at Rocky Valley Dam.

The individual contributions of changes in temperature and precipitation to the overall trends in maximum snow depth and the start and end of the snow season have been assessed using partial regression (Figure 5), i.e. through the covariance of temperature (precipitation) with the respective snow indicator after removing the linear effect of precipitation (temperature) from both variables. The individual contributions isolate temperature and precipitation impacts on snow that are independent of each other.

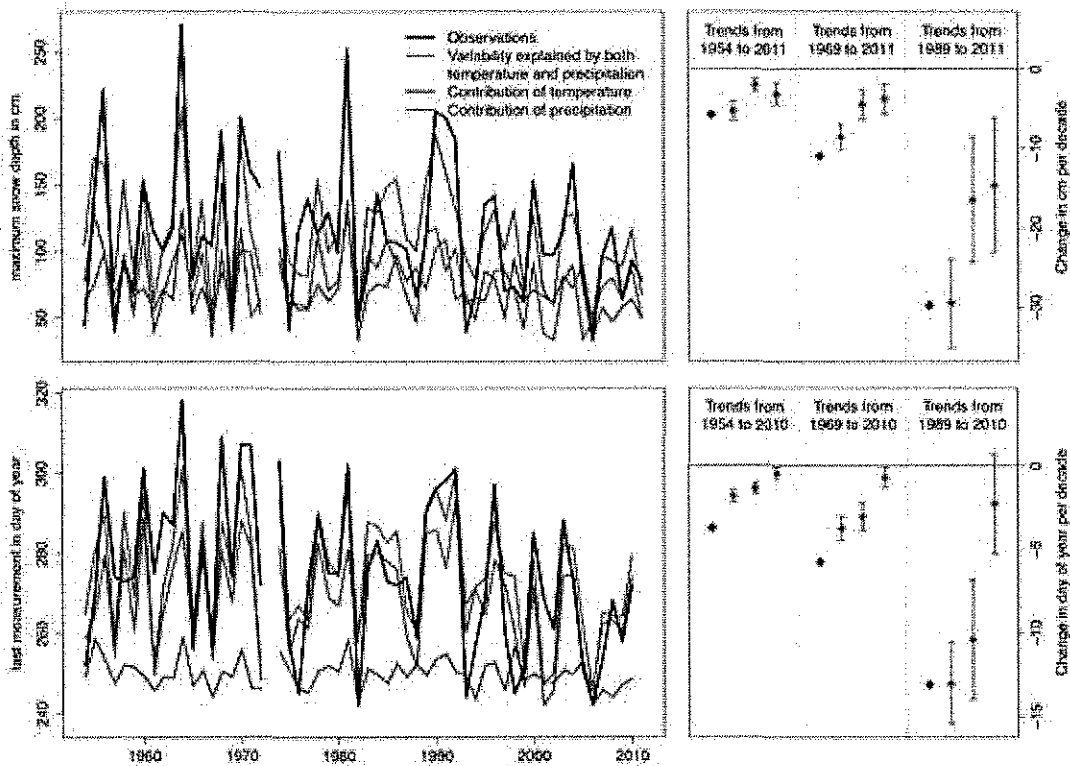


Figure 5: Upper panels: Linear regression of maximum snow depth on Jun-Aug mean daily maximum temperature and precipitation (left), and its respective contributions to trends from 1954 to 2011 (right). Lower panels: Accordingly for the end of the snow season and maximum temperature and precipitation in Jun-Sep. The time series of individual contributions (red and green lines) have been offset for better display. The diamond in the panels to the right indicates the central estimate, the corresponding bars indicate the 95% confidence interval including estimation uncertainty of the linear model and the partial regression model.

Over the period from 1954 to 2011, the observed trend in maximum snow depth at Rocky Valley Dam is  $-6$  cm per decade. The decrease in precipitation contributes  $-3 \pm 1$  cm per decade and the increase in temperature contributes  $-2 \pm 1$  cm per decade to the overall change of  $-5 \pm 1$  cm per decade attributable to temperature and precipitation changes. For trends over 1969 to 2011 and 1989 to 2011, the rate of change increases, but the relative contributions of temperature and precipitation remain comparable in shorter periods.

The observed variability in the start of the snow season as defined by the first measurement at Rocky Valley Dam is basically uncorrelated with temperature and precipitation variability in the preceding months (not shown). This and the fact that the start of the measurements occurs at vastly varying snow heights (see Figure 6) suggest that the first measurement is not a reliable indicator of the start of the snow

season. Therefore, attempting to explain variability in the onset of the snow season in the Victorian Alps is not pursued any further. The tendency towards an earlier onset of the snow season, however, might still be a real feature of snow cover variability, as measurements in New South Wales indicate consistent trends towards an earlier onset as well (not shown).

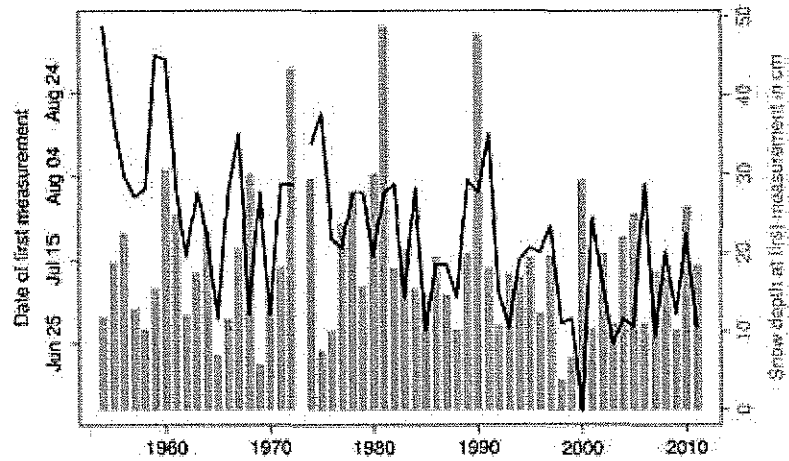


Figure 6: Date of the first measurement at Rocky Valley Dam from 1954 to 2011 (black line) along with the snow depth in cm recorded at the first measurement (blue bars).

Of the observed trend in the end of the snow season of  $-3.4$  days per decade,  $-1.8 \pm 0.3$  days per decade are attributable to changes in temperature and precipitation according to the linear model. In contrast to changes in maximum snow depth, the partial contribution of precipitation variability unrelated to temperature variability is smaller, so most of the change in the end of the snow season is due to the observed warming. Since global and regional changes in temperature since the mid-20<sup>th</sup> century are partly attributable to anthropogenic increases in greenhouse gases (Stott *et al.*, 2010), it is reasonable to conclude that part of the earlier end to the snow season is also anthropogenic.

## 2.4 Conclusions

Snow depths and the start/end of the snow season in Victoria are highly variable from year to year. However, snow measurements at Rocky Valley Dam from 1954-2011 indicate a clear trend to lower maximum snow depths and an earlier end of the snow season. This corroborates earlier findings of changes in snow in the Australian Alps (Nicholls, 2005; Hennessy *et al.*, 2008).

The variability in maximum snow depth can be well explained by maximum temperature and precipitation from June through to August, with changes in temperature and precipitation contributing in roughly equal parts. This, together with the altitude dependency of changes in precipitation, suggests that the decrease in maximum snow depth is slightly stronger at higher altitudes. However, conclusions from the linear regression model may not be applicable to snow depth at lower sites, as the processes governing snow cover at lower altitudes are likely different.

The observed trend towards an earlier end of the snow season is dependent on changes in temperature. Since the warming is partly due to anthropogenic increases in greenhouse gases, it is reasonable to conclude that part of the earlier end to the snow season is also anthropogenic.

### 3. PROJECTED CHANGES IN SNOW CONDITIONS

#### 3.1 Data and method

In the 2003 report titled “The impact of climate change on snow conditions in mainland Australia”, seasonal-mean temperature and precipitation projections were based on simulations from nine global climate models, driven by a range of greenhouse gas and aerosol emissions scenarios (IPCC, 2000). These projections were used as input to the CSIRO snow model to estimate changes in snow conditions for 20-year periods centred on 2020 and 2050, relative to a 20-year period centred on 1990. Ranges of uncertainty encompassed results from different emission scenarios and the nine different global climate models, but results for individual emission scenarios and models were not shown. The data and methods are described in Hennessy *et al.* (2003; 2008).

In 2007, updated climate change projections for Australia were published (CSIRO and BoM, 2007), based on 23 climate models used in the IPCC (2007) report. CSIRO has more confidence in the updated projections than the previous projections as they are based on a larger number of more advanced climate models. These projections have not previously been used in an assessment of snow impacts.

One of the aims of this report is to use the updated projections in a snow impact assessment. A recent evaluation of the ability of climate models to simulate the current climate in the Pacific region found that 18 were most suitable for projections (Irving *et al.*, 2011). In the absence of an equivalent evaluation for Victoria, this set of 18 models is also likely to be suitable for projections over Victoria. Therefore, monthly-mean temperature and precipitation projections in this study are based on those 18 models. Additional details on each of the models can be found at the PCMDI website ([www.pcmdi.llnl.gov](http://www.pcmdi.llnl.gov)) and in Table 8.1 of Randall *et al.* (2007).

Temperature and precipitation projections are used as input to the CSIRO snow model to estimate changes in snow conditions for 20-year periods centred on 2020 and 2050, relative to a 20-year period centred on 1990. In the 2003 study, winter-spring-mean projections were used, whereas in the current study monthly-mean projections are used. Results are given for each climate model and a distinction is made between results for three different emission scenarios: low (B1), medium (A1B) and high (A1FI). Due to the different emissions trajectories in the near future, the medium (A1B) scenario results in a stronger response in 2020 than the low and high scenarios (Figure 7). By 2050 the response to the different scenarios is as expected with the high (A1FI) scenario resulting in the strongest change. For carbon dioxide (CO<sub>2</sub>), emissions have been tracking above the middle of the IPCC range since 2005, with a dip in 2009 due to the global financial crisis (Figure 7). The US Department of Energy estimates that emissions rose 6% in 2010, effectively continuing the pre-2009 trend.

Results are presented for the north-east Victorian region for snow depth, area and duration. At four ski resorts (Falls Creek, Mt Hotham, Mt Buller and Mt Buffalo),



average depth profiles are plotted, and maximum depths and durations are tabulated. Snow simulations for Baw Baw and Lake Mountain were not considered robust, for reasons outlined in Appendix 1 of the 2003 report, so they are not presented.

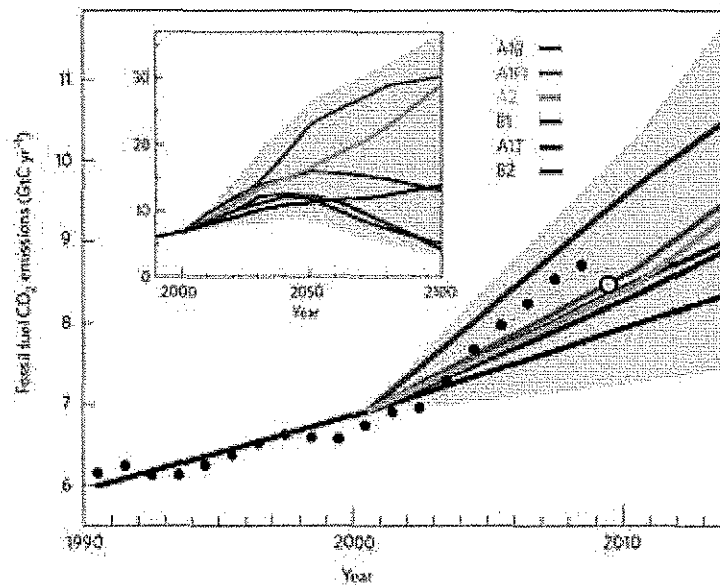


Figure 7: CO<sub>2</sub> emissions (Gt/year) from 1990-2009 (black dots) compared with IPCC scenarios (grey shading shows the full range, while coloured lines show six “marker” scenarios). The open circle shows an estimate for 2009 which includes the effect of the global financial crisis. The inset plot shows IPCC emission scenarios from 1990-2100. Source: Manning et al (2010).

### 3.2 Snow depth and duration

Simulated annual-average maximum snow depths for 20-year periods centred on 1990 and 2020 for medium (A1B) emissions are shown in Figure 8. Decreases are evident in all simulations, but there is a wide range of uncertainty due to differences in climate projections between the 18 models. For example, at Falls Creek, the average maximum depth decreases from 150 cm in the 20-year period centred on 1990 to 90-135 cm for the low (B1) scenario and to 95-135 cm for the high (A1FI) scenario in 2020 (Table 2). These projected trends will be superimposed on large natural year-to-year variability. The number of good snow seasons is expected to decline while the number of poor seasons is likely to increase.

Table 2: Simulated annual-average maximum snow-depth (cm) at four ski resorts for 20-year periods centred on 1990 and 2020 for low (B1), medium (A1B) and high (A1FI) emission scenarios. The range of depths represents the spread of results from 18 climate models. Simulated snow-depths have been rounded to the nearest 5 cm.

Site	1980-1999	2010-2029 low	2010-2029 medium	2010-2029 high
Falls Creek	150	90-135	80-130	95-135
Mt Hotham	130	80-115	75-115	85-115
Mt Buller	95	50-80	45-80	50-80
Mt Buffalo	60	20-45	20-45	20-45

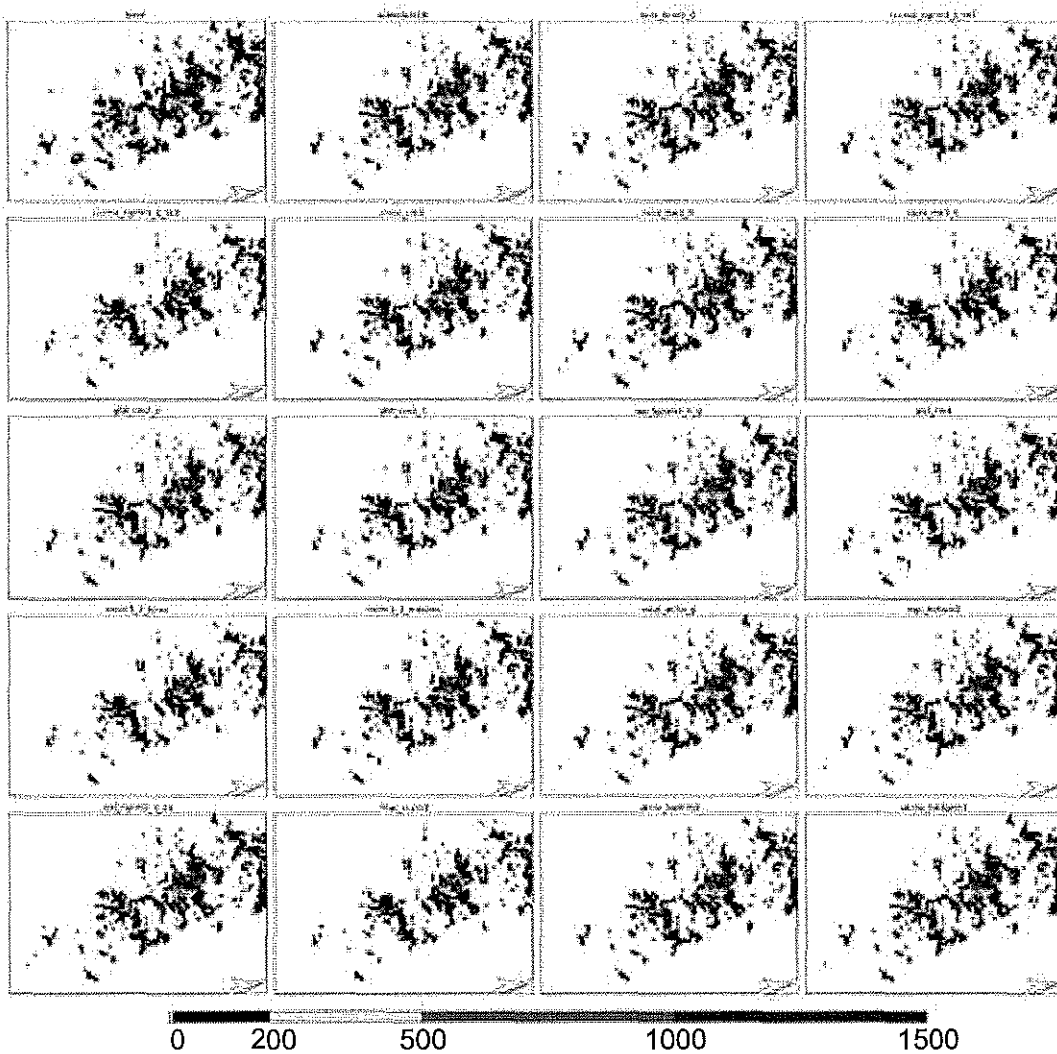


Figure 8: Average maximum snow-depth (mm) over north-east Victoria (Lat  $-38.0$  to  $-36.25^{\circ}$  S, Lon  $145.5$  to  $148.0^{\circ}$  E) for 20-year periods centred on 1990 (top-left "base" case) and 2020 (medium-A1B emissions scenario) for 18 climate models. The 18-model average pattern is shown in the top row, next to the "base" case.

Table 3: Simulated annual-average maximum snow-depth (cm) at four ski resorts for 20-year periods centred on 1990 and 2050 for low (B1), medium (A1B) and high (A1FI) emission scenarios. The range of depths represents the spread of results from 18 climate models. Simulated snow-depths have been rounded to the nearest 5 cm.

Site	1980-1999	2040-2059 low	2040-2059 medium	2040-2059 high
Falls Creek	150	50-105	30-90	20-80
Mt Hotham	130	40-95	25-80	15-70
Mt Buller	95	20-60	10-50	5-45
Mt Buffalo	60	10-30	5-25	0-20

The decreases in maximum snow depth are larger in 2050 (Figure 9) and there is greater sensitivity to the different emission scenarios (see maps for low-B1 and high-A1FI in Appendix 1). Decreases in depth are small for the low (B1) scenario, moderate

for the medium (A1B) scenario and substantial for the high (A1FI) scenario. For example, at Falls Creek, the average maximum depth decreases from 150 cm in the 20-years centred on 1990 to 50-105 cm in 2050 for the low (B1) scenario and 20-80 cm for the high (A1FI) scenario (Table 3).

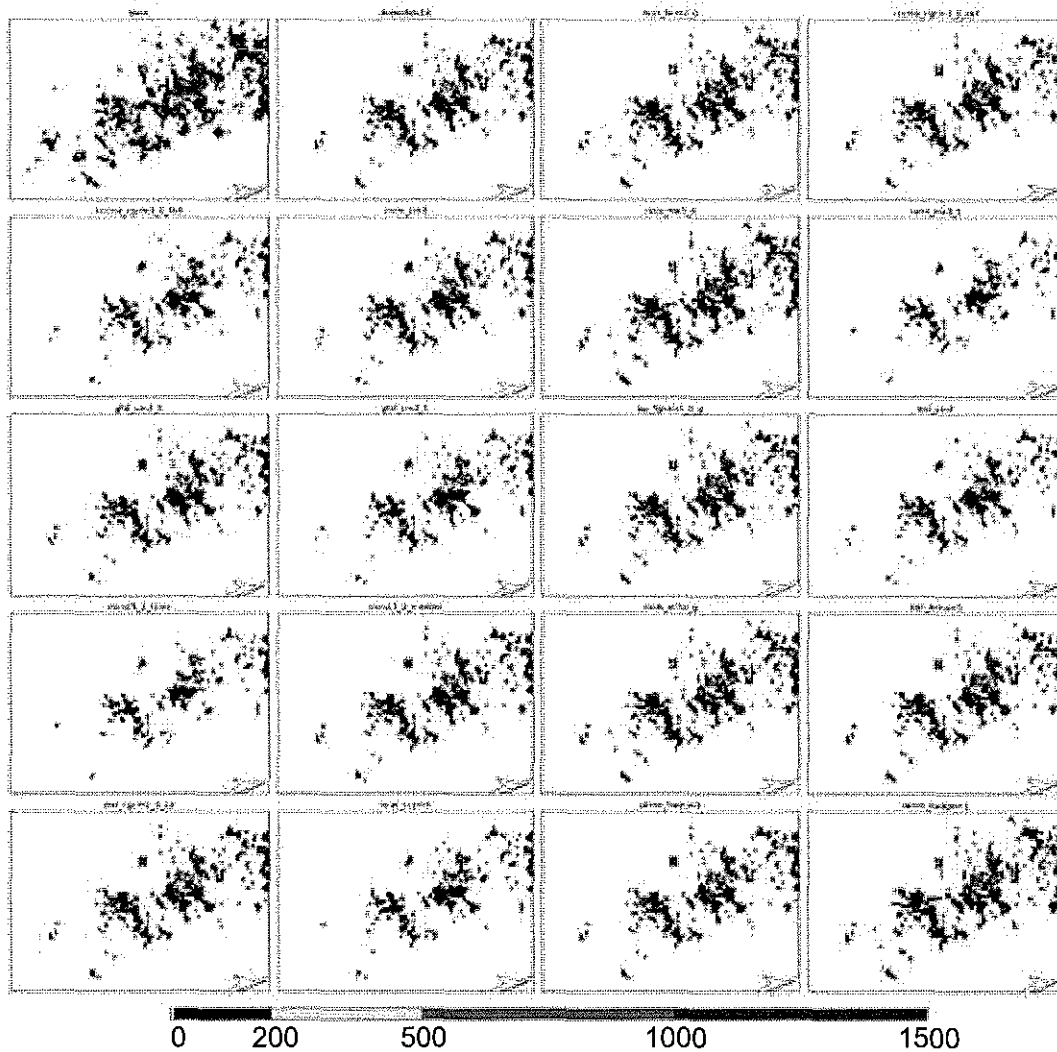


Figure 9: Average maximum snow-depth (mm) over north-east Victoria (Lat  $-38.0$  to  $-36.25^\circ$  S, Lon  $145.5$  to  $148.0^\circ$  E) for 20-year periods centred on 1990 (top-left) and 2050 (medium-A1B emissions scenario) for 18 climate models. The 18-model average pattern is shown in the top row, next to the "base" case. Corresponding maps for the B1 and A1FI emission scenarios are in Appendix 1.

Snow depth profiles show how the daily depths change during a snow season, starting with low depths in early June, peaking in August, then declining from September to November. Profiles averaged over 20-year periods centred on 1990, 2020 and 2050 for the medium (A1B) scenario indicate that the end of the snow season is likely to occur earlier in future, with a slightly later start, and lower maximum depths (Figures 10-13). Profiles for the low (B1) and high (A1FI) scenarios for 2020 and 2050 are presented in Appendix 2.

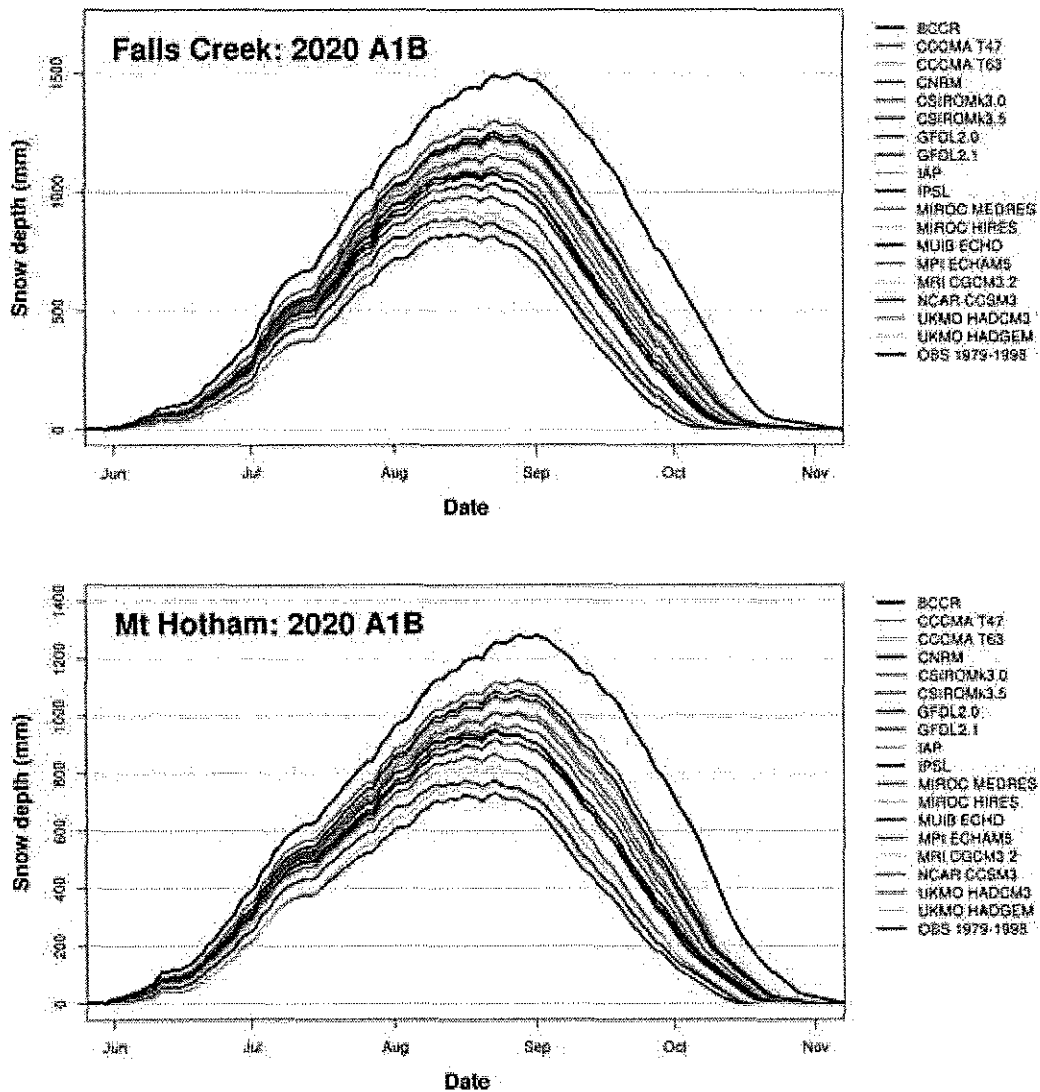


Figure 10: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2020 (coloured lines) for 18 climate models and the medium (A1B) emissions scenario at Falls Creek and Mt Hotham.

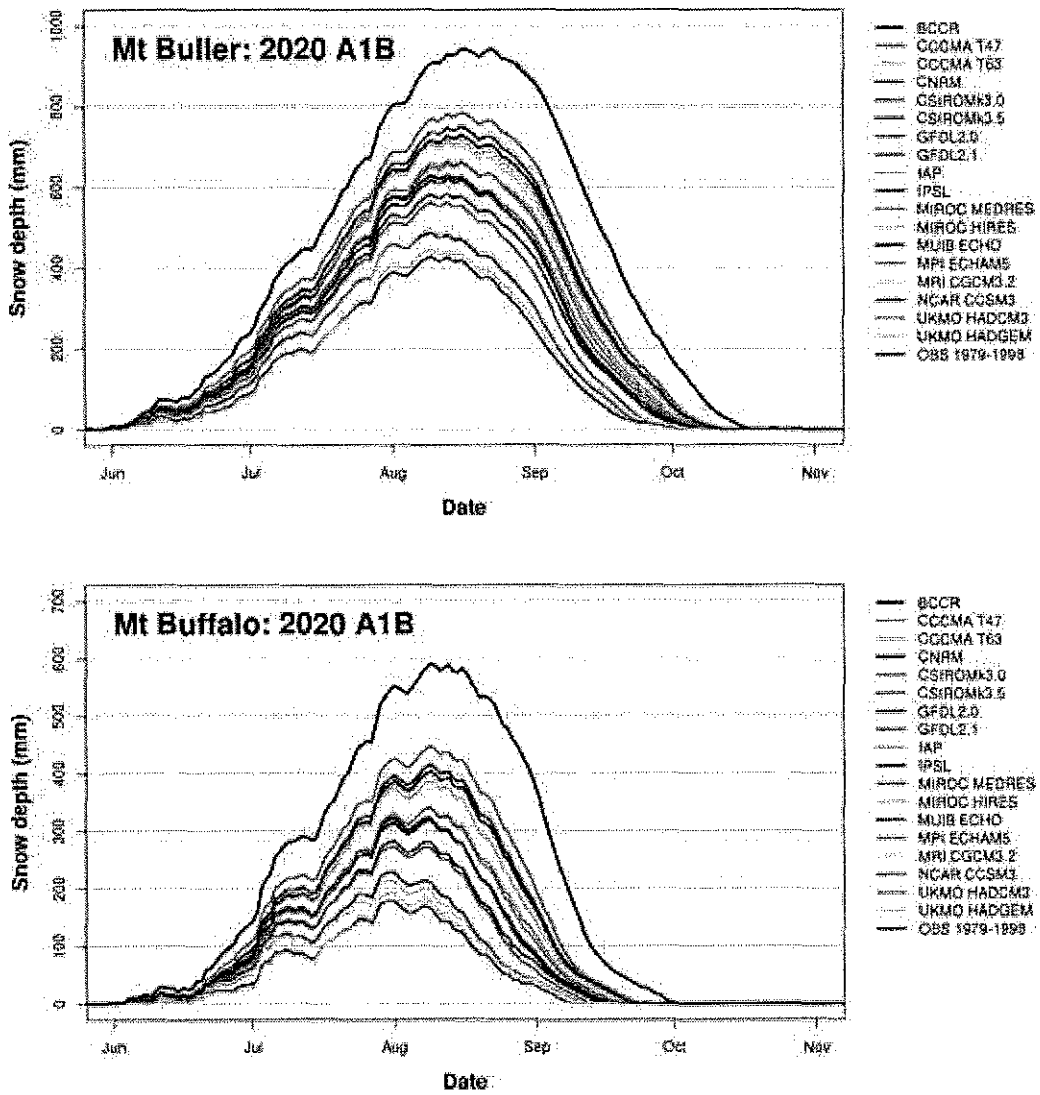


Figure 11: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2020 (coloured lines) for 18 climate models and the medium (A1B) emissions scenario at Mt Buller and Mt Buffalo.

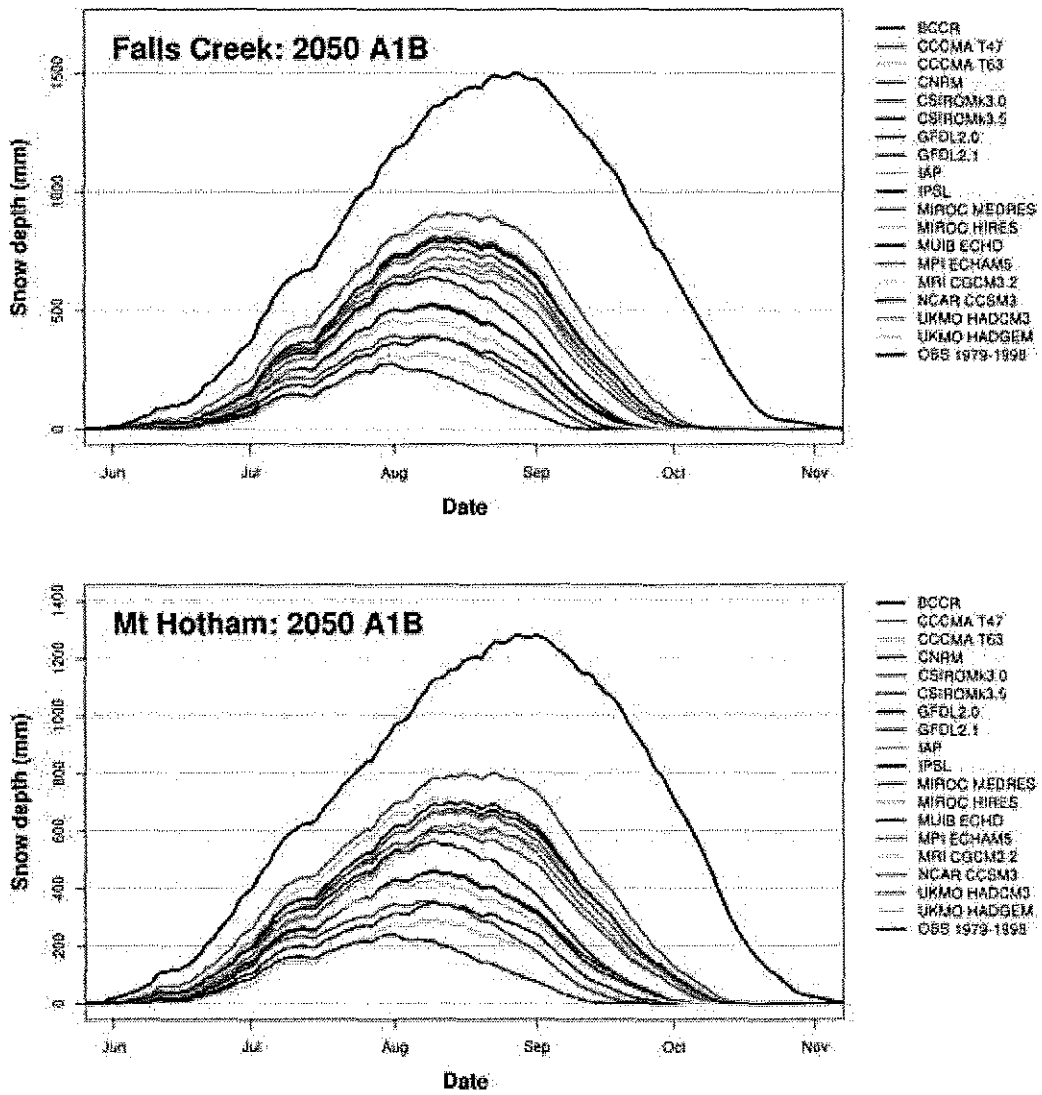


Figure 12: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2050 (coloured lines) for 18 climate models and the medium (A1B) emissions scenario at Falls Creek and Mt Hotham.

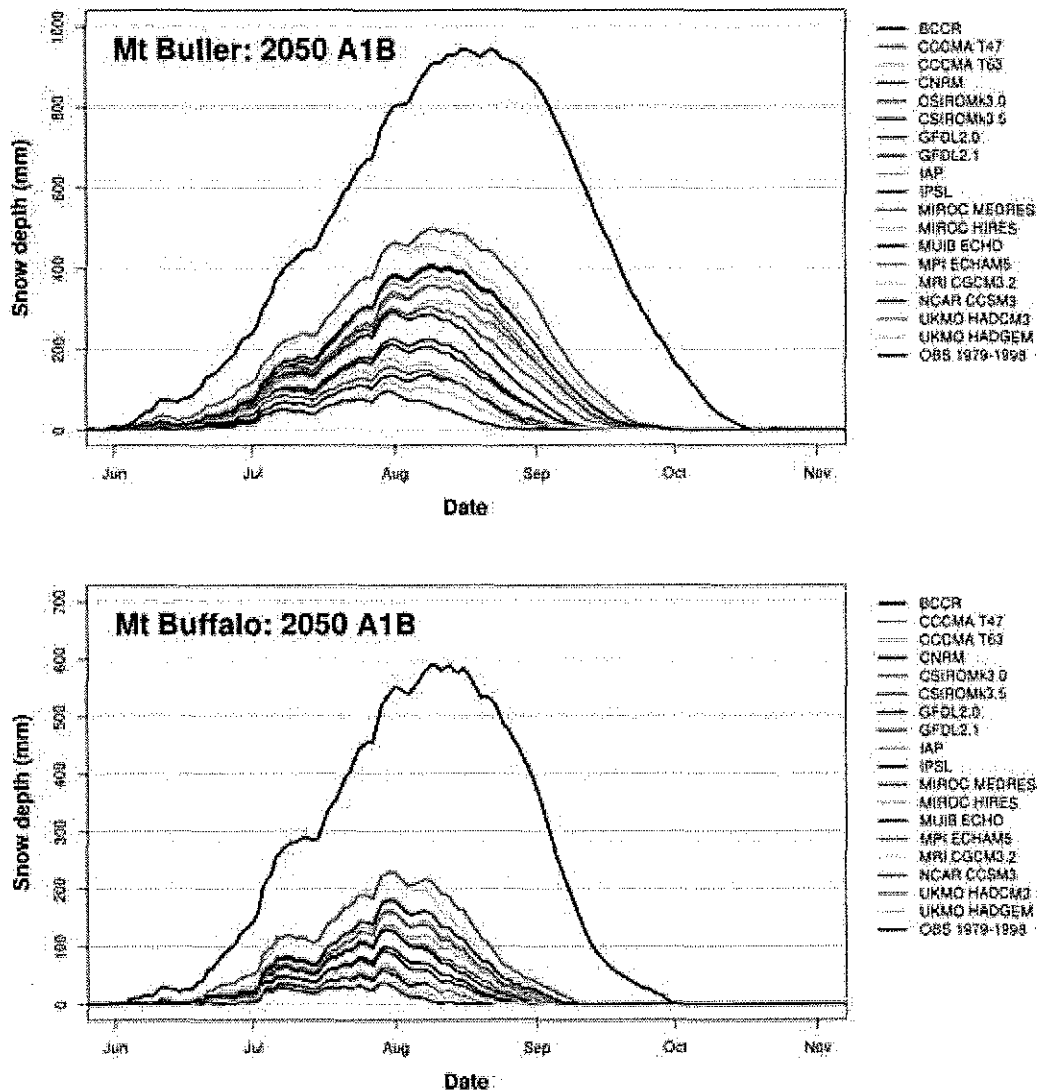


Figure 13: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2050 (coloured lines) for 18 climate models and the medium (A1B) emissions scenario at Mt Buller and Mt Buffalo.

Simulated annual-average snow-cover durations for 20-year periods centred on 1990 and 2020 are shown in Figure 14 and Table 4. The area averaging at least 1 day of snow-cover decreases by 10-35% for the low (B1) and high (A1FI) scenarios and by 15-40% for the medium scenario (A1B). Smallest (largest) decreases are simulated by the HadGEM1 (MIROC3.2-HIRES) model. It is important to note that the report published in 2003 lists projected snow area decreases for New South Wales and Victoria, whereas this report focuses on changes in Victorian snow only. Therefore, corresponding results of the two reports relating to changes in snow-cover extent are not directly comparable. Decreases in duration are more obvious for the 20-year period centred on 2050 (Figure 15). For example, the area averaging at least 1 day of snow-cover decreases by 25-55% for the low (B1) scenario, 30-70% for the medium (A1B) scenario and 35-75% for the high (A1FI) scenario (Table 5). The area averaging at least 60 days of snow-cover decreases by 45-80% for the low (B1) scenario, 55-90% for the medium (A1B), and 60-95% for the high (A1FI) scenario.

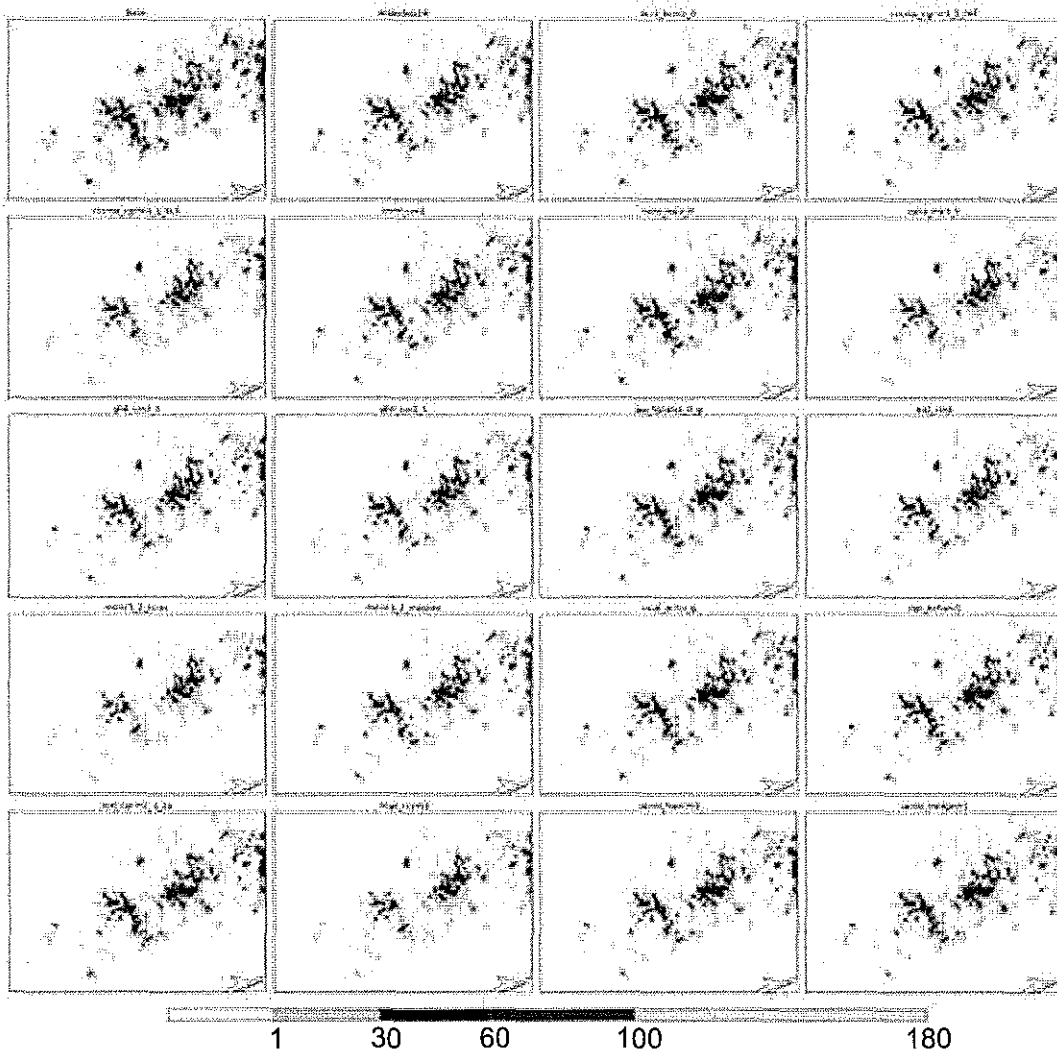


Figure 14: Average snow-cover duration (number of days with at least 1 cm of snow) over north-east Victoria for a 20-year period centred on 1990 (top-left) and a 20-year period centred on 2020 (medium-A1B emissions scenario) for 18 climate models. The 18-model average pattern is shown in the top row, next to the “base” case.

Table 4: Simulated percentage changes in the area of north-east Victoria with at least 1, 30 or 60 days annual-average snow-cover duration for 20-year periods centred on 2020 for three emissions scenarios: low (B1), medium (A1B) and high (A1FI). The range of changes represents the spread of results from 18 climate models. Simulated changes have been rounded to the nearest 5%.

Snow duration	2010-2029 low	2010-2029 medium	2010-2029 high
At least 1 day	-10% to -35%	-15% to -40%	-10% to -35%
At least 30 days	-15% to -50%	-20% to -55%	-15% to -50%
At least 60 days	-15% to -55%	-20% to -60%	-15% to -55%



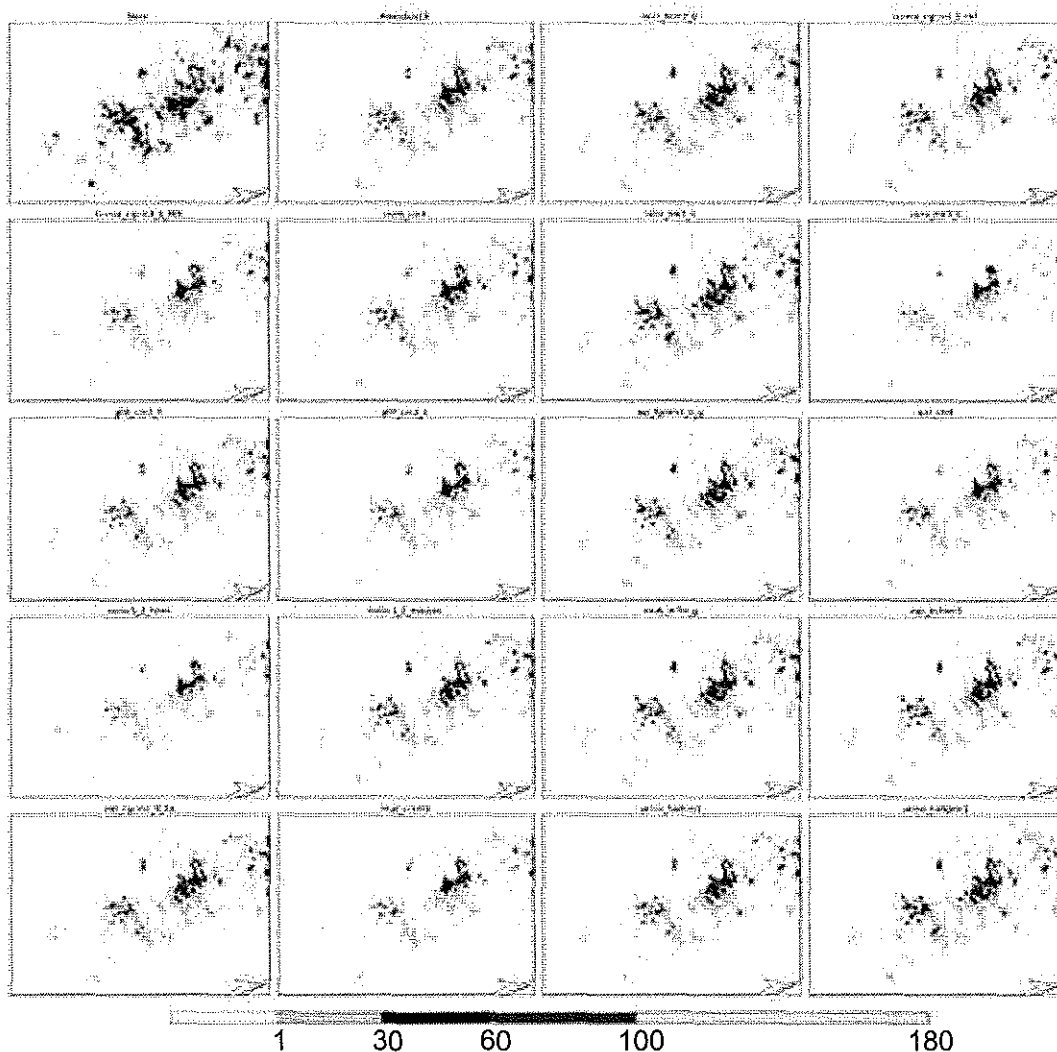


Figure 15: Average snow-cover duration (number of days with at least 1 cm of snow) over north-east Victoria for a 20-year period centred on 1990 (top-left) and a 20-year period centred on 2050 (medium-A1B emissions scenario) for 18 climate models. The 18-model average pattern is shown in the top row, next to the “base” case.

Table 5: Simulated percentage changes in the area of north-east Victoria with at least 1, 30 or 60 days annual-average snow-cover duration for 20-year periods centred on 2050 for three emissions scenarios: low (B1), medium (A1B) and high (A1FI). The range of changes represents the spread of results from 18 climate models. Simulated changes have been rounded to the nearest 5%.

Snow duration	2040-2059 low	2040-2059 medium	2040-2059 high
At least 1 day	-25% to -55%	-30% to -70%	-35% to -75%
At least 30 days	-35% to -75%	-50% to -85%	-55% to -90%
At least 60 days	-45% to -80%	-55% to -90%	-60% to -95%

Changes in average snow-season duration by 2020 have been estimated at four ski resorts (Table 6). For example, at Falls Creek, the average duration declines from 125

days in 1990 to 100-120 days for the low (B1) scenario, 95-115 days for the medium (A1B) scenario and 100-120 days for the high (A1FI) scenario. Across the four resorts, the snow season becomes 5-35 days shorter, largely independent of the scenario.

By 2050, the snow seasons become even shorter (Table 7). Across the four resorts, the snow season becomes 20-55 days shorter for the low (B1), 25-70 days shorter for the medium (A1B), and 30-85 days shorter for the high (A1FI) scenario.

Table 6: Simulated average duration (days) of at least 1 cm of snow-cover at four ski resorts for 20-year periods centred on 1990 and 2020, for three future emission scenarios: low (B1), medium (A1B) and high (A1FI). The range of days for 2020 represents the spread of results from 18 climate models.

Site	1980-1999	2010-2029 low	2010-2029 medium	2010-2029 high
Falls Creek	125	100-120	95-115	100-120
Mt Hotham	130	105-120	100-120	105-120
Mt Buller	110	80-100	75-100	80-100
Mt Buffalo	80	50-70	45-70	55-70

Table 7: Simulated average duration (days) of at least 1 cm of snow-cover at four ski resorts for 20-year periods centred on 1990 and 2050, for three future emission scenarios: low (B1), medium (A1B) and high (A1FI). The range of days for 2050 represents the spread of results from 18 climate models.

Site	1980-1999	2040-2059 low	2040-2059 medium	2040-2059 high
Falls Creek	125	75-105	55-100	45-95
Mt Hotham	130	80-110	60-105	50-100
Mt Buller	110	55-90	35-80	25-75
Mt Buffalo	80	25-60	15-50	10-45

#### 4. DISCUSSION AND RESEARCH PRIORITIES

Analysis of observed trends in snow conditions at Rocky Valley Dam from 1954-2011 shows that the decline in maximum depth and earlier end to the snow season reported in previous studies (Hennessy *et al.*, 2003; Nicholls 2005) has continued. Recent observed changes in maximum snow depth have been compared with projected changes for the closest snow-model grid-cell with comparable altitude (Figure 16). To remove the bias between the observed and simulated snow depths, we use relative projections and scale these with the observed 1990 baseline. Furthermore, we include an estimation error of 20-year averages to allow for the influence of natural variability.

The observed changes in maximum snow depth since 1990 are consistent with changes projected from 1990 onwards due to increasing greenhouse gases. The most recent years are inconsistent with the projected changes according to the low emission scenario (B1). Given that emissions in recent years have been tracking between the medium (A1B) and high (A1FI) scenarios (Figure 7), it may be reasonable to expect the observed changes in maximum snow depth to follow projections for the medium-to-high emissions scenarios.

The observed trend towards an earlier end to the snow season was found to be strongly associated with increased average daily maximum temperatures in the Victorian Alps. Since this regional temperature increase is partly anthropogenic (Stott *et al.*, 2010), it seems likely that the observed trend towards an earlier end to the snow season would also be partly anthropogenic. However, until a more rigorous assessment of the causes of changes in snow properties is conducted, it is not possible to formally determine the degree to which changes in Victorian Alpine snow characteristics are linked to anthropogenic warming (for a review of formal detection and attribution studies see Stott *et al.*, 2010).

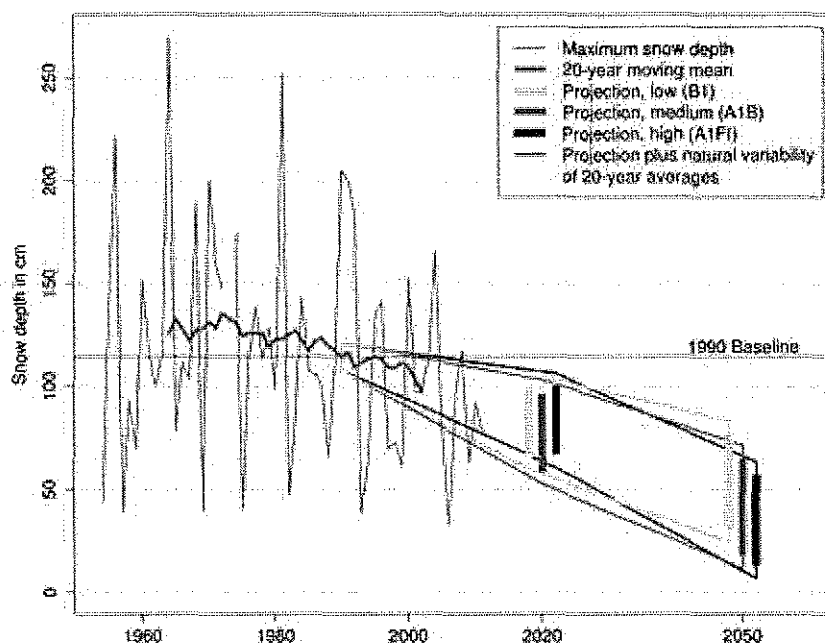


Figure 16: Observed maximum snow depth at Rocky Valley Dam from 1954–2011 (red line) and its 20-year moving average (thick red line) along with the range of projected changes according to three different emissions scenarios (grey bars) for 20-year periods centred on 2020 and 2050. The grey polygons denote the expected bounds for 20-year averages allowing for natural variability. Upper and lower bounds on the projections are linearly interpolated between 1990 and 2020 and between 2020 and 2050.

The updated projections confirm previous findings, with high confidence in a general decrease in snow depth and duration over the coming decades. While some of the updated projections appear to be smaller than the previous report, this is mainly due to differences in the averaging areas, i.e. the previous report included the NSW Alps.

There is significant uncertainty about the rate of decrease. The range of projections from 18 climate models is wide. Narrowing this range might be possible through improvements in climate models and / or improved methods for quantifying uncertainty. Simulations from a new suite of over 40 CMIP5 climate models are being generated during 2011 and 2012. Evaluation of the performance of these simulations over the Australian Alps is a high priority. The new models could be used in an updated assessment of the impact of climate change on snow cover.

The current version of the CSIRO snow model requires monthly temperature and precipitation data on a 2.5 km grid. However, the Bureau of Meteorology has produced

daily temperature and rainfall data on a 5 km grid over Australia, from 1910-2010 (Jones *et al.*, 2009). The Australian National University has developed similar data, with enhanced modelling of daily precipitation occurrence and amount, on a 1 km grid from 1968-2010. If the CSIRO snow model was upgraded to accept gridded daily data, snow accumulation and ablation would be better simulated. There is also an opportunity to upgrade the snow-melt component of the CSIRO snow model using a module from New Zealand's SnowSim model (Hendrikx and Hreinsson, 2010). This would allow for seasonal variability, albedo (reflectivity of old vs. new snow) and the effect of rain on snow.

This report has focused on projections averaged over 20-year periods. More attention needs to be paid to daily, monthly and annual variability in snow conditions, rather than 20-year averages. This would provide insight into the frequency and timing of warm-wet days (rain on snow leading to faster snow-melt) and cold-dry days (good for snow-making), the frequency of good and bad starts to each snow-season, and the frequency of good and bad overall snow seasons.

At ski resorts, seasonal variability in snow conditions can be managed to some extent through a range of practices such as snow-making, snow-grooming and snow-farming. The scope for adaptation through snow-making should be revisited, allowing for recent and projected improvements in the technology. This would require hourly wet-bulb temperature data from ski resorts.

This report has focused on snow changes in Victoria. Future research should expand the region of interest to include other parts of the Australian Alps in New South Wales and Tasmania. A comparison with observed trends and projections in New Zealand would also be valuable.

## **5. CONCLUSIONS**

Snow measurements at Rocky Valley Dam (altitude 1650 m) from 1954-2011 indicate a clear trend to lower maximum snow depths and an earlier end of the snow season. The variability in maximum snow depth can be well explained by maximum temperature and precipitation from June to August, with changes in temperature and precipitation contributing in roughly equal parts. The earlier end of the snow season is clearly dependent on changes in temperature.

Temperature and precipitation projections from 18 climate models, driven by different greenhouse gas emission scenarios, are used as input to the CSIRO snow model. These simulations indicate that the end of the snow season is likely to occur earlier in future, with a slightly later start, and lower maximum depths. The average snow-covered area of north-east Victoria is likely to decline. These trends will be superimposed on large natural year-to-year variability. The number of good snow seasons is expected to decline while the number of poor seasons is likely to increase.

## ACKNOWLEDGEMENTS

This research was supported by the Victorian Department of Sustainability and Environment.

We acknowledge the modelling groups, the Program for Climate Model Diagnosis and Intercomparison (PCMDI) and the WCRP's Working Group on Coupled Modelling for their roles in making available the WCRP CMIP3 multi-model dataset. Support of this dataset is provided by the Office of Science, US Government Department of Energy.

The State Electricity Commission of Victoria and AGL Hydro kindly provided snow depth measurements at Rocky Valley Dam.

We also thank David Kent (CSIRO) for computer programming assistance.

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## APPENDIX 1: MAXIMUM SNOW DEPTHS FOR 2050 B1 AND A1FI

2050 B1

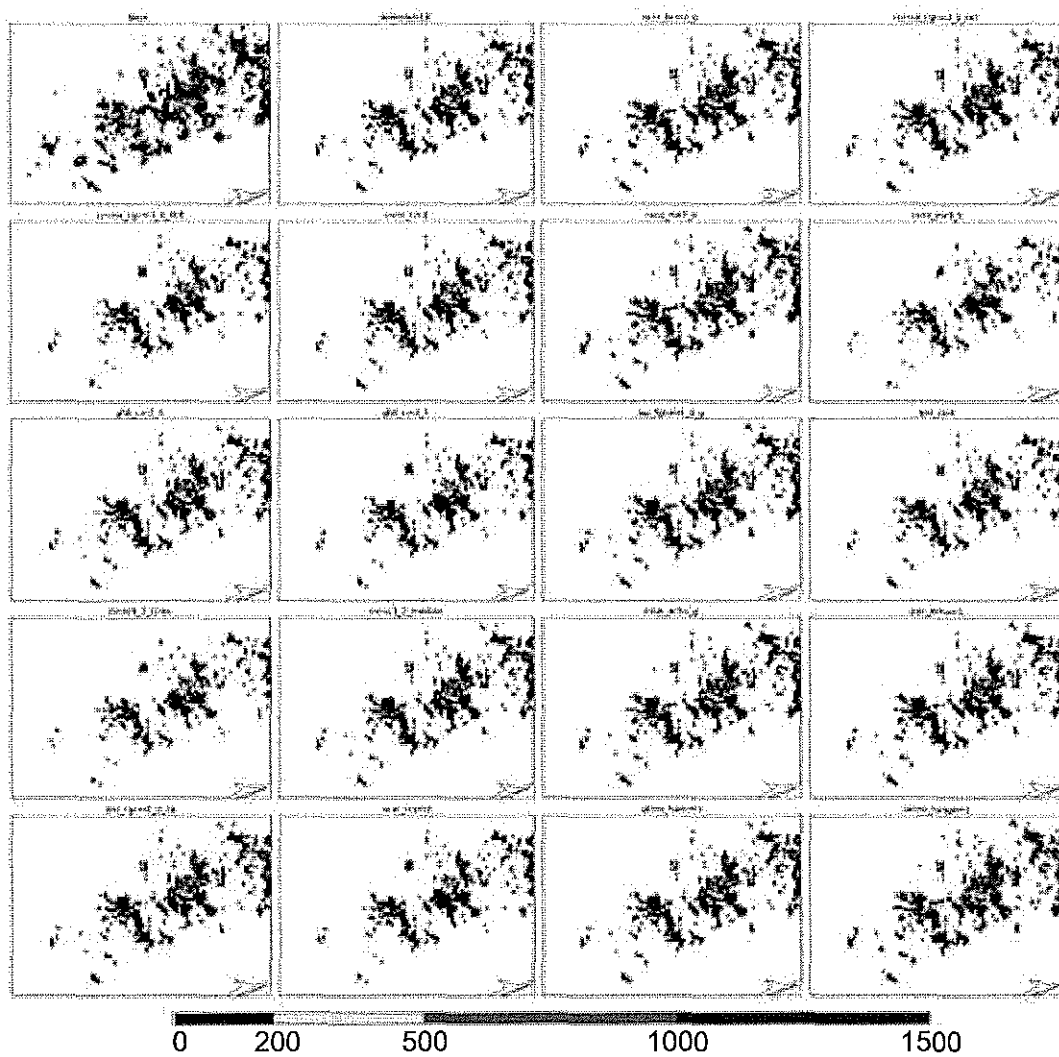


Figure A1: Average maximum snow-depth (mm) over north-east Victoria for 20-year periods centred on 1990 (top-left) and 2050 (low-B1 emissions scenario) for 18 climate models. The 18-model average pattern is shown in the top row, next to the "base" case.

## 2050 A1FI

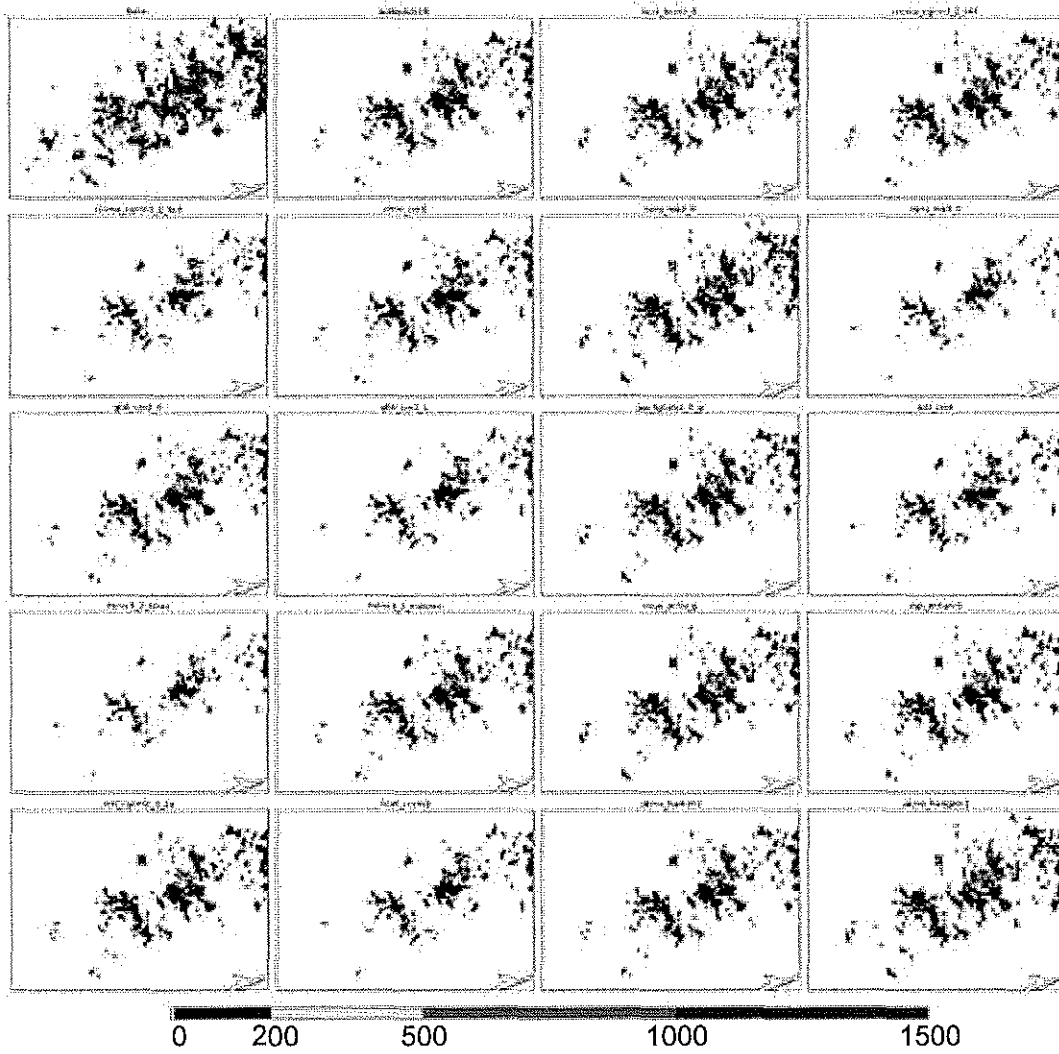


Figure A2: Average maximum snow-depth (mm) over north-east Victoria for 20-year periods centred on 1990 (top-left) and 2050 (high-A1FI emissions scenario) for 18 climate models. The 18-model average pattern is shown in the top row, next to the "base" case.



## APPENDIX 2: SNOW PROFILES FOR 2020 AND 2050 B1 AND A1FI

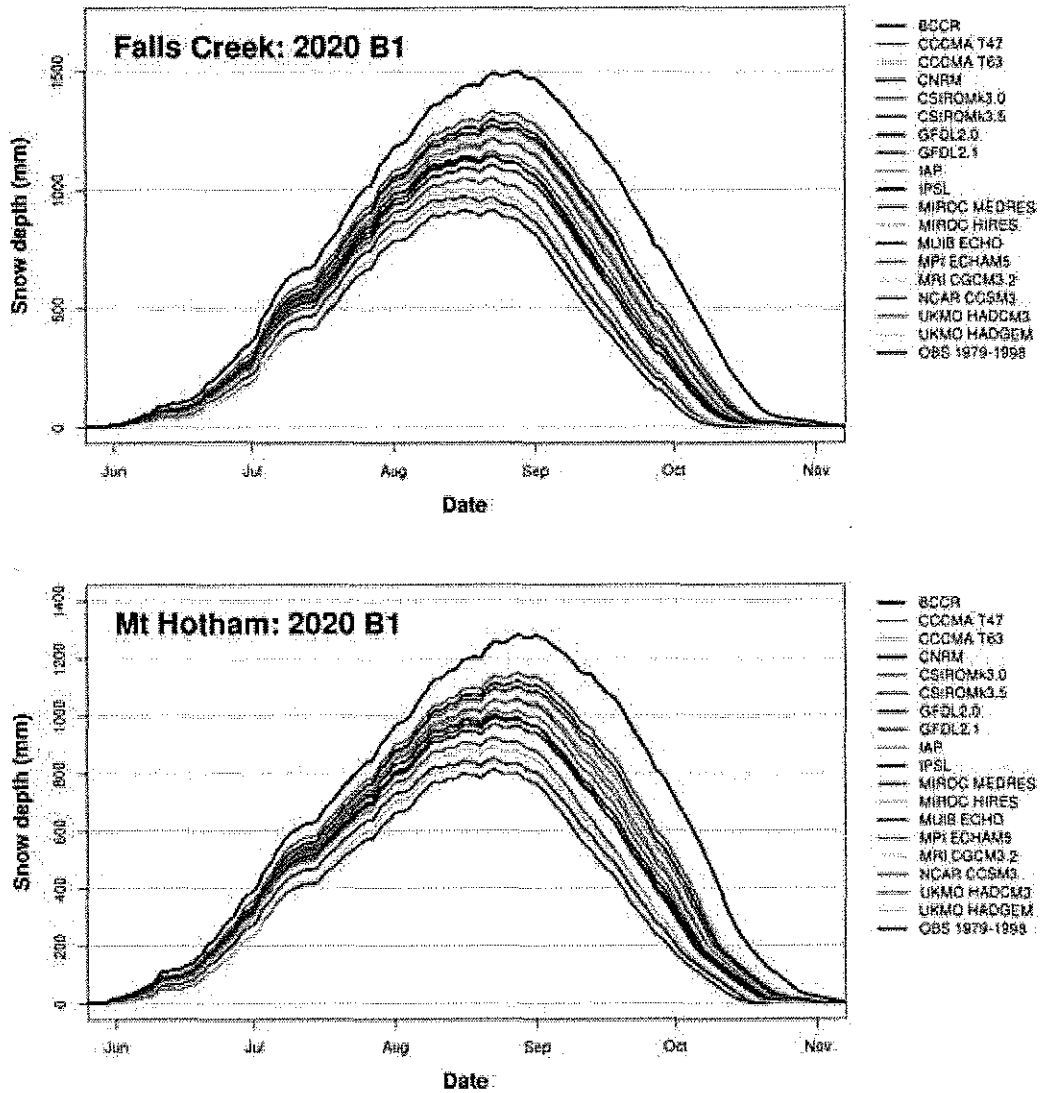


Figure A3: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2020 (coloured lines) for 18 climate models and the low-B1 emissions scenario at Falls Creek and Mt Hotham.

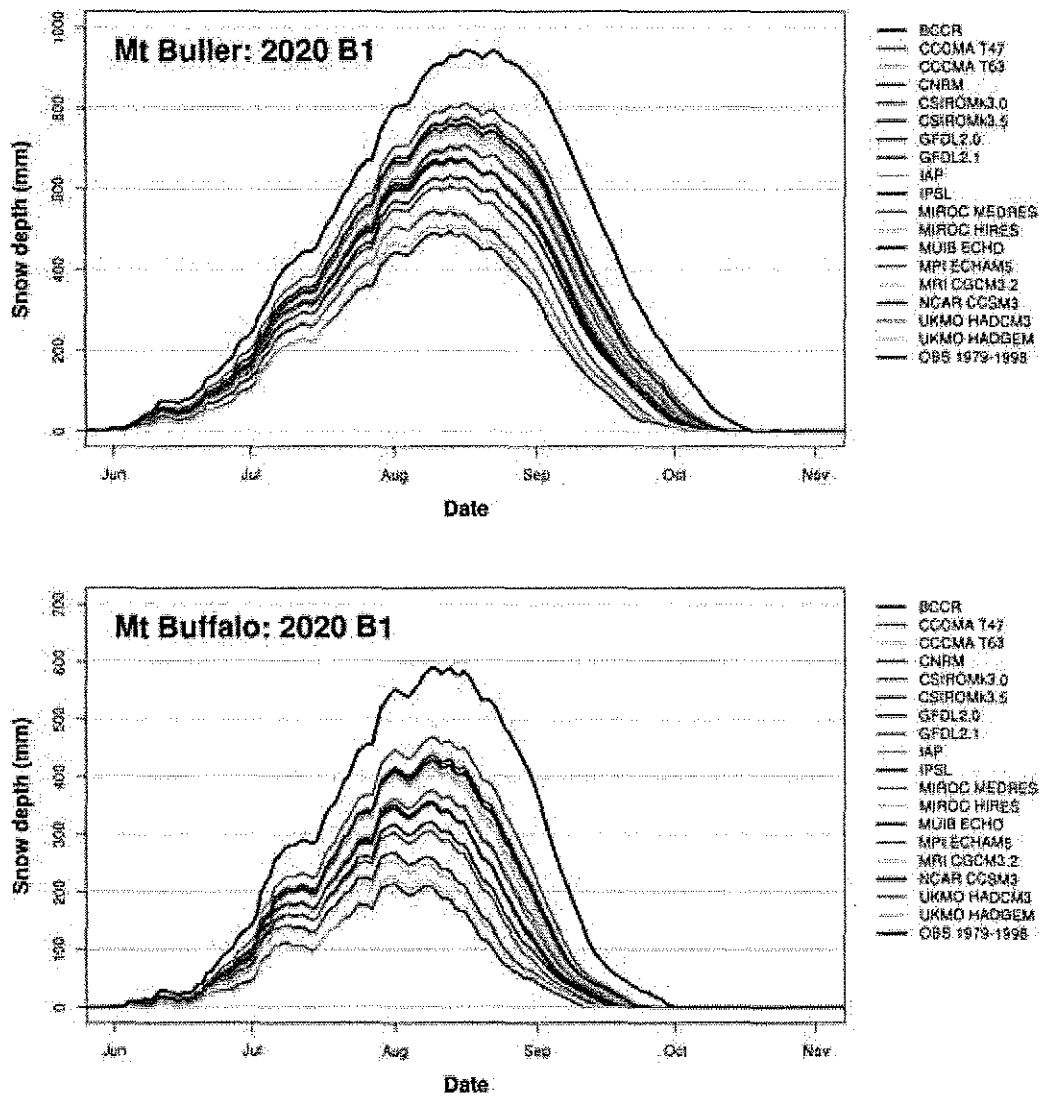


Figure A4: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2020 (coloured lines) for 18 climate models and the low-B1 emissions scenario at Mt Buller and Mt Buffalo.

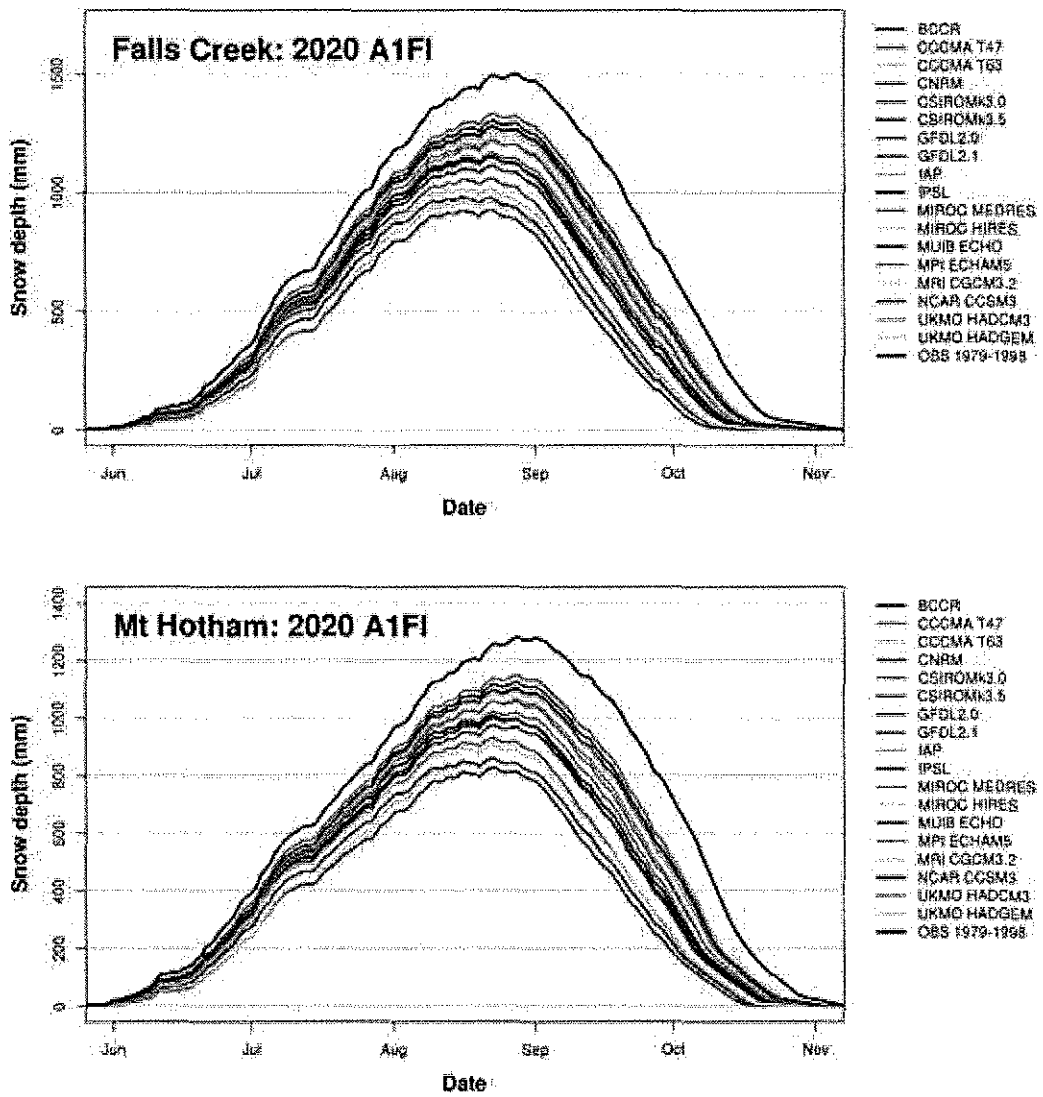


Figure A5: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2020 (coloured lines) for 18 climate models and the high-A1FI emissions scenario at Falls Creek and Mt Hotham.

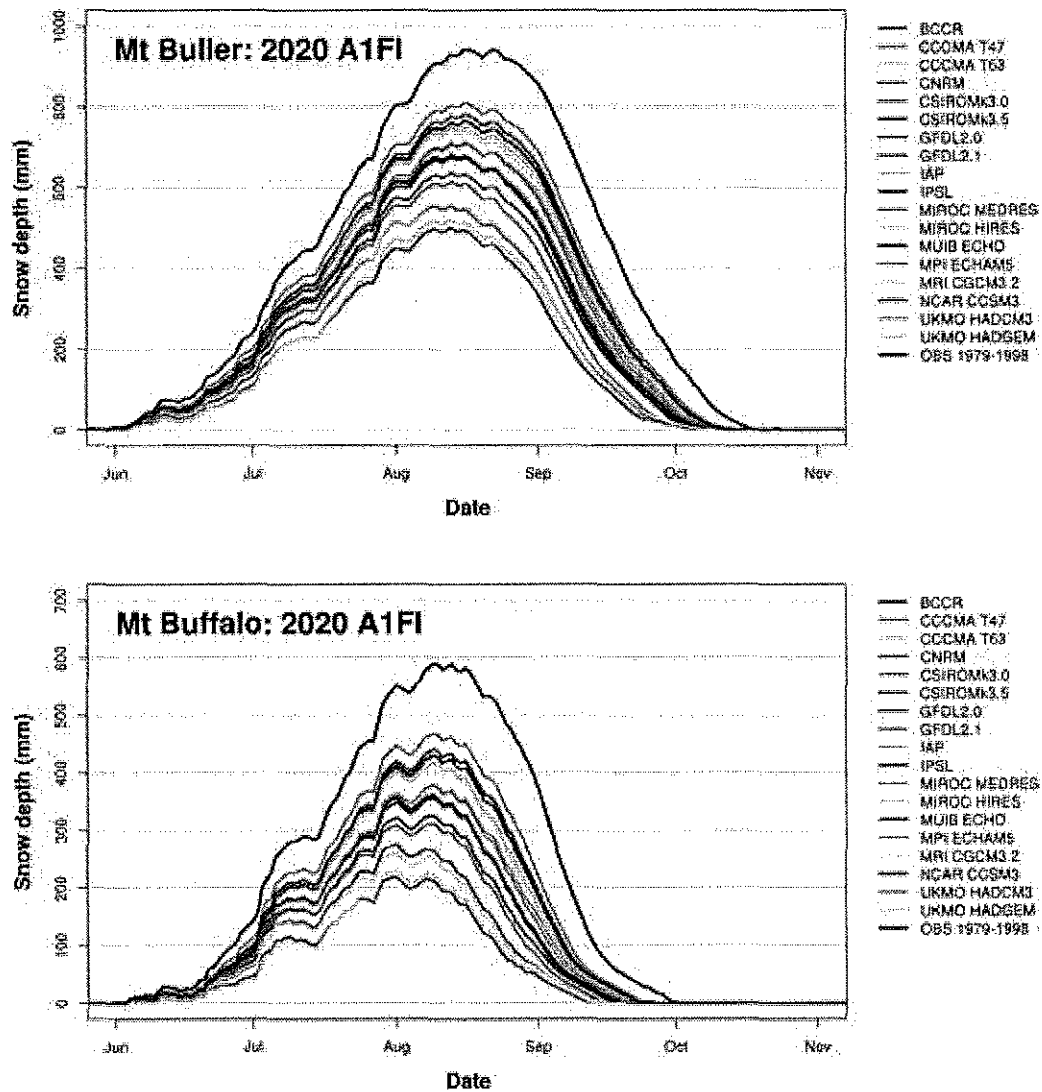


Figure A6: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2020 (coloured lines) for 18 climate models and the high-A1FI emissions scenario at Mt Buller and Mt Buffalo.

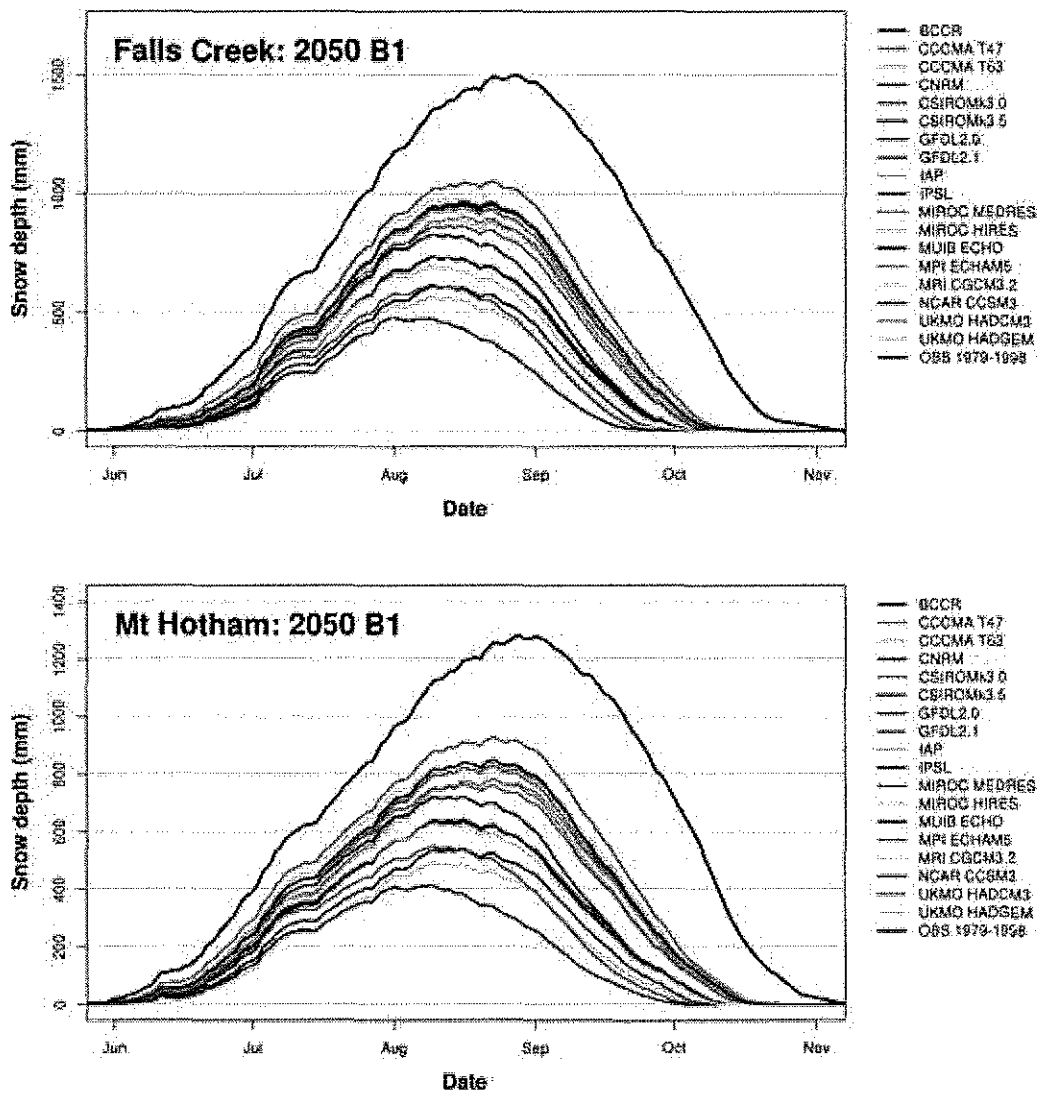


Figure A7: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2050 (coloured lines) for 18 climate models and the low-B1 emissions scenario at Falls Creek and Mt Hotham.

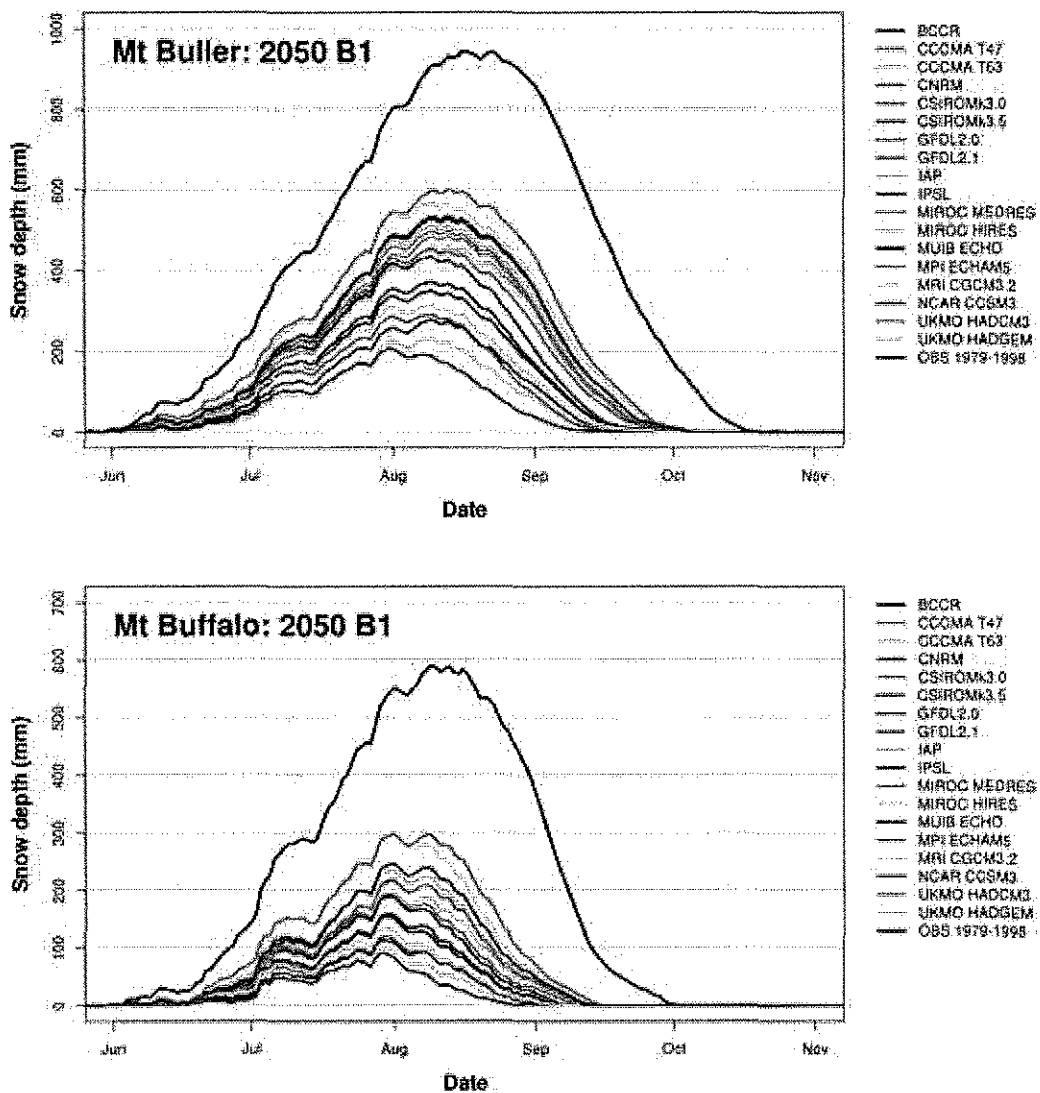


Figure A8: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2050 (coloured lines) for 18 climate models and the low-B1 emissions scenario at Mt Buller and Mt Buffalo.

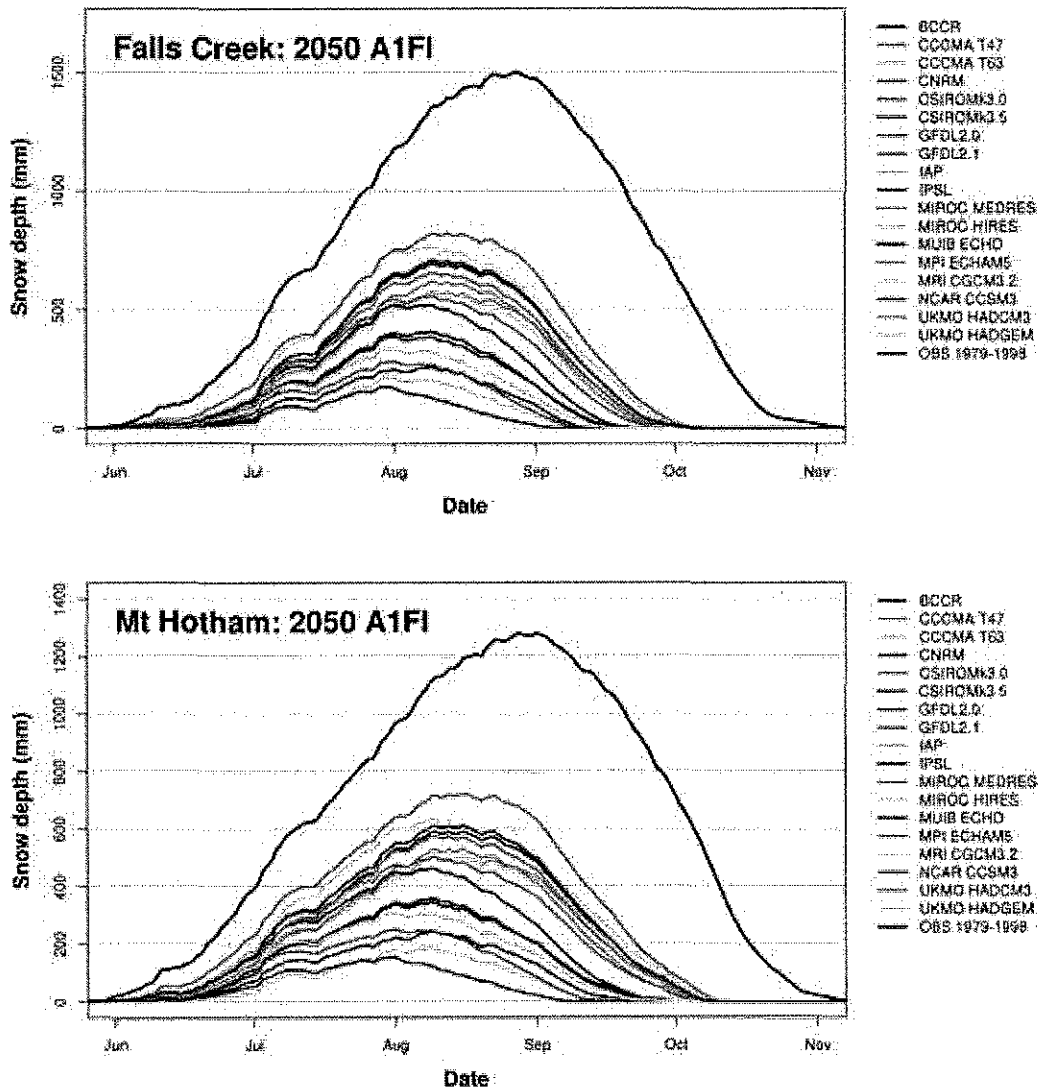


Figure A9: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2050 (coloured lines) for 18 climate models and the high-A1FI emissions scenario at Falls Creek and Mt Hotham.

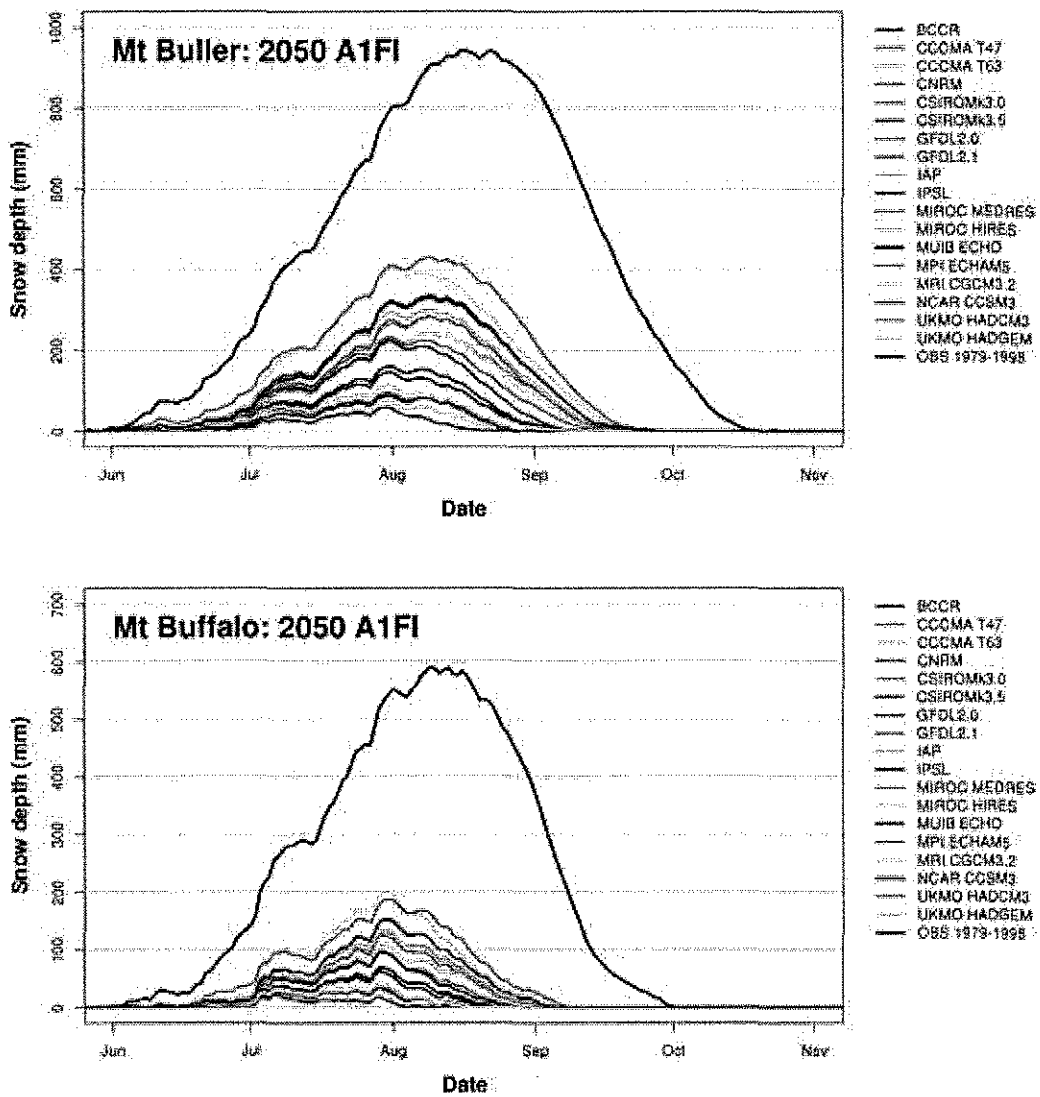
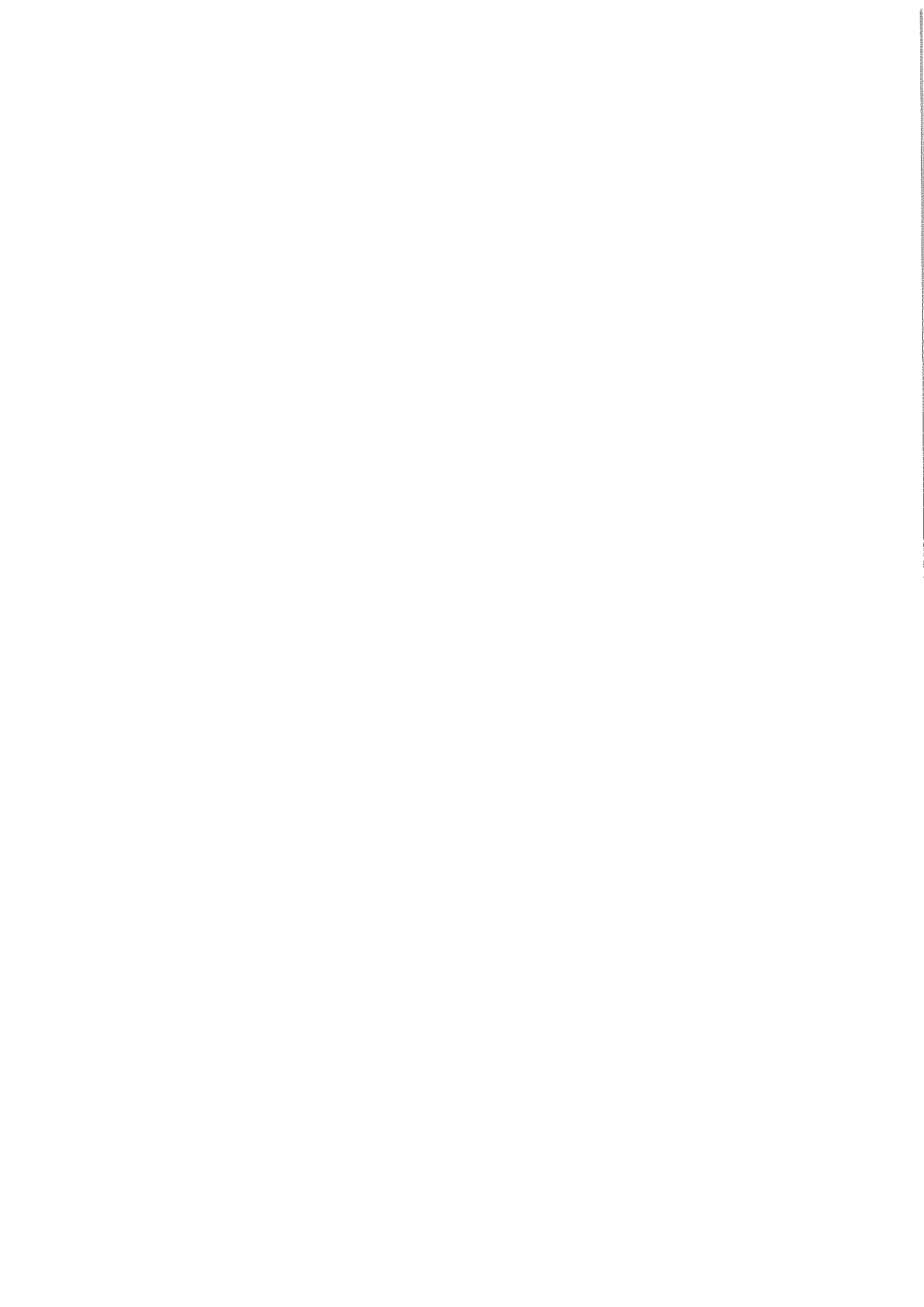
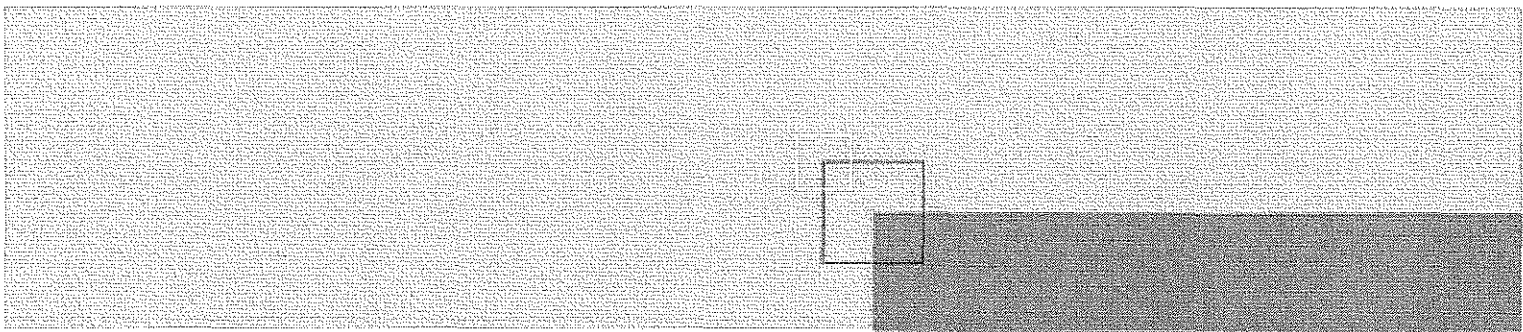


Figure A10: Simulated snow depth profiles for 20-year periods centred on 1990 (black line) and 2050 (coloured lines) for 18 climate models and the high-A1FI emissions scenario at Mt Buller and Mt Buffalo.







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**(769) SKI INDUSTRY (STATE) AWARD****(769) SERIAL C0160****SKI INDUSTRY (STATE) AWARD**

Schedule of Consolidated Award Published on 29.6.2001 and Subsequent Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Award	C0160	29.6.01	On and from 19.4.01	325	876
4; Appendix A; Appendix B	C0940	8.2.02	First full pay period on or after 1.9.01	331	228
24 (24.1)	C1016	8.3.02	On and from 31.5.01	331	1077
4 & Part B - Appendix A & B	C1562	28.2.03	First pay period on or after 1.9.02	338	620
4, 9 & Part B - Appendix A & B	C2271	21.11.03	First pay period on or after 1.9.03	342	143
1 & 24A	C2232	05.03.04	First pay period on or after 10.03.04	343	570
4, Part B	C3003	29.10.2004	First pay period on or after 01.09.2004	347	74
4, Part B	C4012	11.11.2005	First full pay period on or after 1.9.2005	354	787

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The NSW industrial relations system covers most unincorporated businesses in NSW (e.g. sole traders and partnerships) as well as some incorporated businesses operating in NSW (e.g. some charities and not-for-profit organisations). Businesses may need to seek legal advice to determine whether NSW industrial relations laws apply to them.

**(769) SKI INDUSTRY (STATE) AWARD**

**AWARD****Arrangement**

Clause No. Subject Matter

1. Definitions

2. Rates of Pay
3. Allowances
4. Safety Net Commitments
5. Mixed Functions
6. Hours of Work
7. Rostered Days Off
8. Rosters
9. Overtime
10. Meal Breaks and Meal Allowances
11. Stand Down/Stand-by Arrangements
12. Public Holidays
13. Payment of Wages
14. Contract of Employment
15. Sick Leave
16. Personal/Carer's Leave
17. Bereavement Leave
18. Annual Leave
19. Use of Uphill Transport Facilities and other Employee Responsibilities
20. Protective Clothing
21. No Publicity Rights
22. Disputes and Industrial Grievance Procedure
23. Superannuation
24. Anti-Discrimination
- 24A. Deduction of Union Membership Fees
25. Area, Incidence and Duration

## PART B

Appendix A - Rates of Pay

Appendix B - Other Rates and Allowances

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**(769) SKI INDUSTRY (STATE) AWARD**

### 1. Definitions

(i) "Casual Employee" means an employee engaged by the hour to work on an hourly basis.

(ii) "Daily Employee" means an employee who has signed an Employment Arrangement Form with the employer and whose term of employment, as shown on the form, has not been terminated and who is engaged to work for a limited period on a daily basis as required.

(iii) "Employer" means Perisher Blue Pty Limited, Kosciusko Thredbo Pty Limited, Mt Selwyn Snowfields Pty Limited and Charlotte's Pass Village Pty Limited.

(iv) "Supervisor" means an authorised officer of the employer to whom an employee is

directly responsible.

(v) "Union" means the Australian Workers' Union, New South Wales.

(vi) "Union Representative" means an employee elected from time to time by other employees, who are union members, as their representative to communicate with the Union and the employer on industrial matters.

(vii) "Week" means any seven consecutive days as nominated from time to time by the employer.

(viii) "Weekly Employee" means an employee engaged on a weekly basis who has signed an Employment Arrangement form with the employer and whose term of employment, as shown on the form, has commenced but has not been terminated.

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(769) SKI INDUSTRY (STATE) AWARD

## 2. Rates of Pay

Group A - Weekly Rates ) as set out in Appendix A - Rates of Pay

Group B - Daily Rates )

Group C - Casual Rates: Employees in Group C may be engaged in classifications in Group A or B as a casual employee and shall be paid a loading of 15 per cent in addition to the appropriate hourly rate which shall be deemed to incorporate payment for pro rata annual leave. The hourly rates in Group B shall be reduced by one-thirteenth to avoid double counting.

General - The rates prescribed by these conditions shall be adjusted in accordance with State Wage Case decisions.

The rates prescribed by this clause are all inclusive and have been fixed on the basis that they include compensation for all incidences of the employment, including the location of the work, seasonal conditions and variations, the need to work in the open, and/or exposed to the elements, and/or in all sorts of weather, including wet and windy and hot and cold weather or any combination thereof, and where considered necessary at night and/or as shift workers.

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(769) SKI INDUSTRY (STATE) AWARD

## 3. Allowances

3.1 Leading Hand Allowances - An employee appointed as a leading hand or required by an employer to perform the duties of such, shall be paid in addition to the wage rate otherwise prescribed, the allowances set out in Items 1 - 3 of Appendix B - Other Rates and Allowances.

### 3.2 Sewerage Farm Allowance

Resort Worker at Thredbo designated as sewerage farm attendant shall be paid an additional amount as set out in Item 4 of Appendix B - Other Rates and Allowances for all purposes of this award.

### 3.3 Equipment Allowance

(a) Where the employer does not provide all tools and equipment (including ski equipment and boots) required to perform the duties of an employee classified as a Lift Operator, Lift Attendant or Courtesy Staff in Groups A or B of Appendix A - Rates of Pay, the employee shall be paid an allowance as set out in Item 5 of Appendix B - Other Rates and Allowances.

(b) Where the employer does not provide all tools and equipment required to perform the duties of an employee classified as Ski Patrol or Trail Crew in Group A of Appendix A - Rates of Pay, the employee shall be paid an allowance as set out in Item 6 of Appendix B - Other Rates and Allowances.

(c) Where the employer does not provide all tools and equipment (including boots) required to perform the duties of an employee classified as Snow Groomer Operator, Snow Maker or Resort Worker, in Groups A and B of Appendix A - Rates of Pay, the employee shall be paid an allowance as set out in Item 7 of Appendix B - Other Rates and Allowances.

(d) Employees may purchase boots from the employer at cost price. Payment may be made either in a lump sum or, at the election of the employee, by deduction from wages of an amount per week not less than 10 per cent of the cost of the boots. Any amount unpaid as at the termination of employment shall be deducted from moneys due to the employee.

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(769) SKI INDUSTRY (STATE) AWARD

## 4. Safety Net Commitments

The rates of pay in this award include the adjustments payable under the State Wage Case 2005. These adjustments may be offset against:

(a) any equivalent over-award payments; and/or

(b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

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*(769) SKI INDUSTRY (STATE) AWARD*

## **5. Mixed Functions**

5.1 Any weekly or daily employee engaged on any one day or shift for a period exceeding four hours in the aggregate on work carrying a higher rate than the classification in which the employee is employed shall be paid the higher rate for such day or shift. If so engaged for four hours or less in the aggregate on any one day or shift, the employee shall be paid the higher rate for the time so worked.

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## **6. Hours of Work**

6.1 Ordinary hours of work for employees in Group A will be an average of 38 hours per week in any four-week period and may, at the employer's discretion, include one rostered day off per four weeks in accordance with Clause 7, Rostered Day Off, or the working of 7.6 hours per day.

6.2 Ordinary hours worked by employees in Group A may be performed on any or all days of the week.

6.3 Ordinary hours of work for employees in Group B shall, at the employer's discretion, be 7.6 hours per day or eight hours per day, in which case such employee shall accumulate a credit of 24 minutes per day which shall be paid for on termination.

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## **7. Rostered Days Off**

7.1 For each day or shift upon which an employee in Group A is rostered to work eight hours as part

of his ordinary working week including a day upon which an employee is absent with reasonable excuse, proof of which shall lie on the employee, the employee shall accumulate twenty-four minutes towards a rostered day off without loss of pay.

7.2 No employee shall be entitled to a rostered day off until he or she has accumulated in

accordance with subclause 7.1 seven hours and thirty-six minutes.

7.3 An employee shall take his or her rostered day off on a day not being a Saturday, Sunday or public holiday, at the discretion of the employer, provided that the employer shall grant and the employee shall take the rostered day off within fourteen days of the employee's entitlement thereto arising.

7.4 In the event of an emergency an employer may require an employee to work on his or her rostered day off, provided that the employee is paid time and a half for work done on that day and the employee is granted another day off as a rostered day off in lieu thereof.

7.5 Upon termination an employee shall be paid all time credited to him in accordance with subclause 7.1 and which has not been taken by him or her as a rostered day off.

7.6 Notwithstanding the provisions of subclauses 7.1 to 7.5 inclusive, if the majority of employees covered by this award agree that rostered days off should be accumulated until the employee's termination, such days shall be so accumulated for all employees.

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(769) SKI INDUSTRY (STATE) AWARD

## 8. Rosters

8.1 A daily roster, showing days of work for all employees, is to be prepared daily and displayed no later than midday of the day prior to the commencement of the roster.

8.2 Changes to the roster shall only be made when reasonable notice is provided to the employee.

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## 9. Overtime

### 9.1 Overtime

(a) All time worked in excess of an employee's ordinary hours of work each week, prescribed in Clause 6, Hours of Work, shall be referred to as overtime.

(b) The first two hours of overtime performed each week shall be paid for at the employee's normal hourly rate.

(c) All time worked in excess of the first two hours of overtime each week shall be paid for



at the rate of time and one half for the first two hours and at double time thereafter.

(d) Reasonable Overtime

(1) Subject to subparagraph (2) of this paragraph, an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.

(2) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

(3) For the purpose of the said subparagraph (2), what is unreasonable or otherwise will be determined having regard to:

(i) any risk to employee health and safety;

(ii) the employee's personal circumstances, including any family and carer responsibilities;

(iii) the needs of the workplace or enterprise;

(iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

(v) any other relevant matter.

9.2 Call Back

Employees who have worked two hours overtime in a week and who are recalled to work further overtime after the cessation of work on any day in the same week shall be paid for a minimum of 4 hours work at the appropriate rate for each time they are so recalled.

9.3 Rest Periods

All employees shall have a rest period of at least ten hours between ceasing work on one day and recommencing work on the same or the next day. If employees do not receive this rest period

they will be paid overtime rates until released from such duty for such rest period.

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**10. Meal Breaks and Meal Allowances**

10.1 Meal breaks of not less than half an hour are to be arranged on a roster basis.

10.2 Lift Operators at Perisher Blue Pty Limited shall be entitled:

(a) in addition to a half hour meal break, to two breaks of half an hour's duration during the period of a day's employment; or

(b) in the alternative, if agreed by the majority of employees working in that classification, to at least two breaks totalling one and a half hours per day.

10.3 Where an employee is required to work for more than five hours without a meal break overtime rates shall be paid until such a break is provided.

10.4 All employees required to work during their rostered meal breaks shall be paid at overtime rates until they have received a meal break of the usual period.

10.5 When an employee is required to continue working overtime for more than two hours after ordinary ceasing time a meal allowance as set out in Item 8 of Appendix B shall be paid if a meal is not provided. Provided that if such overtime extends, an extra meal allowance as set out in Item 8 of Appendix B shall be paid after each subsequent four hours worked if a meal is not provided.

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## 11. Stand Down/Stand-by Arrangements

11.1 The employer shall have the right to deduct payment for any day or part thereof the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

11.2 Where a stand down is due to unfavourable weather conditions preventing or limiting normal operations, weekly and daily employees shall be paid a minimum of four hours pay at normal rates.

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## 12. Public Holidays

12.1 In view of the nature of the operations of the employers covered by these conditions, employees may be required to work on public holidays.

12.2 Public holidays will be as gazetted for the whole of the State of New South Wales.

12.3 When worked on the public holiday the employee shall be paid the rate of double time and one half.

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### **13. Payment of Wages**

13.1 Wages will be paid no later than three days after the end of the pay week by electronic funds transfer. In the event that this is not possible through technological failure, wages will be paid by cash or cheque.

13.2 When an employee is kept waiting for wages beyond the term specified by this clause, the employee shall be paid ordinary time rates until payment is made, except where such waiting time is occasioned by reasons beyond the control of the employer.

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### **14. Contract of Employment**

#### **14.1 Contract of Employment - Weekly Employees -**

(a) All employees paid a weekly rate of pay as prescribed in Group A as set out in Appendix A, shall be deemed to be employed by the week.

#### **(b) Termination of Employment -**

(1) Employment shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture, as the case may be, of the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated.

(2) Notwithstanding the provisions of subparagraph (a) of this paragraph, the employer shall have the right to dismiss any employee without notice for malingering, inefficiency, neglect of duty, refusing duty, or misconduct and in such cases the wages shall be paid up to the time of dismissal only.

(3) Where the employee has given or been given notice as in subclause (a) above the employee shall, unless expressly permitted otherwise, continue in employment until the date of the expiration of such notice. If, without reasonable cause (proof of which shall be the employee's responsibility), the employee is absent from work during such period the employee shall be deemed to have abandoned his or her employment and shall not be entitled to payment for work performed within that period provided however, an employee other than a casual employee, shall, on request, be granted leave of absence without pay for one day in order to look for alternative employment.

#### 14.2 Contract of Employment - Daily Employees -

(a) All employees engaged under Group B of Appendix A of this award, shall be deemed to be employed by the day.

#### (b) Termination of Employment -

One day's notice shall be given on either side or one day's pay shall be paid or forfeited in lieu thereof.

#### 14.3 Contract of Employment - Casuals -

(a) All employees engaged under Group C of Clause 3, Rates of Pay, of this award shall be deemed to be employed by the hour.

#### (b) Termination of Employment -

One hour's notice shall be given on either side or one hour's pay shall be paid or forfeited in lieu thereof.

#### 14.4 Rolling Notice

In some cases a Daily or Weekly Employee may be provided with notice as set out above and then, because of an extension of the season due to favourable weather conditions, the opportunity arises for the employee to be provided with further work.

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In such cases where notice has already been given and an employee works on, a further one hour's notice shall be given on either side or one hour's pay shall be given or forfeited in lieu where the employment is to be terminated.

#### 14.5 Engagement -

(a) All prospective employees shall complete an employment application form prior to each engagement. The information given on the application form shall be true in every respect and if subsequently any detail is found to be untrue the employer may terminate the employee without notice.

(b) Upon being accepted an employee shall sign an employment acceptance form.

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**(769) SKI INDUSTRY (STATE) AWARD****15. Sick Leave**

15.1 Each Group B employee who has completed 20 days service, and each Group A employee who has completed four weeks' continuous service, who is absent from work on account of personal illness or accident, not being an accident compensatable by workers' compensation, shall be entitled to leave of absence with pay subject to the following conditions and limitations:

(i) The employee shall, prior to the commencement of the shift unless not reasonably practicable, inform the employer of his or her inability to attend for duty and, insofar as practicable, state the nature of the illness and the estimated duration of the absence.

(ii) The employee shall furnish such evidence as the employer reasonably may require that he or she was unable, by reason of such illness or injury, to attend for duty on the day or days for which sick leave is claimed.

(iii) Subject to subclauses (i) and (ii) of this clause, an employee shall be entitled to sick leave at the rate of one day per month during the ski season, namely the months of June, July, August and September, and one day per two months during the remainder of the year. Untaken sick leave may accumulate with continuous service up to sixty days.

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**(769) SKI INDUSTRY (STATE) AWARD****16. Personal/Carer's Leave****16.1 Use of Sick Leave**

(a) An employee, other than a casual employee, with responsibilities in relation to a class of persons set out in subparagraph (2) of paragraph (c) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in clause 15, Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.

(b) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.

(c) The entitlement to use sick leave in accordance with this subclause is subject to:

(1) the employee being responsible for the care of the person concerned; and

(2) the person concerned being:

(i) a spouse of the employee; or

(ii) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or

(iii) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

(iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

(v) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:

1. "relative" means a person related by blood, marriage or affinity;

2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

3. "household" means a family group living in the same domestic dwelling.

(d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

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(769) SKI INDUSTRY (STATE) AWARD

## 16.2 Unpaid Leave for Family Purpose

(a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (2) of paragraph

(c) of subclause 16.1 who is ill.

## 16.3 Annual Leave

(a) A Weekly Employee may elect with the consent of the employer, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding five days in single day periods or

part thereof, in any calendar year at a time or times agreed by the parties.

(b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.

(c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

#### 16.4 Time Off in Lieu of Payment for Overtime

(a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.

(b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.

(c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.

(d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.

#### 16.5 Make-up Time

(a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

(b) An employee on shift work may elect, with the consent of the employer to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

#### 16.6 Rostered Days Off

(a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.

(b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

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(769) SKI INDUSTRY (STATE) AWARD

(c) An employee may elect, with the consent of the employer, to accrue some or all rostered

days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.

(d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

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## 17. Bereavement Leave

17.1 An employee, other than a casual employee, shall be entitled to two days bereavement leave without deduction of pay, on each occasion of the death of a person as prescribed in subclause 17.3.

17.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.

17.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (c) of subclause 16.1 of clause 16, Personal/Carer's Leave provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

17.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.

17.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 16.2, 16.3, 16.4, 16.5 and 16.6 of the said clause 16. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

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## 18. Annual Leave

See Annual Holidays Act 1944.



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## **19. Use of Uphill Transport Facilities and other Employee Responsibilities**

19.1 Where the employee is allowed to use chair lifts, T-bars and other uphill transport of whatever nature free of charge, such transport shall only be used in accordance with the conditions published by the employer.

19.2 Further, where such uphill transport or facilities are used they are used on the condition that the employer shall not be liable for any loss, damage or injury to the employee or the employee's property in any way caused with or attributable to the area held by the employer under lease.

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**(769) SKI INDUSTRY (STATE) AWARD**

## **20. Protective Clothing**

20.1 The employer shall provide all employees required to work outdoors with wet weather and protective clothing, free of charge. All such protective clothing shall remain the property of the employer.

20.2 Protective clothing shall include a hat, a parka coat, a fleece, overpants, one pair of either sunglasses or goggles as determined by the employer, and one pair of protective gloves which shall be sufficient to provide for both wet weather and cold weather application.

20.3 All laundering and cleaning costs of protective clothing specified in this clause shall be paid for by the employer.

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## **21. No Publicity Rights**

21.1 The employer reserves the right to utilise any photographs, films or any form of

publicity taken of employees without any remuneration to employees.

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## 22. Disputes and Industrial Grievance Procedure

22.1 The procedure for the resolution of industrial disputation and grievances will be in accordance with the *Industrial Relations Act 1996*. These procedural steps are as follows:

(i) Procedure relating to a grievance of an individual employee:

(a) The employee shall notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.

(b) The grievance must initially be dealt with as close to the source as possible, with graduated steps for further discussion and resolution at the higher levels of authority.

(c) Reasonable time limits must be allowed for discussion at each level of authority.

(d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.

(e) While a procedure is being followed, normal work must continue.

(f) The employee may be represented by an industrial organisation of employees for the purpose of each procedure.

(ii) Procedure for a dispute between an employer and the employees:

(a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.

(b) Reasonable time limits must be allowed for discussion at each level of authority.

(c) While a procedure is being followed, normal work must continue.

(d) The employer may be represented by an industrial organisation of employer and the employees may be represented by an industrial organisation of employees for the purpose of each procedure.

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### 23. Superannuation

23.1 The subject of superannuation contributions is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993* and the *Industrial Relations Act 1996* (NSW). The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

23.2 The employer shall be a participating employer in any of the following funds: AMP Super Leader Plan for Casuels

Australian Superannuation Savings Employment Trust (ASSET)

Hospitality Organisations and Portable Liquor Union Superannuation Trust (HOST-PLUS)  
or

Superannuation Trust Scheme (STA)

and shall participate in accordance with the Trust Deed of that fund.

23.3 The employer shall contribute to the Fund in accordance with the legislation provided that employer contributions do not fall below 3% of ordinary time earnings.

NOTATION: Employer contributions under relevant legislation are set at 8% until 30 June 2002, when they will increase to 9% from that date.

23.4 The employer shall provide each employee upon commencement of employment with membership forms of the fund and shall forward the completed membership form to the fund within 14 days.

23.5 An employee may make contributions to the fund in addition to those made by the employer.

23.6 An employee who wishes to make additional contributions must authorise the employer in writing to pay into the fund from the employee's wages a specified amount in accordance with the Trust Deed and the rules of the fund.

23.7 An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within 14 days of the receipt of the authorisation.

23.8 All contributions shall be made at the completion of each calendar month.

23.9 Ordinary time earnings shall be as defined by the relevant legislation.

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(769) SKI INDUSTRY (STATE) AWARD

### 24. Anti-Discrimination

24.1 It is the intention of the parties bound by this award to seek to achieve the object in section

3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

24.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

24.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

24.4 Nothing in this clause is to be taken to affect:

- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
- (b) offering or providing junior rates of pay to person under 21 years of age;
- (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti Discrimination Act 1977*;
- (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

24.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

*"Nothing in the Act affects...any other act or practice of a body established to propagate religion that conforms to the doctrine of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."*

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(769) SKI INDUSTRY (STATE) AWARD

#### 24A. Deduction of Union Membership Fees

(1) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:

(a) the employee has authorised the employer to make such deductions in accordance with subclause (2) herein;

(b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;

(c) deduction of Union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and

(d) there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).

(2) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.

(3) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:

(a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and

(b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.

(4) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.

(5) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly or quarterly, as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.

(6) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.

(7) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of

Union  
membership fees to cease.

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(769) SKI INDUSTRY (STATE) AWARD

(B) The above variations shall take effect:

(a) In the case of employers who currently deduct Union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first full pay period to commence on or after 10 March 2003;

(b) In the case of employers who do not fall within paragraph (a) above, but who currently make deductions, other than Union membership fee deductions or mandatory deductions (such as for taxation instalments or superannuation contributions), from employees' pay, or have in place facilities to make such deductions, from the beginning of the first full pay period to commence on or after 10 June 2003;

(c) For all other employers, from the beginning of the first full pay period to commence on or after 10 September 2003.

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(769) SKI INDUSTRY (STATE) AWARD

## **25. Area, Incidence and Duration**

25.1 This award shall apply to the Union and to the Employers defined herein and to all persons employed by the Employers in the classifications listed in Appendix A and Group C - Casual Rates appearing in clause 2, Rates of Pay.

25.2 This award shall take effect from the beginning of the first pay period to commence on or after  
20 August 1992 and shall remain in force thereafter for a period of thirty months.

25.3 This award shall not be varied during its term for any reason other than with the consent of all parties or in order to implement State Wage Case variations or to give effect to the *Occupational Health and Safety Act 1983*.

25.4 This reviewed award replaces the Ski Industry (State) Award published 12 March 1993 (273 I.G. 972), as varied and rescinds and replaces the Ski Industry Remuneration (State) Award published 8

may 1998 (304 IG 824), as varied.

26.5 The changes to give effect to section 19 of the Act and the Commission's Principles for Review of Awards shall take effect on and from 19 April 2001.

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(769) SKI INDUSTRY (STATE) AWARD

## PART B

### APPENDIX A Rates of Pay

Classification Group A SWC 2004 Weekly Rate \$ SWC 2005 Adjustment \$ SWC 2005 Weekly Rate \$

Lift Operator	560.70	17.00	577.70
Lift Attendant	492.50	17.00	509.50
Parking Attendant	492.50	17.00	509.50
Ski Patrol	620.50	17.00	637.50
Ticket Seller	524.70	17.00	541.70
Courtesy Staff	524.70	17.00	541.70
Snow Groomer Operator	658.00	17.00	675.00
Snow Maker	655.00	17.00	672.00
Driver	560.70	17.00	577.70
Resort Worker	519.70	17.00	536.70
Trail Crew	560.70	17.00	577.70
Ski Outlet staff	519.70	17.00	536.70

Group B Existing Daily Rate \$ New Daily Rate (incl SWC 2005) \$

Lift Operator	121.4849	125.1683
Lift Attendant	106.7083	110.3916
Parking Attendant	106.7083	110.3916
Ski Patrol	134.4416	138.1245
Ticket Seller	113.6849	117.3683
Courtesy Staff	113.6849	117.3683
Snow Groomer Operator	142.5666	146.25
Snow Maker	141.9166	145.60
Driver	121.4849	125.1683
Resort Worker	112.6016	116.285
Trail Crew	121.4849	125.1683
Ski Outlet Staff	112.6016	116.285

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(769) SKI INDUSTRY (STATE) AWARD

**APPENDIX B****Other Rates and Allowances**

Item No.	Clause No.	Brief Description	SWC 2004 Amount \$	SWC 2005 Amount \$
1 2 3 5(i)	(1) (2) (3)	Leading Hand Allowance In charge of 2 or more and up to and including 5 employees In charge of more than 5 and up to and including 10 employees In charge of more than 10 employees	0.48 0.69 0.81	0.49 0.71 0.83
4 5(I)		Sewerage Farm Allowance	7.37	7.59
5 5(1)		Equipment Allowance - Lift Operator, Lift Attendant or Courtesy Staff (Group A/B)	1.82	1.87
6 5(2), (5)		Ski Patrol or Trail Crew (Group A/B)	14.85	15.30
7 5(3)		Snow Groomer Operator, Snow Maker or Resort Workers (Group A)	1.24	1.27
8 11(v)		Meal Allowance during overtime: More than one hour After each subsequent four hours	8.69 7.10 8.95	7.30

"Note": These allowances are contemporary for expense related allowances as at 30 March 2005 and for work related allowances are inclusive of adjustment in accordance with the June 2005 State Wage Case Decision of the Industrial Relations Commission of New South Wales.

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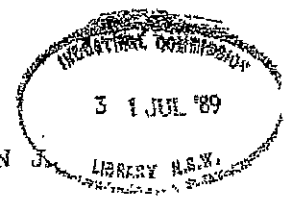
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INDUSTRIAL COMMISSION OF NEW SOUTH WALES

CORAM: WATSON J.

31 July 1989



No. 100 of 1987

SKI INDUSTRY &c. (STATE) AWARD - Application by the Australian Workers' Union, New South Wales Branch for an award.

No. 609 of 1988

NEW SOUTH WALES SKI INDUSTRY (MAJOR RESORTS) (STATE) AWARD - Application by Murray Publishers Pty Ltd and others for an award.

JUDGMENT

The Australian Workers' Union, New South Wales Branch, and certain employers involved in the ski industry have sought a first award for employees in the ski industry to replace the former course of dealing between the parties whereby the industry has been industrially regulated by a series of unregistered agreements between the AWU and individual employers.

The relevant AWU application, No. 100 of 1987 was filed on 11 February 1987, but was not pressed. Instead, the AWU sought to negotiate further separate unregistered agreements with the six resorts in the Snowy Mountains area. This proved unsuccessful, following which the employers unilaterally determined common rates and conditions to be offered to employees during the 1988 season. These rates and conditions, as determined by the various employers, (and which were applied during the 1988 season, subject to adjustment of 3 per cent and \$10.00 per week in accordance with the 1988 State Wage Case<sup>(1)</sup>), were incorporated in an application

which was filed by Murray Publishers Proprietary Limited, Kosciusko Thredbo Pty Limited, Mt. Blue Cow Ski Bowl Pty Limited and Guthega Development Pty Limited for a Ski Industry (Major Resorts) (State) Award.

Following the filing of the employers' application, the AWU sought to proceed also with its application. Interim awards were sought for the different resorts for the then current season, based on the previous agreements, but were not granted by the Commission for reasons stated in the Ski Industry Interim Award Case<sup>(2)</sup>. In declining to make the several interim awards claimed, the Commission stated:

Interim award principles are clear and need not be the subject of any lengthy discussion. The important consideration for the present application is that whatever might be done by way of an interim award should not prejudice the making of a final award. In that respect what the AWU has sought is not one award for the industry but four separate awards, one based on the agreement between the union and Kosciusko Thredbo Pty Limited, a second interim award based on what has been applied at Mt. Selwyn, Guthega and Charlotte Pass during the 1987 season, a third based on the 1987 agreement with Murray Publishers Pty Limited, (affecting Perisher and Smiggins Hole), and a fourth award, (affecting Mt. Blue Cow), based on rates paid in the 1987 season.....

The primary basis for the AWU's application for interim awards, pending the making of final awards in resolution of the two applications, is that for the 1988 season the employers, instead of being prepared to negotiate fresh agreements with the union, determined rates and conditions to be offered to employees..... These conditions of employment are different from those applicable during the 1987 season. In most but not all cases the resulting benefits to employees are said to be less than those applicable during the 1987 season. The rates contracted with employees are on an inclusive basis and do not provide for separate allowances for shift work. The AWU also complains that conditions relating to travel, either in the form of free transport or the payment of an allowance, no longer form part of the arrangements made with employees.

Further proceedings in relation to the 1988 season unfortunately had to be adjourned despite the arranging of hearings and inspections because of my unexpected unavailability.

Subsequent negotiations between the parties initially failed to resolve differences. The Commission accordingly at the request of the parties listed the applications for inspections and for hearing at the commencement of the 1989 season.

During the period of negotiations, the AWU had sought interpretation orders aimed at establishing that certain other awards were applicable to the work under consideration and that exemption applications should first be determined in relation to those awards. The AWU presumably saw some advantage in this procedure if it enabled it to establish, with the aid of s.87A of the Industrial Arbitration Act, a springboard for the making of a general award for the industry with higher rates than the employers were prepared at that stage to concede. It was an approach with an inevitable consequence. Other unions whose traditional areas of concern were thought likely to be affected became interested in the industry - in most cases without any previous interest or involvement. Apart from the unique nature of the employment involved, its limited seasonal period was unlikely to attract other unions to the rigours of the area. In the period since, various discussions have occurred between the AWU and other unions which have resolved differences. In certain cases, exemption orders from other awards have been made in Matter No.312 of 1989, on the basis of agreements recorded in

correspondence exhibited or in transcript. That there are any parallels in other awards, is an aspect which in general is disputed by the employers, a view now accepted by the AWU. Under the agreement since reached with the employers, the AWU has joined in submitting that the work is essentially award free although the exemptions sought in Matter No. 312 of 1989 were pressed to avoid the possibility of confusion as to obligations for the seasonal employment for which a separate ski industry award has been claimed.

At the eve of the inspections which were listed to commence at Jindabyne on Monday, 10 July 1989, the Commission was advised that the parties had reached agreement in principle and that if final agreement was reached, it would be sought that a consent award be made. Both sides asked that inspections be made but on a curtailed basis and that limited evidence be received to support the parties' contentions that it would be appropriate under the principles governing wage fixation for a first award to be made for the industry.

At a subsequent hearing, following the inspections and on-site hearings, the Commission, after hearing the parties in relation to the principles governing wage fixation, ordered that a new Ski Industry (State) Award be made binding on the AWU and the applicant employers with respect to employees working in specified classifications. A further resort employer, Charlotte's Pass Village Pty Limited, was joined as a party to the employers' application and the award.

The new award is made on the basis of the application by the various employers, the AWU application for a common rule award (Matter No. 100 of 1987) having been withdrawn as part of the agreement between the parties. It is applicable only to employment by the applicant employers and with respect to employees of those employers engaged to work in the classifications specified in the award. The agreed rates prescribed for the various classifications are as follows:

<u>GROUP A - WEEKLY</u>	<u>RATE OF PAY PER WEEK</u>
Lift Operator	\$391.70
Lift Attendant	\$330.50
Ski Patrol	\$448.40
Ticket Seller	\$357.70
Courtesy Staff	\$357.70
Snow Groomer Operator	\$488.00
Snow Maker	\$488.00
Driver	\$391.70
Resort Worker	\$357.70
Trail Crew	\$391.70

<u>GROUP B - DAILY</u>	<u>RATE OF PAY PER DAY</u>
Lift Operator	\$86.20
Lift Attendant	\$71.60
Parking Attendant	\$71.60

Group B Rates incorporate a one-twelfth loading for pro-rata annual leave.

The principle primarily relevant to the the making of the new award is that relating to first awards:

FIRST AWARDS AND EXTENSIONS TO EXISTING AWARDS

- (a) In the making of a first award, the long established principles shall apply i.e. prima facie the main consideration is the existing rates and conditions.
- (b) In the extension of an existing award to new work or to award-free work the rates applicable to such work will be assessed by reference to the value of work already covered by the award.
- (c) In awards regulating the employment of workers previously covered by an award or determination, existing rates and conditions prima facie will be the proper award rates and conditions.

- (d) Where a first award is made it shall contain a minimum rate for each classification of employee covered by it. Where the total rate determined for each classification in accordance with (a) and (c) exceeds the appropriate minimum rate for that classification, the excess amount shall be prescribed as a supplementary payment. For the purposes of this paragraph, the appropriate minimum rate will be assessed by comparison with similar classifications in other minimum rates awards.

It is unnecessary to deal in detail with the agreed conditions of employment as opposed to rates of pay. Those conditions substantially relate back to but are not entirely as favourable as the previous agreements which made different prescriptions as between the various resorts. Such conditions therefore, do not raise issues requiring special consideration under first award principles nor the general principles governing wage fixation.

The weekly and daily rates are composite rates established without the benefit of any clear yardstick such as minimum rates for comparable work in other awards, although in a contest to be resolved concerning an exemption sought by the applicant employers from the Shop Employees (State) Award<sup>(3)</sup>, one issue concerns competing claims as to which award is more favourable as to remuneration than the other.

No separate prescription is made in relation to shift work or weekend work which form essential aspects of the employment, demand for the services provided at the ski resorts being greatest at weekends during the season. Nor is there a separate allowance to compensate for climatic conditions or other features of the work including its seasonal nature, (except for a sewerage farm allowance and certain equipment allowances).

The agreed rates of remuneration nonetheless require special consideration in that they are in excess of existing rates, the prima facie basis to be adopted in the making of a first award. Existing rates in this case were those determined by the employers at a time when they were negotiating with the union. The agreement of the immediate parties provides for those rates to be adjusted upwards by ten per cent. This adjustment I am satisfied has to be viewed in the light of the loss of some earlier conditions and the incidence of special factors related to the employment, including the composite nature of the rates for shift and weekend work, climatic conditions and the seasonal nature of the employment. In my view, the rates determined and adopted unilaterally by the employers would clearly not provide an equitable basis for a first award in the industry without the agreed enhancement, despite the prima facie view to be taken of existing rates. That prima facie view arises primarily because, under first award principles, it is a measure which reflects the position the parties have established for themselves.

In that respect, however, the bargaining strength of the work force involved, whatever the AWU might have sought to do, was not high, with their separate areas of employment in isolated settings. Notwithstanding seasonal aspects, it is a form of employment much in demand with many more applicants for the work than positions available. It is not simply a matter of speculation that individual employees, either singly or in their relatively small groups, would be somewhat reluctant to press very strongly for a review of contract

rates or conditions offered for the limited seasonal employment involved when other aspects of that employment make it very much in demand by other aspirants for the work. The acceptance by individuals of the employer determined rates for the 1988 season and overall less favourable conditions than the previous season, with further contracts being entered into, apparently without demur, for the current season, clearly demonstrates this general position, although no doubt some employees would have been aware that the AWU was seeking some enhancement in remuneration and conditions.

A factor of some cogency, in considering the rates agreed in the light of the principles, is that the composite rates relate also to climatic conditions which are the basis of additional allowances in certain other awards operative in the Snowy Mountains area. Those conditions are severe, ranging to extremes of temperature in undeniably the coldest part of the State for outdoor work performed in the open at high altitudes, in particular, ski patrol, lift operators and attendants, snow groomer operators, snow makers and trail crew. The group of employees in the classification of snow maker provide a special illustration. Their work, which was seen under adverse conditions on the inspections, is performed on night shifts either before or after midnight on the slopes of the ski runs in the sub-zero temperatures required for snow making.

Certain employees are required to work broken shifts. Although this is presumably not a matter of complaint on the part of ski enthusiasts who can spend at least some of their time off on the slopes and who, therefore, would desire



such an opportunity, it is a factor which would justify added compensation in other awards.

A further aspect relied on as the basis for the rates sought to be prescribed is the seasonal nature of the employment. In general employees are engaged for the season only which may commence late and end early depending on snow conditions. It is a basis of employment which continues for a few months of the year only, for approximately 10 to 16 weeks. In the recent seasons it is said to have averaged 12 to 14 weeks. At the commencement of the season, if conditions are adverse with limited falls of snow, employees may get a late start in their employment despite their arrival in the area and the abandonment of other employment in some cases. They may find also that they are employed intermittently with the possibility also of being stood down, an arrangement which is a costly one for an employee or potential employee expected to meet accommodation charges and the cost of food, etc. once he has arrived in the resort areas in anticipation of employment. This position can continue after employment commences for weekly employees as well as daily employees. Where employees are not required on any day due to breakdowns or other factors, such as adverse conditions, the award provides that both daily and weekly employees may be stood down although there is a minimum payment prescribed of four hours if due to adverse conditions. The composite rate for daily hire is 1/5th of the weekly rate without any added loading except for the added annual leave component. Nor is it an offsetting factor or any consolation where the stand down is for adverse conditions, that an employee may have free

time. Because of the very conditions causing his stand down, he may also be unable to ski.

This intermittency and seasonal factor is not confined to the start of the season. The persistence of good snow falls or sub zero temperatures which permit snow making, are essential for the possibility of intermittency in engagement not to arise both during and at the end of the season as well. The composite rates are to be regarded as having been negotiated with this facet of past employment conditions well in mind.

In the light of these factors, in particular, the climatic and seasonal aspects, the employment is clearly one for young and healthy ski enthusiasts who are prepared for disadvantages and hardships of this nature, one assumes, because of the added attraction of the opportunity to ski on days off, although clearly the remuneration must on general principles pay regard to the conditions under which the employment is performed as, in my view, it does under the settlement reached.

There are some further compensatory factors in this unique type of short term employment which should also be recorded and included in the accounting. Accommodation subsidies are in general provided. Also apart from the opportunity to ski which is presented by the location of the employment, ski passes for the season are issued free of charge and in some cases free ski lessons are included. With daily passes for skiing costing over \$40 and weekly passes \$190 or thereabouts, the ski pass is of some value in money terms, in enabling the use of resort slopes and ski lifts free

of charge during shift breaks and on days off. Most days off are during the week when the slopes are less crowded, an important aspect also in assessing what disability might be said to be suffered by being required to work on most weekends.

Having regard to all these factors, the Commission is satisfied that the new first Ski Industry (State) Award is consistent with general principles as well as the special principles presently governing wage fixation.

Except for the Shop Distributive and Allied Employees Association, which, in other proceedings, is contesting an issue of exemption, none of the various other unions appearing in the proceedings from time to time sought ultimately to dispute the settlement, an attitude in general conditioned by undertakings and agreements reached with the AWU which are recorded in exhibited correspondence or in transcript.

By consent of the major parties, a Ski Industry (State) Award was made by order of the Commission on 20 July 1989 in Matter No. 609 of 1988 in terms recorded in Exhibit 17. As recorded earlier, Matter No. 100 of 1987 has been withdrawn. The new award will not operate as a common rule but is applicable to the consenting employers, Murray Publishers Proprietary Limited, Kosciusko Thredbo Pty Limited, Mt. Blue Cow Ski Bowl Pty Limited, Guthega Development Pty Limited, Mt Selwyn Snowfield Pty Limited and Charlotte's Pass Village Pty Limited, with respect to employees engaged to work in the classifications specified in the award. It will operate from the beginning of the first pay period commencing on or after that date and remain in force for a period of 30 months.

REFERENCES

- (1) (1988) 26 IR 24
- (2) (1988) AR 27/9/88
- (3) 242 IG 283

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INDUSTRIAL COMMISSION OF NEW SOUTH WALES

BEFORE: WATSON J

TUESDAY 25 JULY 1989

No 312 of 1989

GENERAL CONSTRUCTION AND MAINTENANCE, CIVIL AND MECHANICAL  
ENGINEERING & c (STATE) AWARD AND OTHER AWARDS

Application by the Australian Workers' Union, New South Wales  
Branch, for exemptions from awards

(PART HEARD)

---

MR FEENEY for the Australian Workers' Union, New South Wales  
Branch  
MR McARDLE for Perisher/Smiggins Ski Resort, Guthega Pty Ltd,  
Mt Selwyn Pty Ltd and Murray Publishers Pty Ltd  
MR GRAHAM for Mt Blue Cow Ski Bowl Ltd  
MR HARMER for Kosciusko-Thredbo Pty Ltd with MISS ROBERTS  
MR ROGERS for the Shop, Distribute and Allied Employees'  
Association of Australia, New South Wales Division  
MR LAWRENCE for the Retail Traders' Association of New South  
Wales

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LAWRENCE: We were not served with a copy of this application.  
We are not actually a party to these proceedings, but we would be  
seeking leave to appear.

HIS HONOUR: Is there any objection to Mr Lawrence appearing?  
(There was no objection)

What is the position about this matter, Mr Feeney?

FEENEY: This is the AWU's application asking for exemptions from  
various awards as set out in the schedule, appendix A.

What we would say at this stage is that the ski industry is a  
distinct industry in that there are a finite group of employers  
with employees employed on a limited seasonal basis fulfilling a  
large variety of tasks ranging from what we might describe as  
public relations tasks through the whole gambit, lift attendants  
down to general labouring.

What we would say in this matter is the classifications in  
the award are distinct for this industry.

We would further say that there may be, and I must emphasise "may be" some tasks within those classifications which are incidental to classifications under the awards for which we seek exemption. But again here I must emphasise "incidental". I think that came out during the inspections. If some of these classifications do fall within other awards within the jurisdiction of the various conciliation committees, we would still seek the exemptions to try and avoid overall confusion within the industry where we would have the situation of two awards applying.

I am aware of the requirements of section 87A and what we would say is our application and the classifications under the Ski Industry Award provide for conditions no less favourable than those awards from those which we seek exemption.

At this stage if I could just indicate to the Commission that this morning I received correspondence from the Federated Miscellaneous Workers' Union of Australia which grants exemptions for some of the awards mentioned in appendix A.

HIS HONOUR: That they will consent to exemptions?

FEENEY: Yes. I hand up a copy of that letter. My friends have already received a copy.

(The abovementioned Miscellaneous Workers' Union of Australia letter of 25 July 1989 was admitted and marked Exhibit A.)

HIS HONOUR: I note that letter and the awards. Are they listed in the application?

FEENEY: Yes, they are listed in the application. They would be in the application, awards numbered 12, 14, 15 and 16.

If I might take the Commission now to appendix A, the Transport Industry (State) Award Number 9 and the Transport Industry Motor Bus Drivers and Conductors (State) Award, Number 10.

HIS HONOUR: There is also the retail one.

FEENEY: Yes, and the Transport Industry Retail Award. I am in some difficulty with these matters in that when this matter was last before you when Mr Docking appeared, I believe Mr French also appeared and there were some private conferences in chambers where these matters were discussed.

I have been in contact with the TWU asking them what their position was. That was last week. They had received a letter from the AWU requesting the exemptions but to this stage had not replied. I note they do not appear here today.

HIS HONOUR: There is an Exhibit 1 in these proceedings tendered by Mr French. It is a letter from your union.

FEENEY: Yes, that was the letter from our union --

HIS HONOUR: There was an undertaking from your union which involved, as I understand it, the TWU consenting to these exemptions.

FEENEY: Yes, but we have had no exchange of letters arising from that with the TWU.

HIS HONOUR: I suppose one could turn up quickly what Mr French said in transcript on that occasion. Mr French said he would be prepared to concede four areas of transport work and they are named in the letter Mr French tendered. That is Mr Ecob's letter. Do you have a copy of that?

FEENEY: No, I do not.

HIS HONOUR: What are you asking me to do about the transport awards?

FEENEY: The exemptions?

HIS HONOUR: Yes.

FEENEY: Perhaps I should see the letter (shown).

HIS HONOUR: Mr French said he was happy to have those areas looked after by the AWU, provided the conditions were no less favourable.

GRAHAM: On page 11 of the transcript in Matter 312 on 8 May 1989, in the middle of the page this is said, "Our attitude is except for the four areas specified ... to the AWU." It goes on to explain the four areas (read).

HIS HONOUR: I suppose what needs to be sorted out is whether the consent award so far as driving is concerned only covers those areas and if it does it may be appropriate for an exemption to be granted from the transport awards based on the scope of the Ski Industry Award.

GRAHAM: Yes.

HIS HONOUR: But as you say Mr French has qualified himself in a way that might make it difficult to make an order in that form without him being involved in further discussions.

FEENEY: He refers particularly to those areas which our application 609 seeks to cover.

HIS HONOUR: And only those areas.

GRAHAM: Only those areas.

HIS HONOUR: Perhaps it can be recorded the award 609 in its scope covers only the areas outlined in Exhibit 1 and accordingly it would be appropriate for the exemption to be granted from those awards on the basis of the observations of the employers to the Ski Industry Award.

GRAHAM: It actually goes further than our application requests, particularly the delivery of passengers and freight around resorts. We are not seeking to cover that sort of person.

HIS HONOUR: If you do not go as far as Mr French mentions so much the better. Of course Mr French was dealing with it at the time in the context Mr Docking was pressing an application for a ski industry award to be a common rule in the area.

GRAHAM: Yes.

HIS HONOUR: It was not limited to your application or the scope of your application. It was a very broad attempt to cover all work in the area whichever the employer may be.

GRAHAM: That is correct. It was at that time we had discussion and indicated we did not seek to press for the breadth of the application that Matter Number 312 sought at the time.

HIS HONOUR: I see no difficulty in giving exemption from the three awards based on the scope of the Ski Industry Award, but I would like to give Mr French the opportunity to come back before the order is finally settled in case some qualification needs to be written into it.

GRAHAM: We may be able to do that by an exchange of letters.

HIS HONOUR: Unless someone has a view to the contrary I do not see any difficulty in granting an exemption from these three transport awards in the light of Exhibit 1 but the terms of it might need to be discussed further with Mr French and I will give him leave or the TWU leave to discuss its terms before the award is finally settled. Does that suit you?

FEENEY: No problem.

HIS HONOUR: Does that suit you Mr Graham?

GRAHAM: Yes.

HIS HONOUR: That tidies up Numbers 9, 10 and 11.

FEENEY: If I could take the Commission to 1 and 2, the General Construction, Maintenance, Civil and Mechanical Engineering (State) Award and the Plant Operators on Construction Award.

HIS HONOUR: Before you go to them I think I should look at that rather curious section 87B. It seems to suggest exemptions are not forever and a day. It says, "An exemption remains ... but it may be extended." I think it is sufficient if I make no specification.

FEENEY: Yes.

HIS HONOUR: The award in any event runs out in two and a half years, which is in the three years specified in section 87B. You were going to go to your award which involve the FEDFA, Mr Feeney.



FEENEY: Yes.

HIS HONOUR: What is the position about that?

FEENEY: Perhaps we should include Number 7 in that, the Engine Drivers and General (State) Award. I would be seeking an exemption from those awards on the basis of my original submission where I stated that it is our view any work that is perhaps covered by these awards would at best be incidental. With these three particular awards after carrying out the inspections I would suggest the only plant that is operated down there is the Kassbohrer. That was the vehicle on which we travelled.

HIS HONOUR: The snow groomer?

FEENEY: Yes. As was explained by Mr Graham during hearings in Matter 609, the Kassbohrer plant is peculiar to the snow industry in that it can only be used during the snow season as it requires snow to operate on. It cannot be operated during the summer months.

HIS HONOUR: I might be happy to accept all these contentions you are putting forward. Obviously there is a good deal of comety between you because the employers would want an exemption if one is needed. My difficulty is the FEDFA have been bobbing in and out of these proceedings and they may need to be heard on this issue. True enough Mr O'Connor was here but he may have left before it was stood over. Have you spoken to him about this?

FEENEY: No, I have not, but it is my recollection Mr O'Connor was present when these matters were last before you and he was aware of the hearing set down for today.

HIS HONOUR: He should have been and I am not suggesting otherwise. But he is a recent officer of the union. He has only been on the scene I think a couple of weeks.

FEENEY: I only beat him by a couple of weeks.

HIS HONOUR: And you are doing very well, Mr Feeney, if I may say so.

FEENEY: I appreciate what your Honour is saying. If you feel the FEDFA should be given an opportunity to be heard, we would not be opposed to that.

HIS HONOUR: Can I have it clearly what you are seeking? What are the awards again?

FEENEY: Number 1, the construction award, number 2, the plant operators and number 7, the Engine Drivers (State) Award.

HIS HONOUR: I do not want to hear you on whether exemption should be granted. I doubt if one is needed. But if it is needed then prima facie you can take it it would be appropriate in my view it be done. I would like to give the FEDFA a chance

to be here if they wish. You should I think contact them in relation to that, that is in relation to the plant operators and engine drivers. So far as the General Construction Award is concerned, I think you are the union primarily involved there and I would be prepared to give an exemption in relation to award number 1. But in relation to number 2 and number 7, what I will do is ask you contact the FEDFA and I will get a message to them as well and give them an opportunity to indicate whether they wish to oppose the granting of an exemption. If so, I will hear them. If they do not appear, I will make the order.

FEENEY: Perhaps if we could go to Number 8 in the appendix.

HIS HONOUR: If I could interrupt you again. There seems to be some suggestion when Mr O'Connor came today there may have been a picket line downstairs.

FEENEY: I arrived at the Commission at 10.30 and there was no picket line.

HIS HONOUR: I think the picket line was gone but Mr O'Connor may have found some difficulty.

FEENEY: That could well be so.

HIS HONOUR: My reaction to that is he should be here. I am concerned these matters should not be held up.

FEENEY: I took on board what your Honour said last time when it was raised that there could be problems with today's date. Your Honour made certain comments from the Bench and they were taken on board by the AWU, the employers and the SDA.

HIS HONOUR: It seems most unnecessary employees would be disadvantaged by this sort of thing but perhaps whatever the reason Mr O'Connor is not here, we can give him the opportunity. It is unfortunate if there has to be another day to deal with it but I will give it another day if necessary.

FEENEY: I agree with that course of action.

HIS HONOUR: There would be no need for you people to put anything at this stage until we hear what the FEDFA has to say.

FEENEY: If I could take your Honour to item 8, appendix A, the Clerks (State) Award. I would suggest your Honour's comments in relation to the FEDFA could well apply here also. I would submit on the basis of the award that was made we perhaps do not need an exemption.

HIS HONOUR: I thought the Clerks Union had bought into this exercise?

FEENEY: Yes, Mr Henry was here at one stage.

McARDLE: My recollection is Mr Henry withdrew on the basis of his satisfaction there was no work which could be covered by the Clerks (State) Award which would be embraced by the Ski Industry (State) Award.

HIS HONOUR: That is on page 13 of the transcript.

McARDLE: I think he was given that assurance by the employers and the Commission could be satisfied there would be no clerical work performed pursuant to this award.

HIS HONOUR: What he said was this at point 7, page 13, "At this stage I can simply advise ... and explain that." Then there was some discussion between Mr Docking and myself. Then Mr Graham says, "The employer application does not seek to cover any of the clerical staff employed in the office ... to the Clerks (State) Award." If that is so, why do we need an exemption from the Clerks State Award in Number 8?

FEENEY: The award made under the employers' application 609/88, on the classifications there are on clerks covered by that award and I would seek leave to amend by withdrawing number 8 from our application.

HIS HONOUR: There can be a further application should things change. Anyone object to that course? (No objection)

Number 8, the Clerks (State) Award, will be withdrawn from the application and deleted from appendix A. What is the next one?

FEENEY: If I could take number 4 --

HIS HONOUR: If I could take you to number 13 for the moment, that is the superannuation award which had nothing to do with it?

FEENEY: Yes.

HIS HONOUR: Do you wish to withdraw 13?

FEENEY: Yes. (No objection to withdrawal)

HIS HONOUR: Number 13 is withdrawn from the schedule.

FEENEY: We would also seek to withdraw number 17.

HIS HONOUR: Security?

FEENEY: Yes. (No objection to withdrawal)

And also number 18, another superannuation.

HIS HONOUR: That will be withdrawn also. That takes us back to landscape gardeners in 3 and golf clubs in 4. What is the position about them?

FEENEY: They are basically AWU awards. We would be seeking exemptions from those. But in support of those exemptions I should point out they are basically, if I could so describe them, summer awards. They would only have application in the area some time after November. Where they do affect the industry it is my understanding from our own files and what I have learnt from the inspections, the major area concerned if not the only area concerned is Thredbo. Thredbo is the only resort that has a golf club.

HIS HONOUR: Let us stick to landscape gardeners for the moment, number 3. That is basically your award?

FEENEY: Yes.

HIS HONOUR: Do you propose an exemption from that?

FEENEY: Yes we do.

HIS HONOUR: It is only Thredbo?

FEENEY: Yes.

HIS HONOUR: Does any problem arise which requires an exemption?

FEENEY: Yes.

HIS HONOUR: You are the servicing union involved there?

FEENEY: Yes.

HIS HONOUR: Do you seek an exemption?

FEENEY: Yes we do.

HIS HONOUR: There is no objection to it? (No objection)

That adds force to the list. The only awards left are the two shop awards?

FEENEY: Yes, numbers 5 and 6. Number 6 would be the liquor trades.

HIS HONOUR: That is Mr James' union. Has he been alerted to this exercise?

FEENEY: I am not in a position to know that. From my knowledge, I doubt if he has been. If I could give an undertaking to contact --

HIS HONOUR: Before you give an undertaking to contact Mr James, I thought Mr Graham's statement said restaurant employees was not going to be covered?

GRAHAM: That is correct. I think that is at page 14.

HIS HONOUR: Is there any need for exemption for restaurant employees?

GRAHAM: I think the appropriate course of action is withdrawal.

HIS HONOUR: But give leave to reapply if need be?

GRAHAM: Yes, that would be appropriate.

HIS HONOUR: I will delete the Restaurant Employees (State) Award and note it is withdrawn but there will be leave to reapply to any party.

GRAHAM: That leaves number 5.

HIS HONOUR: Which concerns Mr Rogers and Mr Lawrence.

FEENEY: Yes. I believe there will be some argument there.

HIS HONOUR: It has already been dealt with in the award by excluding shop employees. I did that the other day. I think the employers are saying without objection to seek an exemption they would agree to the award going in. Are they now seeking the exemption, is that what it amounts to?

FEENEY: Yes.

HIS HONOUR: Mr Rogers, you are alerted as to that and obviously you are here.

ROGERS: Yes.

HIS HONOUR: What is the position, Mr Feeney, you ask for the exemption as part of the arrangement that was entered into so far as the scope of the Ski Industry Award is concerned?

FEENEY: We originally in our application asked for exemption from the Shop Employees (State) Award. There were negotiations between the AWU and the SDA to try and resolve this matter. However, we thought the SDA and AWU did come to some agreement on it and there was an undertaking given by the secretary of the union, and in fact there was an agreement signed --

HIS HONOUR: That is an agreement in the other proceedings?

FEENEY: Yes, Exhibit 2.

HIS HONOUR: And you were not seeking to cover in your application or in your membership anyone whose main function would be that of a shop assistant or sales assistant?

FEENEY: Yes.

HIS HONOUR: What is the term now?

ROGERS: Shop employee.

HIS HONOUR: That is your position, Mr Feeney. I think the discussion which arose the other day, some of the courtesy staff may on some weeks be working the major and substantial part of their time on work which may be so categorised.

FEENEY: That was my understanding although my understanding from the inspections was there was rotation, that they would not spend a full week working in a shop or retail outlet but they would be rotated through various duties. But as your Honour said, we gave the undertaking we did not seek coverage for employees who spent their substantial time employed in shop and retail duties. My understanding of the matter is the employers have some submissions to make on this application and that the question revolves around one or two shops. It only affects a very small number of employees in the ski industry.

HIS HONOUR: Have there been discussions with Mr Rogers and Mr Lawrence?

FEEENEY: I am unable to answer that.

HIS HONOUR: I expressed the view the other day and the more I look at the award I am satisfied correctly, the rates fixed for courtesy staff take in such a wide range of functions beyond that of a shop employee and to fix a rate which is above a shop employee, it seemed to be if anything an advantage to Mr Rogers' members that he might be able to claim the benefit of either award or both awards whichever suited him and I therefore counselled he should not bother getting the award written in the terms it was in clause 23 (2) but he did persist with his application and I think you people consented at the time on a without prejudice basis. You now wish to change that?

MCARDLE: I take your Honour's point the rates for courtesy staff particularly if you have regard to say junior employees are more favourable whatever the circumstances than rates available under the Shop Employees (State) Award. So there would be no disadvantage to the employees concerned if they were covered by this award and excluded from the Shop Employees (State) Award. Having said that, just in conference with Mr Graham and Mr Harmer a moment ago the point was made it is possible if the employees whom we are discussing are described as shop workers then the AWU would not have constitutional coverage for them. If Mr Feeney and Mr Rogers see some value in this proposition we would be willing to note rights of coverage to the SDA for such employees still exist and if it came to pass the exemption was granted and the employees concerned were held to be exclusively covered by the Ski Industry (State) Award and not covered at all by the Shop Employees Award, then the rights of the Shop Assistants Union to approach them and recruit them would not be affected. It may be an area of common ground between the parties.

HIS HONOUR: If the Shop Employees Union are going to be involved for a handful of people who are employed for 16 weeks maximum during the year by these resort proprietors or some of them, then no doubt they will get an organiser on the job and look into it. But as I understand it, the scope of the award does not cover the various franchise shops or village shops in the area. The employers are not parties to the award, is that right?

MCARDLE: The industry of the employers there is not the ski industry, it is conducting retail outlets.

HIS HONOUR: Why are the employers seeking to exercise their position at this stage to get an exemption, because are you not in this position, that you can observe the ski industry award and on some calculations I did make having in mind first award principles, it does not seem a shop employee would get anything like a courtesy staff employee at your resort. So if you are prepared as an employer to observe this award for courtesy staff who should be doing some shop employee work then so be it, you will not be in jeopardy of failing to pay on Rae v Radano and like cases. You would be paying more than is due to the employee. On the other hand you are in a position to look

into the situation now that sub-clause 2 has been written in excluding anyone within the scope of the Shop Employees Award and you can if you are an employer, one of the six, say, "X and Y, you are certainly employed as courtesy staff but the award does not apply to you and this week you will receive the lower rates applicable under the shop awards." I would imagine it unlikely any employer would do it but the Clerks Union in seeking that exclusion is giving that employer the opportunity. What puzzles me is why you want to do anything about it at this stage. I would have thought you might want to see how the award goes for the rest of the season and if some employer then wants to take advantage of the Clerks Award then it is open for him to do so. On the other hand if some difficulty arises or confusion arises and an exemption ought to be granted, then you can renew your application.

HARMER: Just in relation to Kosciusko-Thredbo Pty Ltd, we have some 13 employees in two outlets. Whether they are shops or not is debatable. We have one located in Jindabyne. Due to the fact up until last week we did not fully understand the nature of the agreement between the AWU and SDA we in fact anticipated there would be consent to the exemption and for that reason the inspections were somewhat abbreviated. We did not inspect the outlets at Thredbo at all.

HIS HONOUR: I think we saw one at Jindabyne though.

HARMER: We certainly did. The employees engaged down there are obviously engaged full-time in that particular outlet. We cannot rotate them onto the slope which is a facility some of the other resorts utilised.

HIS HONOUR: As the award now stands they are not entitled to the benefits of this award unless you are prepared to grant them that. You can grant them those benefits if you want to but the Shop Assistants Union has now got a position whereby these people are not entitled to what benefits may flow from your award.

HARMER: What we were faced with the other day was the prospect of being bound by both awards. Depending on the age of the employee, the employee will be better or worse off under either of the awards.

HIS HONOUR: There can be a situation where the Shop Assistants Award can produce a higher rate.

HARMER: Yes although we cannot see better benefits overall. At the 21 plus level taking into account the fact we have to roster all our employees at weekends we would be in breach, we would not meet the requirements of the Shop Employees Award if we paid the flat courtesy staff the all-in rate every week.

HIS HONOUR: Cannot weekend work be performed now subject to penalty rates?

HARMER: It is subject to penalty rates. Multiplying the base rate by the Saturday and Sunday penalties you come up with a rate above our all-in rate.

HIS HONOUR: That surprises me. That qualifies what I have said. Am I not bound to apply section 87A? I have to find the employees are not worse off.

HARMER: That is the position. We have had submissions to the effect section 87A can be sustained and an exemption granted given some employees if the Shop Employees (State) Award was paid would undoubtedly suffer a large reduction in pay. There are a number of other factors which we say are relevant to section 87A, particularly the conditions of flexibility available under our award giving the employers the ability to have their rostered days off for example during the week and other factors which we would seek to address your Honour on. I discussed the matter with Mr Rogers and I understand he is determined to oppose the exemption. I am instructed we cannot be bound by both awards, that the impact of that would be catastrophic. We press for the exemption and if successful we would look at the variation made the other day to the ski award. As the situation currently stands with both awards as currently expressed, at present in the absence of an exemption we would have to comply with the Shop Employees (State) Award. All employers seek to apply the Ski Industry (State) Award and we think it is more favourable to the employees and in their best interests in accordance with section 87A. That would be the effect of our submissions today.

HIS HONOUR: Are you the only employer involved in that, Mr Harmer?

HARMER: As I understand it, all of the resorts do have outlets which may or may not constitute retail outlets. I think all of the resorts would prefer to have an exemption granted just to avoid the contingency an employee may now be found to be covered by the Shop Employees (State) Award.

HIS HONOUR: Are you ready to proceed with that issue today?

HARMER: I am. In order to assist this case we faxed two affidavits which we seek to present to the Commission in order to assist as background to the submissions. We do have the personnel manager from Thredbo present who is prepared to provide direct evidence today. I would like to ascertain from Mr Rogers if he has any opposition to those affidavits being utilised?

ROGERS: I do not object to the affidavits.

HIS HONOUR: Perhaps I should ask Mr Lawrence about his attitude.

LAWRENCE: In relation to the proceedings today, this is the first time my Association is actually aware that an application for exemption from the Shop Award has been made. We would have no objection to the exemption going through with the proviso we have leave to have these proceedings reopened after examination of all the relevant facts. We have not actually received an application in relation to this matter, nor have we seen a copy of the award which has been made in relation to the ski industry prior to day. ~~So we would have no objection to the application being approved by the Commission on the proviso my Association~~



has a leave reserved provision to come back and have these proceedings reopened forthwith if we have a problem in relation to the matter.

HIS HONOUR: Subject to leave reserved you are neutral?

LAWRENCE: We are neutral. We do not want to hold up these proceedings. The employers bound by the ski award are not members of my organisation. The principal reason I am appearing is to protect other members of my Association if flow-ons do arise.

HIS HONOUR: The application is restricted in its scope and it does not relate at this stage - and as far as I am aware it is not foreshadowed that there should be any change - it does not relate to other employers beyond the six named resort operators.

LAWRENCE: I take on board those comments.

HIS HONOUR: The AWU has withdrawn its more general application.

LAWRENCE: I take that on board, but we have not been notified in relation to these proceedings. Anything that does happen to the Shop Employees Award we do take an interest in.

HIS HONOUR: Mr Rogers, are you taken by surprise or are you ready to proceed?

ROGERS: I am ready to proceed. I am in two minds what the correct order should be. It seemed to me appropriate those contending for the exemption should put their case.

HIS HONOUR: I am not asking you to answer the case until we hear what it is. I am more concerned to know if you are ready to go ahead.

ROGERS: Certainly I am. If I could say this, there is one matter which only came to my attention this morning, which is the only application for an exemption, as I understand it the AWU application in Matter 312/89. In my submission that means there is on one or two grounds no application before the Commission for an exemption. The first of those grounds would be the AWU lacks constitutional capacity to seek variations to the Shop Employees (State) Award. The second of those grounds is by virtue of paragraph 4 of Exhibit Z in the proceedings which were before your Honour last week, the AWU undertook, and I will read from it, "Provided further the Australian Workers' Union, New South Wales Branch shall delete point 5 Shop Employees (State) Award from appendix A ... 312/89." I take that to mean the AWU by its undertaking would be seeking leave to withdraw the application for exemption. I recognise no such application has been granted by the Commission.

HIS HONOUR: It has not really been made. It is rather being pressed on one view.

ROGERS: One view is the AWU is in no position now having reached a formal agreement between the unions which has been filed with this Commission to contend other than as set out in paragraph 4.

The alternative view is one could attach no weight to the submissions the AWU makes that it presses its application for exemption from the Shop Employees (State) Award. The jurisdictional issue still arises - I do not intend to catch the parties by surprise - I had assumed from remarks made at the bar table last week the employers had similarly had an application in for exemption. If there is no application in for exemption from the employers, my submission is there is no application validly before the Commission. I would not be prepared to run that argument today. I could, however, run the merits argument whether the application ought to be granted or not granted. I say that for the purpose of not catching anybody by surprise.

HIS HONOUR: I am pleased you raised that point at this stage. Mr Harmer, I have apparently not had the full benefit of the calculations you have made. I would like to see them so I would need to be assisted in relation to that. But there is this very real difficulty, I imagine I can proceed not in 312 if what Mr Rogers says is right, but I possibly could proceed under the umbrella of Matter Number 609. I express no view about that because I would need to hear Mr Rogers whether he agrees with that proposition. It may be I could hear the argument the AWU has jurisdictional coverage. I can also hear argument from Mr Rogers whether or not the AWU would be in breach of an agreement to which I should attach some weight if the AWU presses on with its application. I could easily form the view whatever the jurisdictional answer may be that I would not be prepared to proceed with Matter Number 312 as affecting the Shop Employees Award having in mind the terms of Exhibit Z to which Mr Rogers has referred. The whole thing can be cured by proceeding under Matter Number 609 and it can be cured by the simple expedient I thought would be followed, that an application for exemption would be filed. I thought that might have been done following what was said the other day. That could be filed by Thredbo and the matter could be resolved on that. It could be filed by 2pm and I could give you leave for short notice. I am quite happy to proceed this afternoon.

HARMER: I must admit yesterday I thought the AWU would be pressing their application. Perhaps if we could have a short adjournment I could discuss it with the SDA and the other employers to see if the other parties are prepared to press on with the matter after lunch. Perhaps if we could have an adjournment until 2pm during which time we will decide if we press on.

HIS HONOUR: It may be convenient to set the matter down on another date. That is something you can consider.

ROGERS: I am content to press on this afternoon if the matter can be resolved, but I would hope another date could be set aside.

HIS HONOUR: If it assists in your consideration I am not proposing to entertain a jurisdictional argument if the result ~~would be whatever answer I give the matter is cured by a certain application.~~ In other words because it can be rectified it is an issue which should not arise.

ROGERS: I understand that. The difficulty I see with your Honour's approach, if the matter proceeds in the absence of jurisdiction even if the SDA as a party raises no objection, it does call into question or may call into question at some later date the validity of any award or exemption.

HIS HONOUR: You misunderstood me. If the employers make the application then I have jurisdiction to entertain it.

ROGERS: Yes.

HIS HONOUR: In other words it can be cured by that simple expedient.

ROGERS: I thought your Honour was putting even in the absence of an application by the employers your Honour would not entertain an argument on jurisdiction and might make the award in the absence of such application.

HIS HONOUR: No, I am not getting on that slope. Likewise, Mr Rogers, I am reluctant to proceed under Number 312 in any event because of Exhibit Z. I think that would put the AWU in an invidious position if they were the vehicle for this exemption.

Mr Lawrence, I thought I would indicate to you unless you want to be involved at 2pm you can have leave to be away, but I am not suggesting you leave. I am happy you should stay if you wish.

LAWRENCE: We will take those comments on board.

(Luncheon adjournment)

UPON RESUMPTION

HIS HONOUR: We will dispose of 312 of 1989 at this stage. I propose to exclude the Shop Employees Award on the basis that that will be dealt with in other proceedings. USA

FEENEY: Your Honour, it perhaps might help proceedings if I could seek leave to withdraw Clause 5 of Appendix A - that is Shop Employees Award.

HIS HONOUR: Yes.

FEENEY: My friend has agreed to that course of action. Perhaps that might leave your Honour open to make the orders of 312, and then we could proceed with the other matters as my friends will wish.

HIS HONOUR: Thank you Mr Feeney. In matter number 312 of 1989 the Commission grants exemptions from the following awards based upon the observance of the Ski Industry (State) Award. The General Construction & Maintenance, Civil & Mechanical Engineering &c (State) Award, Landscape Gardeners &c of Building & General Construction and Maintenance, Civil & Mechanical Engineering &c (State) Award, Golf Club Employees (Country) Award, Transport Industry (State) Award, Transport Industry Motor Bus Drivers & Conductors (State) Award, Transport Industry Retail Industry (State) Award, Miscellaneous Workers Kindergartens & Child Care Centres &c. (State) Award, Miscellaneous Gardeners &c (State) Award, Miscellaneous Workers General Service (State) Award, Parking Attendants, Motor Car Washers &c (State) Award. The exemption in each case will be granted to Murray Publishers Pty Ltd, Kosciusko Thredbo Pty Ltd, Mount Blue Cow Ski Bowl Pty Ltd, Guthega Developments Pty Ltd and Charlotte's Pass Village Pty Ltd subject to the observance of the Ski Industry (State) Award; in each case, the exemptions will take effect on and from 20 July, 1989 - which should be the first pay period commencing on and from 20 July. The Commission will also be prepared to make some orders of exemption with the same restrictions with respect to the plant operators of the State Construction Award, the Engine Drivers &c General (State) Award.

I would not wish to hear the parties presently appearing in relation to orders with respect to those two awards. However possibly due to the problems associated with the picket line, the representatives of the Federated Engine Drivers & Firemens Association did not attend today. Normally the Commission would not regard that as a basis for delay. The processes of the Commission should not be interrupted by stoppages of the nature which has occurred today. Notwithstanding that position the FEDFA will be given the opportunity to put any submissions, or raise any issues concerning exemptions from the two awards referred to should they wish to do so.

The matter will be listed again tomorrow for 10.30 a.m. for hearing to enable that to occur. I will give directions immediately that the FEDFA be informed of that listing so that

although they should have been here to deal with the matter today, they can a further opportunity to deal with it tomorrow.

(Discussion ensued off the record)

(Further discussion ensued re dates)

HIS HONOUR: I was going to suggest some arithmetic might be done to assist with any matter Mr O'Connor raises. But Mr McArdle you will have a reply which can be put in writing if necessary.

McARDLE: Yes, your Honour.

HIS HONOUR: Matter No 312 of 1989 will stand over to Wednesday, 26 July, 1989 at 10.30 a.m. for hearing.

11/2/89

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INDUSTRIAL COMMISSION OF NEW SOUTH WALES

BEFORE: WATSON J

WEDNESDAY 26 JULY 1989

No 312/89

GENERAL CONSTRUCTION AND MAINTENANCE, CIVIL AND MECHANICAL  
ENGINEERING &c (STATE) AWARD AND OTHER AWRDS  
Application by the Australian Workers Union, New South Wales  
Branch, for exemptions from awards.

(PART HEARD)

MR O'CONNOR for the Federated Engine Drivers and Firemen's  
Association of Australasia (NSW)

---

HIS HONOUR: As I indicated to the parties yesterday, Mr  
O'Connor, I would be prepared to make orders of exemption from  
the two relevant awards affecting your interest, that is the  
Engine Drivers General and the Plant Operators on Construction  
Awards. They are two of the awards in the schedule to the notice  
of motion, the exemption to be limited to the named employers who  
are the applicants in the Ski Industry Award matter, that is the  
group of employers, Murray Publishers, Guthega Pty Ltd, Mt Selwyn  
Pty Ltd, Perisher/Smiggins Ski Resort, Mt Blue Cow and Kosciusko  
Thredbo. They are the respondent employers to the new Ski  
Industry Award which I made last week. It would be limited to  
them and would be subject to the observance of the Ski Industry  
Award. That award is for thirteen months only so the exemption  
will be limited to the life of the award. Under s 87B there is a  
statutory limitation in any event. That order will take effect  
from the date of variation of the award which was the first pay  
period on or after 20 July 1989. That was subject to any  
representations that your union wished to put in the matter.

I understand from a message received yesterday you do not  
want to put any submissions to the contrary?

O'CONNOR: That is correct.

HIS HONOUR: I should indicate of course whereas the Australian  
Workers Union is the moving party in the Ski Industry Award and  
your union has not been involved in negotiations or agreements in  
the past, that this does not represent a demarcation order. It  
is simply an exemption from the award. In other words, I am not  
making any order of demarcation. That is an issue that may arise  
between you, and it is something that nobody ever got to the  
barrier in the course of negotiations. So it remains outstanding  
if ever that problem arises.

O'CONNOR: For the record we have no objection to those exemptions as I explained yesterday. However, we obviously reserve our right and we are glad it is limited to the employers in the award. But we reserve our rights should there be any further classifications in the award sought in the future in the thirteen months of the existence of the award. For instance, if there were to be some form of construction classifications attempted to be put into the award then naturally we would be back in the Commission objecting to that. But as the classifications stand at the moment, we have no objections but we wish to place on record should other classifications be sought then we would be looking at them as a result to see if any of our areas are involved. Obviously following on from that we would be expected to be notified of any changes to the award sought by any party.

HIS HONOUR: There will be leave reserved in the matter. It will be a general leave reserved so you will not be restricted in any application you may wish to file. Thank you for your assistance in the matter. What you have said is noted.

The Commission will make further orders in matter 312/89 and exempt the employer respondents to the Ski Industry (State) Award who should be named in the order from the provisions of the Plant Operators on Construction (State) Award and the Engine Drivers & General (State) Award.

The exemption in each case will be expressly subject to the observance of the Ski Industry (State) Award.

The exemption order in each case will take effect on and from the first pay period commencing on or after 20 July 1989.

There will be leave reserved to apply generally to the relevant union in the case of each order of exemption made in this matter.

The form of the order in each case will be settled before the Registrar.

If any issue arises the matter can be raised again with the Commission at a speaking to the minutes of the order.

Is there anything further affecting you, Mr O'Connor?

O'CONNOR: No.

HIS HONOUR: I propose to issue reasons for the order I made probably on Monday. I do not think you are particularly concerned but I thought I would give you notice of that now. As far as I can recall nothing will be said about your union or your union's involvement directly, although there is a reference to other unions being interested in the Ski Industry Award. As was indicated, that award only applies to employees in the classifications specified who are employed by the applicant employers, and it is not a common rule award.

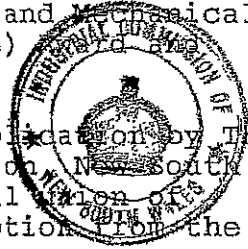
That I think concludes matter 312/89 subject to any difficulty about the form of order.

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BEFORE THE INDUSTRIAL COMMISSION  
OF NEW SOUTH WALES

No. 312 of 1989

IN THE MATTER of General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) others,



IN THE MATTER of an application by The Australian Workers' Union, New South Wales Branch, industrial employees, for an exemption from the said awards,

AND IN THE MATTER of the Industrial Arbitration Act 1940.

Minutes of ORDER/AWARD

**MINUTES SETTLED**  
*A. M. [Signature]*  
Deputy Industry Registrar 26/2 191



BEFORE THE INDUSTRIAL COMMISSION )  
)  
NEW SOUTH WALES )

No. 312 of 1989

IN THE MATTER of General  
Construction and Maintenance,  
Civil and Mechanical Engineering,  
&c. (State) Award and others,

IN THE MATTER of an application  
by The Australian Workers' Union,  
New South Wales Branch,  
industrial union of employees,  
for an exemption from the said  
awards,

AND IN THE MATTER of the  
Industrial Arbitration Act 1940.

BEFORE THE HONOURABLE MR JUSTICE WATSON  
26 JULY 1989

THE COMMISSION MAKES AN ORDER as appears in the attached schedules A and B.

THE COMMISSION MAKES AWARDS varying respectively the -

1. Plant Operators on Construction (State) Award, published 4  
July 1990, as varied, as appears in schedule A attached, and

2. Engine Drivers, &c. General (State) Award, published 15  
January 1960 and reprinted 29 October 1980 and further reprinted 11 January  
1984, as varied, as appears in schedule B attached.

*WA*

SCHEDULE A

PLANT, &c. OPERATORS ON CONSTRUCTION (STATE) AWARD

THE INDUSTRIAL COMMISSION OF NEW SOUTH WALES

Application by The Australian Workers' Union, New South Wales Branch,  
Industrial union of employees.

(No. 312 of 1989)

before the Honourable Mr Justice Watson

26 July 1989

VARIATION

1. Insert after clause 28, of the award published 18 December 1974, reprinted 29 October 1980, further reprinted 22 February 1984 and further reprinted 4 May 1990 (256 I.G. 49), as varied, the following new clause 29:

29. Exemptions

This award shall not apply to the following employers:

Murray Publishers Pty Ltd  
Kosciusko Thredbo Pty Ltd  
Mt Blue Cow Ski Bowl Pty Ltd  
Guthega Development Pty Ltd  
Mt Selwyn Snowfield Pty Ltd  
Charlotte's Pass Village Pty Ltd

who are covered by the Ski Industry (State) Award.

2. This variation shall take effect from the beginning of the first pay period to commence on or after 20 July 1989.

*HC*

SCHEDULE B

ENGINE DRIVERS, &c., GENERAL (STATE) AWARD

THE INDUSTRIAL COMMISSION OF NEW SOUTH WALES

an application by The Australian Workers' Union, New South Wales Branch,  
Industrial union of employees.

(No. 312 of 1989)

before the Honourable Mr Justice Watson

26 July 1989

VARIATION

1. Insert new subclause F after subclause E of clause 25, exemptions, of the award published 15 January 1960 and reprinted 29 October 1980 and further reprinted 11 January 1984 (232 I.G. 205), as varied, and insert the following:

F. This award shall not apply to the following employers:

Murray Publishers Pty Ltd  
Kosciusko Thredbo Pty Ltd  
Mt Blue Cow Ski Bowl Pty Ltd  
Guthega Development Pty Ltd  
Mt Selwyn Snowfield Pty Ltd  
Charlotte's Pass Village Pty Ltd

who are covered by the Ski Industry (State) Award.

2. This variation shall take effect from the beginning of the first pay period to commence on or after 20 July 1989.

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PM:CAT:6

INDUSTRIAL COMMISSION OF NEW SOUTH WALES

BEFORE: WATSON J

MONDAY 8 MAY 1989

No. 312 of 1989

GENERAL CONSTRUCTION AND MAINTENANCE, CIVIL AND MECHANICAL  
ENGINEERING, ETC (STATE) AWARD AND OTHER AWARDS.  
Application by the Australian Workers' Union, New South Wales  
Branch for exceptions from awards.

- 
- Mr Ebbutt appeared for the MTIA.
  - Mr Thorpe appeared for the AMWU.
  - Mr Kelly appeared for the Employers' Federation of New South  
Wales and the Earthmovers and Contractors Association.
  - Mr Pyers appeared for the MBA.
  - Mr Docking appeared with Mr Feemey for the AWU.
  - Mr Henry appeared for the Federated Clerks' Union.
  - Mr Field appeared for the SDA.
  - Miss Kassis appeared for the ETU.
  - Mr Harmer appeared for Kosciusko Thredbo Pty Ltd.
  - Mr Graham appeared for Mount Blue Cow Ski Bowl Pty Ltd.
  - Mr McArdle appeared for the Perisher Smiggins Ski Resort, Murray  
Publishers Pty Ltd, Guthega Developments Pty Ltd and Mount  
Selwyn Pty Ltd.
  - Miss Bishop appeared for the Federated Miscellaneous Workers'  
Union.
  - Mr Harden appeared for the Chamber of Manufactures.
  - Miss Moore appeared for the FEDFA.
  - Mr French appeared for the TWU.

DOCKING: I expect Mr Feemey will be shortly appearing this  
morning.

HIS HONOUR: Miss Moore indicated to my associate this morning  
that she proposes to be in this matter also.

HIS HONOUR: Mr Docking, I have read the grounds. I take it  
what you are seeking is to come to an establishment union for  
the snow ski resorts.

DOCKING: The purpose is to facilitate the AWU becoming the  
industry union for the ski industry. Your Honour would recall  
in the interim judgment issued last year your Honour had

expressed a prima facie view that it was appropriate to have one award regulating the entire ski industry in the Snowy Mountains region.

Perhaps an advantage that has arisen from the unvoidable delay in these applications is that time has permitted the AWU to obtain a fuller picture as to what occurs in the industry. Originally the AWU had indicated it appeared the work was substantially award free. It appears that is not exactly the case. There are indeed, as we have always alleged last year, a number of AWU awards which cover certain areas of the work. In addition, it appears there are certain common rule awards of other unions which would pick up certain facets of the industry.

Another issue is that the ski industry, on consideration by the union, is not limited to the six ski resort employers. It appears certain work is also contracted out by those principals, and we say such work is also an integral part of the industry. Further, there are a number of separate enterprises which perform work in the industry. If we are to achieve that goal of a single award covering the industry, we believe this exemption application is essential.

Your Honour would be well aware of the difficulties that would arise if there were two separate awards covering the same areas of work. For example, the inconsistencies which might develop, for example, on methods of hire, pay rates, penalty rates and other relevant conditions. So the purpose of this application is to avoid those inconsistencies developing. It appears some of the other awards have obviously come first, so if the AWU is to achieve a single award we understand we would need to achieve exemptions from those awards.

HIS HONOUR: And then only for three years.

DOCKING: Yes. Under s.87B of the Act it appears that there is a maximum three year period possible. However, our draft order and/or award would seek those exemptions for a year's duration. However, if this exemption application proceeds successfully, the duration of the exemptions is a matter to be determined by your Honour.

One area where it appears the AWU would recognise the existing membership of other unions is in the area of tradespersons' work. Specifically I refer there to the Amalgamated Metal Workers' Union and the Electrical Trades Union. They have, as I understand it, already got membership at certain ski resorts. We are not seeking to interfere with the trades area of work, however we are seeking to pick up all other areas.

HIS HONOUR: Can I just follow your application. Your application is to achieve this goal of one award which embraces a variety of applications in the resorts.

DOCKING: Yes, your Honour.

HIS HONOUR: There seems to be a ground which relates to avoiding a multiplicity of unions. Exemptions from the other awards of course doesn't demark the other unions. The other unions could be parties to this single award.

DOCKING: Your Honour will recall in the interim judgment, and it appears at page 3 of the interim judgment, the Commission directed that certain unions should file demarcation applications to seek the necessary orders. As I recall the unions concerned were the Shops' Union, the FEDFA, the Miscellaneous Workers' Union, the Theatrical Amusements Union, and there may have been one or two others. However, as I understand it no such applications have been filed by those relevant unions.

HIS HONOUR: What effect do you say that has?

DOCKING: Well, I would assume for those particular unions, given there was no demarcation application filed, that there is no demarcation dispute with those unions. The position may not be that for certain unions. I would indicate for at least the Miscellaneous Workers' Union and the Transport Workers' Union we have reached consent on the exemption applications. So for those unions it would not be necessary to obtain any sort of demarcation determination.

HIS HONOUR: Are they going to have you look after cleaners and others and truck drivers and the like. Is that what it is?

DOCKING: Perhaps if I firstly deal with the Transport Workers' Union. We have had negotiations with representatives. We can report there is consent.

HIS HONOUR: Consent to the exemption from the award?

DOCKING: Yes, your Honour. I can tender a copy of a letter from the AWU to the TWU which records the agreement reached between the parties.

HIS HONOUR: We will come to that later. I am just getting attitudes at the moment, and I would need to talk to the other parties before you start developing detail like that. What you are saying then is that these two unions have agreed to the exemptions. Have they agreed to the further step that you cater to the interests of their members or potential members in the area?

DOCKING: As I understand it, that is the case.

HIS HONOUR: What about the other unions? What about Mr Field?

DOCKING: As you would recall from the duty statements which have

been on public record for some time, there are people who man ski shops in the industry. We have had them as members for over a decade and we would be continuing to service those people. Now, it appears they may have decided to claim those particular workers, who, I hasten to add, are indeed employees engaged at the actual ski runs and in some cases at the bottom of chairlifts. That would be developed more fully if necessary.

HIS HONOUR: What about the shops in the resorts?

DOCKING: The shops, as I understand it, would fall into two general categories. The first category would be shops which are contained in what is known as a ski centre or ski terminal at each resort. Now, these are typically located at the bottom of chairlifts or T-bars. Further, some of them are actually located at the very bottom of the ski runs, and it is arguable they are part of the ski run, as it is possible, as I understand it, to ski around certain of these shops.

HIS HONOUR: But are there not shops that sell confectionary and those sorts of things?

DOCKING: Indeed. As to what the shops might sell, it extends from anything from a necessary feature of a ski resort of hiring out skis, boots, bindings, also selling ski gear such as hats, goggles, glasses, sun cream and the like. Another category of shop would be of course those that sell food to the skiers that choose to use the resort's facilities. The food would extend to the usual sort of takeaways, some hot meals and of course also liquid refreshments. So they are the people we would be seeking to pick up in terms of shop employees. In this day and age of structural efficiency and restructuring efficiency, there is much to be said of course for one union in an industry.

HIS HONOUR: I am not expressing any views one way or another. I am certainly not against that concept at the moment until I hear what you say, but I am a little concerned with all the appearances the extent of the interest in the matter and what happens here today, what is in front of the union in achieving this interesting objective.

DOCKING: Well, it would be desirable to do things the correct way from the beginning of any award being prescribed by the Commission and avoiding any difficulties at a later date with inconsistent award prescriptions.

HIS HONOUR: You say there is no contest, in any event, with at least two.

DOCKING: Yes, your Honour. I am in a position to detail the type of work we are talking about for those two unions and also there is one rider to our agreement with the Miscellaneous Workers' Union in respect of a particular category of workers.

HIS HONOUR: What category is that?

DOCKING: The AWU is prepared to agree that security people and cleaners employed by contractors would not be brought within the scope of a proposed AWU award. This is opposed to cleaners and security people who may be employed directly by the six ski resort employers, for example.

HIS HONOUR: Before we go any further, can you speak of the attitudes of others at the moment or should I go to the parties?

DOCKING: Taking the Electrical Trades Union, it appears there are two areas which need to be clarified, and we would be hopeful they can be settled by conferences between the relevant officers of the unions. Firstly, there is some concern about the coverage of the trades assistants when it comes to the construction and maintenance of ski lifts and T-bars and the like. Your Honour will recall, for example, the AWU had an underpayment claim which was settled amicably for a construction job down in the Snowy Mountains region last year. That's the type of construction work for which the AWU has a trades assistants classification cover, and I hasten to add so would the ETU, as I understand their award.

The second area is in the area of a handyperson. The AWU would need further information from Mr McArdle's client as to that classification. Your Honour may recall in a 1981 agreement, which is in evidence, and I think numbered Exhibit U or V, it records that in the technical service area it included handypersons. Certainly eight or nine years ago such a classification was picked up by unregistered agreements. So we need some clarifications from Mr McArdle's Murray Publishers client.

HIS HONOUR: Are qualified electricians doing that work?

DOCKING: To be frank, the AWU has not got that information to hand. The relevant officials who serviced the industry at that stage have now gone from the union. It belongs to Mr Preece's era.

HIS HONOUR: In any event you could surely clear that up with the ETU. I understand you are not seeking to embrace tradesmen and electricians.

DOCKING: Certainly for those electricians engaged by the companies and relevant contractors we are not seeking to cover such people. That would also apply to the metal workers.

HIS HONOUR: What if the resorts or one of the resorts wished to employ, say, a qualified fitter or a qualified electrical tradesman to do the electrical and other trades work, but also to do some handyman duties or handyperson duties. Would you be claiming that person?

DOCKING: We really would need clarification from the ski resort



employers as to duty descriptions. If that person is principally engaged as an electrician, then we would say it is appropriately dealt with by the relevant ETU award. Now, it does occur on occasions ---

HIS HONOUR: You are not seeking exemptions from the electrical trades awards or the various trades awards?

DOCKING: That is correct.

HIS HONOUR: That probably tidies that up. That's the Electrician (State) Award and the Boilermakers, Engineers and perhaps Sheetmetal Workers (State) Awards, you would not be seeking exemptions from those awards.

DOCKING: No, your Honour. You may recall that for example Kosciusko Thredbo is in fact bound by the Federal Metal Industry Award, which may create problems in seeking to cover those persons.

HIS HONOUR: That might help Miss Kassis. Is there somebody here from the AMWU?

THORPE: Yes, your Honour.

HIS HONOUR: Do the employers want to say anything at this stage or should I go around the unions first?

MCARDLE: I think it is essential to clarify something at this stage. We refer to Exhibit 1 and its qualification, Exhibit 12, which is the terms and conditions of employment which currently prevail for the employees subject to our application.

HIS HONOUR: For the moment I am dealing with this exemption application. There are no exhibits in that at the moment. If you are referring to exhibits in another matter you had better nominate that matter.

MCARDLE: No. 100 of 1987 and No 609 of 1988. It is very clear the classifications we are discussing - lift operator, ski patrol, ticket seller, courtesy staff, snow groomer operator, snow maker, driver, resort worker, trail crew, lift operator, lift attendant and parking attendant. Anyone not specifically contemplated by that classification structure is not, according to our contemplation, to be bound by the award arising from those proceedings. So it is not necessary to debate or discuss with anyone what the appropriate award coverage should be of anyone other than people who would be included in that category structure.

HIS HONOUR: Did that include shop assistants? You said ticket sellers.

MCARDLE: It would probably be that courtesy staff might include that. I would have to seek instructions on that, but it is our

contemplation that the employees who work behind a counter dispensing merchandise would be covered by this award.

HIS HONOUR: You are seeking to have them under the award?

MCARDLE: Yes.

DOCKING: Perhaps I could assist by reading Exhibit 10 in the joint matters of 100 of 87 and 609 of 88. At page 3 it states: "Resort worker ... and ski clothing." At this point of time I would not seek to go into what 100 of 87 contemplates.

HIS HONOUR: Can I just take it further. If I can pick a neutral one that can't possibly be embraced by this application, but no doubt there are illustrations like it. At Falls Creek, for example, there is a very well equipped shop in what seems to be a small village. They sell everything - bread, milk, you name it. I imagine you are seeking to cover anyone doing the general shop assistants' work in that field too, are you, at the resort?

DOCKING: Having worked at Falls Creek for a season I am familiar with that. Keeping in mind, of course, that that is a Victorian resort ---

HIS HONOUR: I picked it for its neutrality. I am sure we will have similar categories here.

DOCKING: That would go to the two categories of shops we would say are appropriately AWU, the first at the ski centre or ski terminal which has ticket selling and the like.

HIS HONOUR: That's Exhibit 10.

DOCKING: Yes, your Honour. The second category is those shops which are located often four-fifths of the way up a ski run, at the bottom of a T-bar chair lift, which sell the refreshments and food at particular resorts. So it is firstly those in the ski centre or terminal, which is most typically at a ski resort, and the second is those actually located on the ski runs themselves at Falls Creek. Depending on the availability of snow, the ski runs go right to the bottom carpark. So, for example, the shops that are probably in the bottom fifth of the ski runs we say are most appropriately covered by this AWU application, using that as an example.

HIS HONOUR: I thought at Mount Blue Cow when you got there with this new transport you got into a neat shopping centre where you could spend the day. What about those people?

DOCKING: Yes, your Honour. We would be seek to include such people, subject to perhaps some where the Federal Liquor Union Award might be applicable, for example, their cafeteria cum bar. That I would need to have clarified.

HIS HONOUR: Is there a liquor shop there too?

DOCKING: There is certainly a cafeteria which dispenses liquid refreshments, including alcohol.

HIS HONOUR: Mr McArdle, did you want to say anything more?

MCARDLE: Perhaps by way of expediting matters this morning it would be possible for us to move straight into a debate on Mr Docking's application for exemption.

HIS HONOUR: I am seeking attitudes at the moment. You are not going to get a chance to get into a full debate until I hear the attitudes of everyone else.

MCARDLE: Our attitude is that it is not necessary to be exempt from that which you are not bound. If it did come to debate our submissions would generally be that the schedule of the awards which has been tendered by Mr Docking is in every particularity not one which requires exemption, because the employees are not appropriately bound by the awards in question. So therefore it is not necessary to seek exemption. If we are going to look at what people do and say: Ha Ha, awards cover them, you might say Actors' Equity should be involved because there is a degree of routine in being a ski instructor, Pastry Cooks because there is food, the AMA because it is it is often necessary for medical practitioners to be employed in the resorts.

HIS HONOUR: Mr McArdle, you are getting into an area of unreality. If any of these resorts have a golf amenity there, it may be that the Golf Club Employees Award applies. Does your client have such an amenity?

MCARDLE: My client doesn't, but Thredbo has one which operates obviously only during the summer months.

HIS HONOUR: If the AWU wants to hive that activity off under this more general award, this establishment type of award, it is pretty clear that an exemption is needed there. If these shop employees are going to be embraced by the general award, it may be that an exemption would be needed from the Shop Employees (State) Award, unless you are going to be bound by both awards. I imagine your client has some short sort of a shop, at least one, probably several.

MCARDLE: My client is not engaged in the industry of golf clubs, nor is it engaged in the industry and callings that are contemplated by the Shops (State) Award.

HIS HONOUR: You have no shop assistants?

MCARDLE: We have people who sell things and receive cash in exchange for them, but we are not engaged in the enterprise which is contemplated by the Area Incidence and Duration clause of the Shop Employees (State) Award. That would be our

submission.

Obviously the parties that are here would like to put some position on the record, but could I suggest that after the mention has concluded that we put this application to one side and then proceed with the negotiations that the parties to the principal matters have come some distance to conduct.

HIS HONOUR: That's what I was anxious to do, but if this application is to get anywhere, it involves, subject to your views, which would seem to be to the contrary, getting into the area of interest of a number of unions, including engine drivers, for example. That may have to be at least sorted out to the extent of attitudes. It may be that they will want to be involved in the conferences until this application is resolved. I haven't heard from Mr Field yet, but I would imagine if there are some shops which he says he claims, then he may want to be involved in the conferences. I do not know.

MCARDLE: We don't know, that's correct. If we come to know that is the case perhaps we would need to sort that out as a threshold matter.

HIS HONOUR: I would have hoped we could dispose of this much more quickly, but obviously it has to be explained by Mr Docking and the employers too so I know where they stand before I call on the unions. Mr Harmer, what do you people say?

HARMER: Certainly Kosciusko Thredbo acknowledges that the issue of exemptions is most relevant. Application 100 of 1987 in its now amended form by the AWU is considerably expanded from that originally contemplated by either the employers or the union, and accordingly the issue of exemption is much more pertinent to the union application than that of the employers. Certainly our view is that we wish to progress the employer application which we do not consider involves the same range of exemption issues. Given that Mr Docking is involved in his own application, we consider it relevant and would appreciate hearing the views of the remaining unions.

GRAHAM: I have similar comments to that of Mr Harmer. At Mount Blue Cow we employ an electrician under the Electricians (State) Award.

HIS HONOUR: Apart from their location, some of the shops are --

GRAHAM: I understand the gift shop is run by the owner.

HIS HONOUR: That wouldn't be different from a gift shop at Lindfield, except for its location.

GRAHAM: That's right. There are also people in the cafeteria and restaurant at Mount Blue Cow under the appropriate award.

HIS HONOUR: The Federal Liquor Award?

GRAHAM: Yes.

HIS HONOUR: That award is observed, is it?

GRAHAM: It is observed. That's about as strong a statement as I can make on that. Mr Docking has opened up in his application a whole range of other issues which we didn't seek to even address in our application, which has been treated on and off since last June. I, like Mr Harmer, am also interested in hearing the views of the other parties, and I believe we can adequately address the concerns of the other parties. Also the exemption application goes some way to address the questions we raised in our application as well.

HIS HONOUR: Is it your attitude the common award should only apply to the area embraced by the employers' application.

GRAHAM: Correct.

HIS HONOUR: That is a common view of the employers.

GRAHAM: Yes, your Honour.

MCARDLE: Yes, your Honour.

HARMER: Yes, your Honour.

(Miss Moore announced her appearance for the FEDFA.)

HIS HONOUR: Miss Moore, I had indicated to Mr Docking that you had displayed an interest.

FRENCH: We have had ongoing and meaningful negotiations with the Australian Workers' Union as late, I understand, as 9.30 this morning. My instructions, therefore, are to tender a letter dated 8 May from the Australian Workers' Union to the Transport Workers' Union. It is essentially an agreement reached between the Australian Workers' Union and the Transport Workers' Union.

(Letter admitted and marked Exhibit 1.)

MCARDLE: We have not received a copy of Exhibit 1.

HIS HONOUR:- Mr French will help us all by telling us about it.

FRENCH: As it was only handed to me at 9.30 this morning with an instruction, I have not had an opportunity to have copies distributed to the parties. Perhaps when I give the explanation my friends will see it foreshadows a future situation. Perhaps if I can explain the discussions to avoid ---

HIS HONOUR: I am really after your attitude at the moment.

FRENCH: We understand from the amended schedule setting out the Australian Workers' Union proposal for coverage of the ski industry that in their clauses 42 and 43 ---

HIS HONOUR: You are referring to an application in another matter?

FRENCH: I'm sorry, it is apparently a document you have not officially got before you in matter No. 100 of 1987.

HIS HONOUR: That's the AWU application for a ski industry award.

FRENCH: Yes.

HIS HONOUR: Have you seen the employers' application?

FRENCH: Yes, your Honour.

HIS HONOUR: Are you affected by the employers' application?

FRENCH: We believe as a result of the employers' application we would be affected by the classification of driver.

HIS HONOUR: What is your view of the common award in the industry sought by both employers and the union?

FRENCH: Our attitude is that except for the four areas specified in that letter dated 8 May, our present three relevant awards, the Transport Industry (State), the Transport Industry (Motor Bus) and the Transport Industry (Retail) would continue to cover this work, but we have indicated to the Australian Workers' Union this morning in answer to this letter which comprises Exhibit 1 that on the basis that an award is made for the ski industry we would agree to four particular areas being covered, especially as to membership being transferred, as it were, to the AWU. They are firstly the over snow transport, which carries passengers and goods from Perisher to Charlotte Pass and return. Secondly, the shuttle bus, which carries passengers to and from Guthega's ski centre along the length of the ski resort's carpark. Thirdly, a bus which carries passengers to and from Thredbo's village and carpark along the stretch of road running parallel to the ski resort's carpark. Further there is a small mini bus which carries passengers to and from Thredbo's lift ticket terminal and their village accommodation and, fourthly, the shuttle bus which operates between Smiggin Holes and Perisher Valley, tracked and four-wheel drive vehicles which deliver passengers, injured skiers and freight around that resort, assuming the word "injured" only qualifies the word "skiers".

On page 2 it is clear that the basis of the proposed peace settlement between those two unions firstly is not to be used as a precedent elsewhere and, secondly, is on the basis that the AWU achieve an award with a provision that the terms

and conditions shall be not less favourable with those that would apply under the relevant TWU award. I think that refers to the proposed clause 42 savings in a document the parties discussed.

In essence we believe that whatever the draft award resulting from today's hearing and conferences, that those four particular areas of agreement, without prejudice, can belong to the AWU. Otherwise we would be seeking our awards which currently apply to continue to apply to all other transport of goods and passengers.

HIS HONOUR: That is your attitude.

FRENCH: Yes, your Honour.

HIS HONOUR: Could you or Mr Docking get copies of that distributed to the other parties interested? In particular the three employers should be given a copy of it.

FRENCH: If your Honour will give me leave to withdraw I can undertake to do that and return later in the day with it.

HIS HONOUR: Mr Docking, can't you get copies to the other people?

DOCKING: Yes, we would undertake to do that.

HIS HONOUR: Mr French, I do not know what the award will contain but it may not necessarily be as favourable as your award. Are you saying that that qualifies your exclusion completely, does it?

FRENCH: The way I phrased my statement, yes, but I do believe that agreement between the AWU and TWU will continue. We are seeking to protect the rates and conditions for all transport persons in the ski area.

HIS HONOUR: I can understand your point of view, but there may be some matters which perhaps get dealt with in a different way.

FRENCH: We will have a continuing interest in a minor way in this case. But we of course will be seeking to continue our awards and their operation, that is for passengers and goods generally, but we were prepared to concede to the AWU those four areas of transport work, should they succeed in their award application.

HIS HONOUR: You certainly may get away, Mr French, if you want to. Does anybody want any more clarification from Mr French?

MCARDLE: We do not object to Mr French's application to withdraw, however our silence should not be taken as an inference that we in any way accepted that any agreement was necessary or was valid between the TWU and the AWU. The awards

to which Mr French refers and which are mentioned in Exhibit 1 - I will confirm this when I see it - are not now complied with in respect to the employers concerned and will not be in the future. Any application for an exemption from them is most unnecessary.

FRENCH: With respect, your Honour, perhaps rather than starting arguing at this stage we do not agree with Mr McArdle's submission.

HIS HONOUR: You don't accept his viewpoint.

FRENCH: No, your Honour.

HIS HONOUR: Mr Henry, where do you fit into this exercise.

HENRY: The application by the AWU seeks in the appendix an exemption from the Clerks (State) Award. At this stage the union hasn't had detailed discussions with the AWU. At this stage, however, I can advise the Commission that the Federated Clerks' Union will not be consenting to such exemption.

It is of concern to the union that we are not still aware of just how far the application seeks to go, and that was perhaps reflected this morning by the fact that the proposed coverage in the area of shops seems to have grown in the course of today's hearing, so much so that it would be my submission that it would also seek to cover clerical people who may be employed in those retail shops. And those relevant employees would be covered by the Clerks in Retail Shops (State) Award and an exemption has certainly not been sought from that particular award.

At this stage I can simply advise that the union is not consenting to an exemption from the award. However, I do note that in the application by the employers for an award there is no classification there for a clerk of any description. I also, like Mr French, do disagree with Mr McArdle that exemptions would not be necessary anyhow, but it certainly doesn't seem to me that in their application they are seeking to cover clerical people. Perhaps Mr McArdle may be able to explain that for me.

HIS HONOUR: Mr Docking, first of all who are the clerical people you say you want an exemption for?

DOCKING: Again there are clerical employees directly engaged by the ski resort operators. For example, if I could use an easy case from recollection, in Blue Cow's duty statement and information they provided in Nos. 100 of 1987 and 609 of 1988 in Exhibit S, from recollection it notes they employ a secretary year around at that particular resort. Now, the AWU during its negotiations and discussions with the resorts has also had cause to deal with the clerical staff of other resorts such as Thredbo and Perisher. So obviously these are quite large businesses in



some cases.

HIS HONOUR: As well as secretaries they would have booking clerks or receptionists.

GRAHAM: The employer application does not seek to cover any of the clerical staff employed in the office. There is a range of secretaries, executive staff who are completely outside our application. It unnecessarily complicates the employer application. There are all sorts of other people, as I indicated earlier, the electrician, mechanic, people in the restaurant and cafeteria area, that our application doesn't seek to cover at all. That applies to the Clerk (State) Awards.

HIS HONOUR: It is not your application that brought all these people along this morning.

GRAHAM: That's right, your Honour.

HIS HONOUR: Mr Docking, are you going to restrict your claim eventually so far as clerical people are concerned to the area the employers are seeking to cover or are you seeking to embrace secretaries, clerical staff, receptionists and the others?

DOCKING: We are seeking to implement in the fullest way possible this concept of one union, one industry. Most certainly we are seeking to have covered by No. 100 of 1987 clerks, receptionists and other support staff within the scope of the Clerks (State) Award. We are taking your Honour's prima facie conclusion, which I hasten to add was on the particular facts and circumstances as presented at that time, about having a common award applicable in the Snowy Mountains region taken to its logical conclusion.

HIS HONOUR: I am not sure that I have statements and duties of receptionists and secretaries before me. They are certainly not in my mind.

DOCKING: As I say, the information before the Commission at that time, as I said in opening, the time lapse has permitted us to get a fuller picture as to what occurs at the resorts, an approach which we expect will be a major tenet of awards in the future. We are not looking at the dim past. We are being progressive and looking forward.

HIS HONOUR: Mr Henry, it looks as though Mr Docking has your union's members or potential members in sight. You had better talk to Mr Docking about this. As far as the employers are concerned, they are not seeking to embrace you in a separate award at all.

HENRY: I understand that. If it comes down to the fact that the AWU will be seeking to do that, I should put on record that it would be an incorrect assumption to believe that the Federated Clerks' Union does not and has not members in the ski

industry. As you would be aware, the ski industry being seasonal, it is quite often that you have members of the Clerks' Union who may have a part time or casual job in Sydney, Melbourne or wherever, would go to the snow and work as a clerk in the industry and they would still be members of the Federated Clerks' Union.

HIS HONOUR: Mr Henry, I am not seeking to express any views at this stage, but it is obvious that you have a special position which may to some extent be analagous to Miss Kassis'. At least you should discuss it with Mr Docking and perhaps you can get him to trim his sails or change his direction. If not, perhaps we would need further discussions. I do not want to hold the principal matter up while you sought out your differences this morning. Can you arrange to confer with him?

HENRY: I shall arrange to do that, your Honour.

HIS HONOUR: Miss Bishop, you seem to have reached some agreement. Where do you stand?

BISHOP: As you will recall we have been involved in the matter right from the start. Perhaps the difficulties we find ourselves in today would perhaps not be quite so acute if in fact matter No. 101 of 1987 was dealt with first. That's the application to establish the ski industry conciliation committee, which application, it would seem to me, would actually define the parameters of the ski industry, and that is one of the problems we are faced to today, and the fact that that matter was stood over generally on the basis that there was a pressing need to have established an award at the time. But various events have since transpired and actually progressing to establish an award has proved a lot more difficult than it was originally comprehended.

Now, we have some five conciliation committees that clearly define and clearly cover employees engaged under awards made by those five conciliation committees who are working and employed by the various employers in what might euphemistically be called the ski industry. Over that two year period that those applications have been on foot, we have had discussions with the AWU in an effort to reach agreement in relation to our concerns about the awards covering those people that we are entitled to cover, in the absence of being able to have a more clearly defined way of going about things by dealing with the conciliation committee application.

Now, the result of those discussions has been that indeed we have reached agreement with the AWU on the basis of undertakings that will be exchanged in relation to membership coverage, but essentially the upshot of the negotiations are that the AWU will not seek to cover either industrially or by way of their application employees of security contractors and cleaning contractors. Those employees would of course be employed by persons other than the employers who are at the bar

table today or representative of those employers.

HIS HONOUR: In other words, if Mr Graham's or Mr Harmer's clients employ cleaners or security people, then you are not worried about them being embraced by the award.

BISHOP: That is so. That would go for child care employees, and there are child care employees at at least one, parking attendants, lift attendants, but certainly we view cleaning contractors and security contractors who are employed by separate employers, and regardless of the nature of the industry, would invariably be employing some of those persons and other persons elsewhere in other fields of endeavour entirely. I am in the process of drafting appropriate letters to be exchanged with the AWU and hope to have that done in the next day or two and also to look at an amendment to the exemption application that is currently before the Commission.

HIS HONOUR: Have you spoken to Mr Harmer or Mr Graham or Mr McArdle about this at all?

BISHOP: No, your Honour.

DOCKING: I did have a conference last Friday with the three solicitors present, and the AWU did communicate our position with the Miscellaneous Workers' Union. I confirmed we are on track with our negotiations and there would be a consent position on the AWU's exemption application.

MCARDLE: My client does not act for and I do not appear for any contractors. Therefore the employees of contractors in either the security industry or the cleaning industry are not subject to our award application and we have no comment on the fact that any agreement has been reached between the Miscellaneous Workers' Union and the AWU.

HIS HONOUR: Am I wrong in assuming, Mr Docking, that your application related to a limited number of employers?

DOCKING: Yes, your Honour. The AWU's original application was limited to six specified employers.

HIS HONOUR: I thought that remained the position.

DOCKING: We have distributed to the parties present an amended schedule. That schedule resulted from our realisation that the industry went beyond six resort employers, and certainly if some work is contracted out, and I am not addressing cleaning and security, we say this is also dealt appropriately with by a common industrial prescription. Otherwise the quite simple step occurs of contracting work out which is already covered by common rule awards. That is exactly the same, we would say, as work performed by the principal.

HIS HONOUR: There might be problems under the Act about that

sort of thing. I would imagine that the Employers' Federation, if they had members who may be contractors, would not have been aware of the implications involved in the application, which I understand on both sides has been confined to employment by the ski resort proprietors.

DOCKING: That is the reason we have notified the chamber and the Employers' Federation about our amended schedule and provided a copy of that schedule to those bodies.

HIS HONOUR: Have I got that amended schedule yet?

DOCKING: No, your Honour. We were waiting for No. 100 of 1987 to be called on.

HIS HONOUR: Miss Bishop, would you get your letters to the employers as well?

BISHOP: Yes, your Honour.

HIS HONOUR: It looks as though you should let the Employers' Federation and the Chamber have a copy as well.

BISHOP: Yes, your Honour.

HIS HONOUR: And perhaps the Metal Trades Industry Association. Perhaps they could be given a copy, too. Mr Thorpe, where do you stand?

THORPE: Our position is somewhat ambivalent, if I can say that. We see no reason why we shouldn't become parties to this award, however given the assurances here today by the AWU that the three principal state awards under which we have coverage will be left alone and we would have the ability to organise people as we have and are doing at this moment, we would be satisfied with that. Our position is one of concern for this industry. We see a continuing role for us in this area and provided we have the authority to continue to enrol people who are doing work which are covered by those three principal state awards, we see no reason not to be satisfied with that.

HIS HONOUR: There is no attempt to seek an exemption from any of those awards in the appendix to the application in any event. Miss Kassis, are you in a similar position to Mr Thorpe?

KASSIS: We originally were in consent with this application because, as with Miss Bishop, we have had a number of discussions with Mr Docking relating to this area for quite a while and we were under the understanding that the application did not seek to attempt to cover electricians or their assistants. As to the assistants, we are now finding that we have to discuss the matter a little bit further. We maintain that if there is a tradesman assisting an electrician he should be a member of ours and paid under the Electricians (State) Award.

We also were concerned with the classification titled technical services, which is in application 100 of 1987, which also includes the terminology "handyman" or "handyperson", and we wanted to find out exactly what that entailed. It appears that it's possible that an electrician may be hired under a totally different classification but is required to undertake electrical work while he is employed. We would maintain if that is the case then he should be paid as per the Electricians (State) Award.

We have not been served by any of the applications by the employers, so we can only assume that that means any electrician or his assistant who is employed by any of the ski industry employers, that they are paid under the Electricians (State) Award.

As to our difficulties with tradesman's assistants and further conferences as to the handyperson, we would set a meeting up with Mr Docking and hope to have something formal to hand to the Commission which indicates our consent.

The question of terms which is also in this application, looking at items I and J, refers to "the general construction ... as a trade assistant." Then J also continues in that vein. So we would be discussing those issues with the AWU. As I said, I would hope that we would come to some sort of agreement similar to the Transport Workers' Union and the Miscellaneous Workers' Union and hand up a document to that effect.

HIS HONOUR: Mr Field, you seem to have been getting a lot of mention, but you haven't had a say.

FIELD: I think the concern of the SDA goes in the first place to the application by the Australian Workers' Union for an exemption for the ski industry from the shop award for employees in the ski industry. Furthermore our concern also I think goes to the amended schedule which Mr Docking is yet to tender in these proceedings but which was circulated to interested parties, including ourselves, in a letter dated 20 April. I think in referring to this document I am perhaps a little bit premature in as much as it hasn't been tendered, but needless to say the definitions clause in this draft schedule, which is in the form of an award, does mention the words "shop worker (including boot and ski handler, cafeteria worker, cooks offsider)". The interpretation of "shop worker" in the definitions clause and subsequently in the wages clause of that document is another reason for our concern.

Thirdly, the employers' document, which I believe is Exhibit 12, tendered by Mr McArdle, that document is also the cause of some concern to the SDA in as much as in clause C, rates of pay, there is the mention of the words "courtesy staff". I think our concern is finding out the definition of

what that definition seeks to cover.

HIS HONOUR: There were schedules filed. Have you had a chance to see them?

FIELD: No, your Honour.

HIS HONOUR: Have you members in the resorts?

FIELD: To my knowledge I frankly don't know. I would have to make an inquiry through our membership records. I am not aware informally in our office of any membership, but in so much as going on a search, that has not been done. We have some 65,000 members in New South Wales. For me without conducting some background, it is difficult to give 100 percent assurance today. I do say that we are not aware of a large active membership. That is my own personal awareness. However, on a formal inquiry I think it would necessary be clarify that. The AWU in seeking to cover them does not have the constitutional coverage to enrol such employees or workers into their union. I would like to tender a copy of the Australian Workers' Union State Rules.

HIS HONOUR: There is no need to do that at this stage. You say that that rather long and general rule of the AWU does not embrace shop assistants?

FIELD: That's right. It does mention ski instructors et cetera. I think that that limits the Australian Workers' Union in the ski industry. It mentions nothing about shop workers. It mentions nothing about courtesy workers.

HIS HONOUR: I would think that they could cover workers in the ski industry under a number of more general parts of their rule.

FIELD: The reference I have just made is the specific reference to the ski industry. There may be more general classifications. But in so far as a general application to retail I am at a loss to find one in their state rules. I think there is no point in reciting the SDA's state rules. I think it goes without saying that we have constitutional coverage of employees in shops. There is, we contend, the Retail Employees (State) Conciliation Committee which adequately covers the employees or potential employees that we understand exist in the ski industry.

HIS HONOUR: It may be that if you do not reach some agreement with the AWU that you are directly involved in the principal matters before me today, and your attitude at the moment is that you are not consenting to being shut out.

FIELD: That is correct. Although we object to the notion that the shop award be exempt from this industry, rather we seek that it would apply, my instructions from last week for today are that all reference to shop employees be deleted from the amended schedule which my friend is yet to tender and be deleted from any settlement of an award to be made. However, we may be able

to consider the concept or possible settlement whereby shop workers, courtesy workers, whatever wording might be decided upon, be included in a final award but which we are a party to. I have no instructions on that for this morning, but I think for the purposes of negotiation it may be a point we can consider.

HIS HONOUR: Is there any other union interest.

MOORE: As you are aware we have been maintaining an involvement in the matters before you today. I would indicate that the last time matter 100 of 1987 was listed your Honour did indicate that the FEDFA should do one of two things, which related to demarcation of the work which our members were concerned in.

HIS HONOUR: I did ask that you be precise about what you were claiming. Nobody seemed to be doing that.

MOORE: Having had that direction, we did consider our position in relation to the AWU's application, and on 5 April we corresponded with the Australian Workers' Union and indicated the terms of a settlement that we would agree to to finalise our involvement in the application. The response to that was only forthcoming in terms of the amended schedule which Mr Docking will tender at a later stage this morning in the other matter, but it means that the FEDFA's position is back to square one, if you like.

HIS HONOUR: You are interested in the Plant Operators On Construction (State) Award.

MOORE: That's our primary concern, but there is also the question of the applicability of the Engine Drivers (State) Award. That would apply to classifications such as lift attendant. Certainly the FEDFA's primary concern is with the Plant Operators On Construction (State) Award. Unlike the Miscellaneous Workers' Union position re contract employees, the AWU's amended schedule specifically nominates one particular contractor.

HIS HONOUR: I am quite concerned with contractors being brought into this. Up to now we have had attempt being made to get a ski resort award covering proprietors. We will have to see what happens with the amendment. Could you just stick with the proprietor. Do you have people employed by the various ski resort owners?

MOORE: Yes, your Honour, we do.

HIS HONOUR: You are still interested in the general application; you don't have any agreement with the AWU as yet?

MOORE: That's right.

HIS HONOUR: It looks as though you, like Mr Field, are involved in the general negotiations later on in the day.

MOORE: That's right. Our position in relation to the exemptions is that we oppose that application.

HIS HONOUR: Before I get to the major employers, I wonder if I could hear from the Employers' Federation.

KELLY: It was always our understanding that it was only going to apply to the major ski resort employers. As would be seen from the mail of the AWU two weeks ago, it would appear that the proposed award is also going to be extended to contractors and employers generally within the Kosciusko National Park.

HIS HONOUR: Mr Kelly, do you have a copy of whatever it was.

KELLY: I believe one of our officers may have been interested in the matter last year and in 1987. However, I am unable to find the original application. However, Mr Docking did serve the amended schedule of the proposed award in 100 of 1987.

HIS HONOUR: I see Mr Grindsell did appear back in February 1987 in the dim past of these matters.

KELLY: I have been trying to find his file, your Honour.

HIS HONOUR: Until this question of the scope of the award is resolved, you have an interest on behalf of a number of your members.

KELLY: Yes.

HIS HONOUR: As far as these exemption applications are concerned, do you have anything you want to say about the various awards from which exemption is being sought?

KELLY: No. We are still investigating our position in relation to the exemption applications, so I am unable to put anything concrete to you this morning.

HIS HONOUR: Was the Chamber involved today?

(Mr Harden announced his appearance for the Chamber of Manufactures.)

HARDEN: Our position is similar to the Employers' Federation in that we haven't been involved to date, but we note the amended schedule has been amended to include those other than limited to the ski industry. On that basis we are keeping a watchful eye at this stage, but have nothing to add at this stage.

HIS HONOUR: As far as the exemption applications are concerned you are in a similar position to Mr Kelly?

HARDEN: Indeed.



HIS HONOUR: - Mr Ebbutt?

EBBUTT: We are in a similar position to Mr Kelly of the Employers' Federation. I have no instructions regarding the matter, but we would need to understand fully what the amended schedule means in terms of our membership before we could really put a constructive view.

HIS HONOUR: The progress of the matter, such as it has been, has been to get an award under way for the ski resorts but confined to employment by the proprietors. That may not have affected you at all. If it is to be widened to cover contractors and others who may work from time to time in the area, then you might have a very real interest as to what comes out of the award. It may be that there are awards already that embrace the work done by your members.

EBBUTT: That's correct.

HIS HONOUR: Then the exemption application might be of some interest. For example, the Plant Operators on Construction is one. There was no attempt to seek exemption from the Metal Industries Awards or from the Electricians Awards.

EBBUTT: I understand that, your Honour.

HIS HONOUR: Mr McArdle, Mr Graham and Mr Harmer, you have already said one or two things in the course of the discussions. Do you want to say anything in relation to the exemption application? I intend to direct that the parties confer on the matter and put it aside.

MCARDLE: This is subject to seeking further instructions and perhaps conferring with the other employer parties, but our difficulty would be in engaging in substantive negotiations on the applications for an award with other than the AWU. If other organisations besides the AWU are to be included in the negotiations on that subject matter, then we will have to - or I personally, in any case - will have to seek further instructions before proceeding.

HIS HONOUR: If other unions have an interest, and Miss Moore is one particular one who obviously has been interest in some of the work that has been described already, how can I shut her out?

MCARDLE: I think what I was saying was that whether or not she has an interest or any other union claims it has an interest should be determined in the first instance before proceeding with discussing the subject matter that we initially intended to come here and discuss today and tomorrow.

HIS HONOUR: The snow will be on and off the ground again before we resolve this if that is going to happen.

MCARDLE: That is not in any sense our doing. I was - surprised is the wrong word, aghast is too strong a word, but I was bemused by arriving today and finding just about everyone I had ever met in attendance. I thought it was a testimonial there for a while. If we are going to lose another season, it will not be our doing. Mr Phillips, the manager of Perisher Smiggins, has taken the time to come to Sydney today and tomorrow because we felt some conclusions would be reached today and tomorrow.

HIS HONOUR: I had hoped so, too. These matters arose long after we listed the dates for the conferences, but for the reasons we are discussing now, they raised fundamental issues in relation to the rights of people. If Mr Docking is raising it in relation to contractors, then there are a lot of other people affected as well as yours and Mr Graham's and Mr Harmer's. It is quite a different application than what I had anticipated we were talking about the other day.

MCARDLE: I agree with that. There are people who are specifically named in the application who have no voice here today and should be given the opportunity to be heard.

HIS HONOUR: There is a pretty good line-up.

MCARDLE: I was referring to employer groups. In Mr Docking's schedule he refers to a couple of contractors.

HIS HONOUR: Don't let's get worried about that, Mr McArdle. We wanted to sort these engine drivers out long ago and neither the AWU nor the FEDFA took the initiative, and in the result it hasn't been sorted out. Prima facie the FEDFA have an interest in mechanical equipment and engines, engine driving, which is an ancient term, but it comprehends all modern devices, and clearly the machinery for driving ski lifts. I do not know yet, but I am not proposing to shut Miss Moore out if she wants to be involved in negotiations. Likewise, if we are going to cover the clerical staff, how can I shut out Mr Henry and if we are going to cover shop assistants and particularly the people who have the shops leased out to them at Mount Blue Cow, if I am going to deal with that area as the AWU is now seeking, apart from the clerical people and shop people employed by you people, how can I shut Mr Henry or Mr Field out?

MCARDLE: If they have an involvement they should not be shut out. We submit that they have none. Perhaps we should determine that in the first instance.

HIS HONOUR: What is your position about shops, just to take that as an illustration? Do you employ people who sell things in what might be called a shop?

MCARDLE: Well, the visual impact would be you walk in and there would be goods for sale and for hire arrayed on shelves.

HIS HONOUR: What, films and clothing and things like that?

MCARDLE: I assume so, souvenirs.

HIS HONOUR: Do you say the Shop Employees Union would have no interest in that?

MCARDLE: They would have the same interest as they would in a souvenir counter in a resort hotel, perhaps, which is none.

Now, to the extent that they are right and I am wrong perhaps that is something we have to determine but the employees who work in what is colloquially known as the shop or the shops at Perisher Smiggins in any case are engaged in the ski industry. They are not employed under the auspices of the Shop Employees Conciliation Committee. The name might not be that, I am not sure of the conciliation committee's name.

HIS HONOUR: There is an exclusion for ski resorts, is there?

McARDLE: No, it describes the industries and callings. the industries and callings which are covered by the Shop Employees (State) Award.

If we are going to that, your Honour told me that I was being unreal virtually when I referred to a large number of possible unions but I would suggest that some of these unions have as much participation in this industry as some of those who have been served by Mr Docking, I think perhaps the Storemen & Packers' Union - there are things stored and packed. In the ski resorts there may be tradesmen being employed and the Federated Ironworkers may therefore have an interest. There are people a large proportion of whose work is first aid -ski patrol - primarily to attend to injured skiers and render first aid, transport patients to surgery. Now, where are the HREA if we are to be one-dimensional about it?

I think that what has characterised the approach of the AWU in this matter has been unrealistic in that the issue of union participation has become between last Friday and today a major threshold issue. Now, that is frustrating to my client. We wanted to be able to say that this matter was fixed but I don't know that that can be the case. I am not saying that speculatively. My instructions may be to the contrary.

HIS HONOUR: I would have thought we could have pressed on with the employers application and the union application. All I am concerned about is what you are saying or suggesting, that it could not go on until this was resolved. It may be that the interests of the FEDFA would have to be resolved but not necessarily at this point in time. If it is possible to proceed and reach some sort of conclusion and then sort out the other matters that have been raised, well, that would be quite a positive approach but I personally have my doubts. We certainly won't settle it if we negotiate only with the AWU and the FEDFA comes along and says - we don't agree with that settlement, yet we have coverage. That is what I am concerned about. I am not going to have the whole thing frustrated by that sort of exercise. Now that the AWU have widened it, they are making it more complicated in the process and I want to avoid spending a couple of days now and then find it is frustrated by another union making another application.

All I am saying to you is that if we are going to negotiate it may be that they should get involved, if they are to be involved finally.

McARDLE: I take your Honour's point. Perhaps after everyone

Shop  
Emp  
CS

HIS HONOUR: Yes, very well.

GRAHAM: My instructions are quite clear and that is to promote the employers' application in matter No 609 of 1988. I have no objection, or my instructions are to take no objection to any of the unions which were involved in that application, that was the TWU, the Australian Railways Union, the SDA and Australian Theatrical & Amusement Employees' Association, Federated Miscellaneous Workers' Union and the Federated Enginedrivers & Firemen's Association.

I think we can say if our application was allowed to proceed that we would have concerns that some of those unions might see that their work is being eroded or the scope of their traditional coverage has been eroded.

Our application has been complicated by the renewal of the application by the AWU in No 100 of 1987, and this was renewed when the employers' application was served and addressed in June last year. The employers have no intention of including the whole - in the Ski Industry Award a whole range of jobs which have not been addressed in Mr Docking's application. In fact, the employers do not seek to have a common rule award in the Ski Industry because one employer in the Ski Industry is not represented by any of the three advocates from the Employers' side here.

It is Mr Docking who seeks a common rule award, and Mr Docking who seeks this coverage, but we don't. My submission based on the instructions I have is that application 609 of 1988 by the employers should be dealt with first and any other questions which arise can then be disposed of. I have no further instructions than that.

HARMER: I would basically concur with Mr Graham's point. So far as 609/1988 is concerned, our instructions are to expedite that application with a view to securing an award for this industry. This being the second season that we have been here to press our application and we have had no opportunity to address it directly, having to respond to Mr Docking's application, insofar as that application is concerned and the FEDFA involvement in that particular application, I would again note that not only were all unions who were earlier involved in our application written to by the employers and requested to delineate their area of interest in our particular application, but also on 6 February 1989, and this appears at p227 of transcript, the FEDFA was requested by your Honour within a period of 21 days from that date to write to the AWU and/or the Employers in order to express the extent of their interest in both applications and, of course, they failed to do so and I have a concern that the FEDFA's intermittent appearances here have not at any time been followed up by any great expression of interest, even in response to your Honour's specific request on that occasion, but insofar as the application has now been expanded by the AWU's yet to be tendered amended schedule in No 100 of 1987, we certainly recognise the ongoing interest of all unions that have appeared today and basically

in an historical perspective I think Mr Docking has, with respect, a choice to make as to whether he does or does not want to have an award in this particular industry this season. Last year when he made the interim award application and that failed he alleged injustice on the part of the employers. To that we objected and we do object to it and we went a whole season without an award. We have now re-engaged all employees on our standard conditions. We are interested to press on with our award application so that we can get an award for this season. If Mr Docking does intend to press that the entire scope of his application now should be amended, 100 of 1987, with respect, I see no way that we will resolve the award for this season and the AWU will gain no award for its employees.

It is entirely in the hands of the AWU. If it seeks to press this expanded application 100 of 1987, that is its choice. We will acknowledge, when we get instructions to do so we will oppose the application for certain awards, certain awards we may not be able to contest their application, but certainly this is going to be a longterm process and given that we have only 3 months of the ski industry and this particular year we have the World Cup taking place and I think all resorts would be fully booked for accommodation throughout the period there is no way that inspections or hearings could take place during that particular period. Your Honour will recall the programme for the limited applications last year, involving extensive inspections and so on. So, if Mr Docking is to pursue with his extended application 100 of 1987 then certainly, exemption matters are less relevant and can be pressed as threshold issues, we will be looking at 1990 before we get an award for this industry.

HIS HONOUR: The application for exemption will stand over generally at this stage, with a direction that the parties confer and there will be leave to have it restored to the list on notice.

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# The Federated Miscellaneous Workers Union of Australia

NEW SOUTH WALES BRANCH

GROUND FLOOR, 365-375 SUSSEX STREET, SYDNEY 2000.

Postal Address: PO BOX K400, HAYMARKET 2000.

Telephone: (02) 264 8644 Telex: AA75879 Facsimile: (02) 267 3778

*EOA*  
 PRESIDENT: J. ROSE  
 SECRETARY: C. RAPER  
 ASST. SECRETARY: J. CAVERS  
 ASST. SECRETARY: I. WEST

Ref EARB:GP

25th July, 1989

Mr. E.C. Ecob A.M.  
 Branch Secretary  
 The Australian Workers' Union  
 New South Wales Branch  
 Spencer House  
 513 Kent Street  
 SYDNEY 2000

Industrial Commission	
No.	312/89
APPL BY A.W.U. FOR	
EXEMPTIONS FROM VARIOUS	
AWARDS	
EXHIBIT	A
	FEENEY
	25/7/89

Dear Mr. Ecob,

RE : SKI INDUSTRY & C. (STATE) AWARD  
MATTER NO'S 100 OF 1987, 609 & 1257 OF 1988, 311 & 312 OF 1989

I refer to the abovementioned Matters which are currently before his Honour Mr. Justice Watson in the Industrial Commission of New South Wales and also to discussions with Mr. B. Docking and Mr. J. Feeney of your Union concerning The FMWU's objection to the applications as sought by the AWU and the various employers in the Ski Industry.

I confirm that the FMWU is prepared to withdraw its objection and consent to the award currently being sought on the following basis:

- The FMWU has constitutional and industrial coverage for persons employed in the Ski Industry in classifications covered by the following awards -

- 15* Miscellaneous Workers - General Services (State) Award.
- 12* Miscellaneous Workers' - Kindergartens & Child Care Centres &c. (State) Award.
- 16* Parking Attendants, Motor Car Washers &c. (State) Award.
- 14* Miscellaneous Gardenera &c. (State) Award.

However, the FMWU is prepared to concede that it is more appropriate for the AWU to have industrial coverage of such employees and for such employees to be covered by the Ski Industry (State) Award. It is

NEWCASTLE  
 25 Gibson St.  
 Postal Address:  
 PO Box 5019A  
 NEWCASTLE 2302  
 Telephone: (049) 293314  
 Facsimile: (049) 294800

WOLLONGONG  
 Trade Union Centre  
 Lowden Square  
 WOLLONGONG 2500  
 Telephone: (042) 296557  
 Facsimile: (042) 280106

WAGGA WAGGA  
 120 Fitzmaurice St.  
 Postal Address:  
 PO Box 945  
 WAGGA WAGGA 2650  
 Telephone: (069) 214316  
 Facsimile: (069) 216972

TAMWORTH  
 15 Bourke St.  
 Postal Address:  
 PO Box 629  
 TAMWORTH 2340  
 Telephone: (067) 663552  
 Facsimile: (067) 661071

not our intention to industrially represent such employees in the future.

2. This undertaking and consent to the award sought is given on the understanding that such employees would receive benefits under the Ski Industry &c. (State) Award which are no less favourable than any of the above-mentioned awards. The FMWU hopes this approach will ensure that hundreds of other ski resort workers receive at least the same award conditions.
3. This undertaking and consent to the award sought does not extend to or cover employees of contractors employed pursuant to the terms and conditions of the Security Industry (State) Award and the Cleaning Contractors (State) Award. Such employees shall continue to be members of the FMWU and the FMWU shall have the exclusive right to enroll as members and to represent the industrial interests of such employees.

On the basis of the undertakings given by our respective Unions and the FMWU's consent to the award as sought the parties are prepared to agree and undertake that in so far as the Australian Workers' Union, New South Wales Branch, and The Federated Miscellaneous Workers' Union of Australia, New South Wales Branch are concerned due to the particular facts and circumstances of the Ski Industry, the said agreement reached shall not in any way whatsoever be used to prejudice the position of either union in other disputes on industrial coverage.

Trusting that our respective organisations will continue their harmonious working relationship.

I look forward to your early confirmation of the above agreement.

Yours fraternally,

*C. J. Raper*  
C. J. Raper  
BRANCH SECRETARY