

Fair Work Act 2009

FAIR WORK COMMISSION : 4 Yearly Review of Modern Awards

SUBMISSION in REPLY

AM2014/239 Pastoral Award 2010

20 October 2016

SHEARING CONTRACTORS ASSOCIATION OF AUSTRALIA (SCAA)

Sent via email to amod@fwc.gov.au

BACKGROUND

1. This reply submission is filed by the Shearing Contractors Association of Australia (SCAA) and relates to the Four Yearly Review of the Pastoral Award 2010 (Pastoral Award).
2. The SCAA is a registered organisation under the Fair Work (Registered Organisations) Act 2009 (Cth) and represents the interests of professional shearing across Australia. Its origins originate back to 1927.
3. On 5 October 2016, the President of the Fair Work Commission issued Directions to file written submissions and any evidence in support of the outstanding claims identified in their submissions filed in accordance with previous directions
4. This SCAA reply submission is filed in accordance with these Directions

OUTLINE OF SUBMISSIONS IN REPLY

5. The SCAA is only concerned with matters directly or indirectly related to shearing operations.
6. In this instance the we are concerned with the matters tabled by the National Farmers Federation (NFF) in their submission dated 28 September 2016: [NFF Submission 28 Sep 2016](#) in particular Item 84, Item 86 & Item 95 – See table, along with 4 additional matters
7. There are three additional matters that the SCAA believes should be considered during this ‘Drafting Process’ being:
8. **Additional Item SCAA1 – Clause 40.2 Shearers providing their own stud combs.**
Details: Currently the Award states that where a shearer provides their own stud combs, 25% needs to be ‘added to the rate for each class of sheep’.
9. **Issue:** The practice of using ‘thicker’ combs to shear non-stud sheep is far more common than the practice of shearing ‘stud’ sheep. Currently there is debate in the marketplace over the rate if thicker combs are used and whether or not the payment of ‘stud’ rates is applicable.
10. **Comment:** Anecdotally most shearers and shearing contractors agree that there should be a higher rate for using these thicker, what is most commonly known as ‘Cover’ combs but 25% premium is questioned as possibly being too much of a premium. Some of the issues that need to be considered are:
 - (i) ‘Tallies’ (number of sheep shorn per day) are reduced but not by 25%. The reduction in tallies is closer to say 12.5% but evidence should be sought to verify this.
 - (ii) It is accepted that the thicker combs do increase the ‘wear and tear’ on the running components of the handpiece, resulting in earlier replacement of ‘moving parts’.
 - (iii) There is the monetary cost for the worker buying the actual combs and the question if this is at a higher cost than what the existing ‘in-built’ comb-and-cutter-allowance has provided for.

11. **Solution:** The term and practice of using 'stud' combs needs to be reviewed in terms of relevance and either have a definition that includes 'cover' combs or similar terms, assuming that the same rate of pay is applicable or insert a new term and rate for 'cover' combs.
12. **Additional Item SCAA2 – Clause 40.2 Quoting of Additional rates**
Details 40.2 Additional Rates has six additional applicable rates, with five of them being specified and one being as agreed. Of the five specified rates, three (Rams, Stud Ewes and Lambs, Double Fleeced) are quoted as a % multiplied by the prescribed rate and two of them (Hand Shearing, Stud Combs) and are quoted as 'additional rates'
13. **Problem:** The quoting method is inconsistent and slightly confusing as they all can be quoted using the same methodology.
14. **Solution:** it would be better to quote Hand Shearing as 107% of the rate prescribed appropriate to the class of sheep (compared with 7.5% added to the rate for each class of sheep) Shearers providing their own stud combs 125% of the rate prescribed appropriate to the class of sheep (compared with 25% added to the rate for each class of sheep),
15. **Additional item SCAA3 – Clause 40.4 - Quoting of Shed Hand's 'Weekly Rate'**
Details: Amending Clause 40.4 regarding quoting of Shed Hand rate as a '*Weekly Rate*' and a '*Per Run Rate*'.
16. **Issue:** the Award is currently stating that that the weekly rate is *20 times the 'run rate'* but many workers legitimately only work 19 runs per week and are only entitled to 19 runs of pay.
17. **Comments:** This is the result of the move to the 38 hour week and the 'Per Run Rate' was adjusted accordingly in 2010. Currently, the two ways shed staff can be requested to work are:
 - (i) 5 days of 3x two hour (120minutes) runs and a fourth run that finishes after 96 minutes (5.06pm on a normal day). The worker would be paid for 20 runs during the week or
 - (ii) 4 days of 4x two hour runs and on the fifth day (normally Friday) they would work only 3x two hour runs. The worker would only be entitled to 19 runs of pay.
18. **Solution:**
 - (i) Remove the quote 'weekly rate' amount and only quote the per 'run rate' or
 - (ii) Quote both the weekly rate as 19 runs and 20 runs
19. **Additional item SCAA4 - Clause 46.1 Sleeping Quarters Allowance**
Details: Clause 46.1 The ambiguity of when a Sleeping Quarters Allowance is payable in Suburban Work
20. **Issue:** the applicability of the sleeping Quarters allowance is currently being contested in the 'field' and it would be timely to review the clause:
 - (i) Currently there appears to be no debate as to the entitlement of free accommodation or the payment of the sleeping quarters allowance is where:
 - (a) a worker or team of workers live on a 'camp-out job (where there is a mess and cook) or
 - (b) a worker or workers are traveling to another town, that is impractical to 'day-trip'.

- (ii) There is ambiguity in common instances, where workers come to a town for work and then live in a caravan park or a flat that is owned or paid for by the employer, for extended and indefinite periods of time but may consider their parent's home (or similar), their 'home', even though they arguable do not 'live' there or intend to live there for any significant periods in the future. In this case, does the worker have grounds to argue that they are entitled to free accommodation or alternatively the sleeping quarters allowance?

21. **Comments**

Does this clause require:

(i) Require 'time-frames' to be stated i.e. maximum time staying away from home or usual place of residence to identify when the 'new' residence become their 'usual place of residence'?

(ii) a better definition as to when the payment is applicable and its intention:

(a) is it intended to be compensation for the inconvenience of a worker being away from 'home/usual place of residence? or

(b) is it intended to be a general pay and condition that actually allows all workers in the shearing industry to call the shearing sheds their 'home' and not have to pay rent or a mortgage elsewhere? In other words was it a deliberate 'attraction and retention strategy' to keep more workers in the industry without needing to pay them higher (monetary) pay rates.

(iii) a revision in light of the significant changes in work practices over the past 30 years and more specifically the shift from camp-out jobs (cook and mess) being the norm to 'suburban jobs' that has shifted the capital costs from farmers to shearing contractors who need to buy accommodation (flats or caravan parks) in order to attract and retain the required staff? Should they be able to charge the staff staying there to cover the costs of funding, running and maintain these premises?

22. **Summary** table below

Item	Pastoral Award	Exposure Draft	NFF's comment on Change	SCAA comment on Change
84 Sleeping Quarters Allowance SCAA4	46 Special allowances (other than Woolclassers Special allowances (other than Woolclassers and Shearing shed experts) 46.1 Allowance where sleeping quarters are not provided Where the employee does not reside during a shearing (or crutching) at the employee's home or usual place of residence and the employee is forced to obtain and pay for sleeping quarters away from the employer's premises because the employer is unable to provide sleeping quarters at the premises for the employee, the employer will: (a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer's expense; or (b) pay to the employee an allowance of 259.4% of the standard rate per night for each night during the employee's employment that the employee is so forced to obtain and pay for sleeping quarters; and (c) where the distance is one kilometre or more walking distance between the employee's sleeping quarters and the shed, provide or pay for the transport of the employee between the sleeping quarters and the shed.	41. Special allowances (other than Woolclassers and Shearing shed experts) 41.1 Allowance where sleeping quarters are not provided If the employee does not reside at their usual place of residence and is forced to obtain and pay for sleeping quarters away from the employer's premises because the employer is unable to provide sleeping quarters at the premises for the employee during a shearing or crutching, the employer will: (a) arrange for sleeping quarters for the employee to be supplied elsewhere at the employer's expense; or (b) pay to the employee an allowance of \$46.15 per night during the employee's employment that the employee is forced to obtain and pay for sleeping quarters; and (c) provide or pay for the transport of the employee between the sleeping quarters and the shed where the distance is one kilometre or more walking distance between the employee's sleeping quarters and the shed.	The legal dictionary defines residence as "personal presence at some place of abode" and indicates that "although the domicile and residence of a person are usually in the same place, and the two terms are frequently used as if they have the same meaning, domicile means living in that locality with the intent to make it a fixed and permanent home. Residence merely requires bodily presence as an inhabitant in a given place." This definition shows that, while a person's home and usual place of residence will often mean the same	1. SCAA Agrees with the NFF's comments here and the term 'home' should be reinserted to the Exposure Draft. 2. Issue: the applicability of the <i>sleeping Quarters allowance</i> is currently being contested in the 'field' and it would be timely to review the clause: (i) Currently there appears to be no debate as to the entitlement of free accommodation or the payment of the <i>sleeping quarters allowance</i> is where: (a) a worker or team of workers live on a 'camp-out job (where there is a mess and cook) or (b) a worker or workers are traveling to another town /region, that is impractical to 'day-trip'. (ii) There is ambiguity in common instances, where workers come to a town for work and then live in a caravan park or a flat that is owned or paid for by the employer, for extended and indefinite periods of time but may consider their parent's home (or similar), their 'home', even though they arguable do not 'live' there or intend to live there for any significant periods in the future. In this case, does the worker have grounds to argue that they are entitled to free accommodation or the sleeping quarters allowance?

			<p>thing, this is not necessarily the case. Shearing is a form of employment that is traditionally associated with an expeditionary lifestyle where employees move around throughout the year for work and may establish a usual place of residence that is away from their home. The Exposure Draft clause would not apply to a circumstance where an employee returns to their home for work, which is not their usual place of residence at that time. To avoid this becoming a contested issue in the future, the term 'home' should be reinserted to the Exposure Draft.</p>	<p>Comments</p> <p>Does this clause require</p> <p>(i) require 'time-frames' to be stated i.e. maximum time staying away from <i>home or usual place of residence</i> to identify when the 'new' residence become their 'usual place of residence'?</p> <p>(ii) a better definition as to when the payment is applicable and its intention: (a) is it intended to be compensation for the inconvenience of a worker being away from 'home/usual place of residence ? or (b) is it intended to be a general pay and condition that actually allows all workers in the shearing industry to call the shearing sheds their 'home' and not have to pay rent or a mortgage elsewhere? In other words was it a deliberate 'attraction and retention strategy' to keep more workers in the industry without needing to pay them higher (monetary) pay rates.</p> <p>(iii) a revision in light of the significant changes in work practices over the past 30 years and more specifically the shift from camp-out jobs (cook and mess) being the norm to 'suburban jobs' that has shifted the capital costs from farmers to shearing contractors who need to buy accommodation (flats or caravan parks) in order to attract and retain the required staff? Should they be able to charge the staff staying there to cover the costs of funding, running and maintain these premises?</p>
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86	47.3 Allowance for delays for Woolclassers paid at piecework rate (a) ... unless the failure to start is caused by wet weather or other unforeseen causes such as fire, flood, earthquake or any other act of God. Note: Abbreviated for ease of reading	42.3 Allowance for delays for Woolclassers paid at piecework rate (a) ... (ii) the failure to start is not caused by wet weather or other unforeseen natural causes such as fire, flood, or earthquake. Note: Abbreviated for ease of reading	The Commission has expressed a preference not to use the phrase 'act of God'. The NFF proposes the following alternative form of words to ensure that fires that are deliberately lit continue to be covered by the revised clause. It is our understanding that the AWU has agreed to this form of words. 42.3 Allowance for delays for Woolclassers paid at piecework rate (a) ... (ii) the failure to start is not caused by wet weather or other unforeseen natural causes such as fire, flood, or earthquake. Note: Abbreviated for ease of reading	SCAA agrees with NFF's comment.
95	45.1(h) If found employee— the rates prescribed above less the amount of \$29.85, which is arrived at by adding the Shearing cook's daily rate to one fifth of the Shearers' ration	A.1.2 'If found' rates are calculated by deducting \$29.20 from the 'not found' rate. This amount is arrived at by adding the Shearing cook's daily rate to one fifth of the Shearers' ration	Schedule A.1.2 should clarify that the deduction is 'per day'. The daily	SCAA agrees with NFF's comment.

	component.	component. The Shearing cook's daily rate is calculated in accordance with clause A.5.	'found' deduction should be \$29.85. Clause 40.3(d) should also be amended in the same way, in relation to crutching. A further identical provision should be inserted above proposed clause 40.3 in relation to shearing (see current clause 45.1(h) of the Pastoral Award).					
FWC Item ? (SCAA1) Stud Combs	45.1 (F) Any Shearers that are required to provide their own stud combs will be paid 25% additional to the rate of each class of sheep	40.2 Other Shearing Rates <table border="1"> <thead> <tr> <th>Description</th> <th>% of applicable rate</th> </tr> </thead> <tbody> <tr> <td>Shearers providing required to provide their own stud combs</td> <td>25% added to the rate for of each class of sheep</td> </tr> </tbody> </table>	Description	% of applicable rate	Shearers providing required to provide their own stud combs	25% added to the rate for of each class of sheep	New Item – no comment from NFF as yet	Additional Item SCAA2 – 40.2 Shearers providing their own stud combs. Details: Currently the Award states that where a shearer provides their own stud combs, 25% needs to be 'added to the rate for each class of sheep'. Issue: The practice of using 'thicker' combs to shear non-stud sheep is far more common than the practice of shearing 'stud' sheep. Currently there is debate in the marketplace over the rate if thicker combs are used and whether or not the payment of 'stud' rates is applicable. Comment: Anecdotally most shearers and shearing contractors agree that there should be a higher rate for using these thicker, what is most commonly known as
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<p>FWC Item ? (SCAA2) Quoting of additional rates</p>	<p>(e) For hand shearing—7.5% additional to the rate for each class of sheep.</p> <p>(f) Any Shearers that are required to provide their own stud combs will be paid 25% additional to the rate of each class of sheep.</p>	<table border="1"> <thead> <tr> <th data-bbox="592 1464 778 1565">Description</th> <th data-bbox="778 1464 962 1565">% of applicable rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="592 1565 778 1760">Shearers providing required to provide their own stud combs</td> <td data-bbox="778 1565 962 1760">7.5 % added to the rate for of each class of sheep</td> </tr> <tr> <td data-bbox="592 1760 778 1957">Shearers providing required to provide their own stud combs</td> <td data-bbox="778 1760 962 1957">25% added to the rate for of each class of sheep</td> </tr> </tbody> </table>	Description	% of applicable rate	Shearers providing required to provide their own stud combs	7.5 % added to the rate for of each class of sheep	Shearers providing required to provide their own stud combs	25% added to the rate for of each class of sheep	<p>New Item – no comment from NFF as yet</p>	<table border="1"> <thead> <tr> <th data-bbox="1165 1464 1326 1565">Description</th> <th data-bbox="1326 1464 1513 1565">% of applicable rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="1165 1565 1326 1760">Shearers required to provide their own stud combs</td> <td data-bbox="1326 1565 1513 1760">107.5% of the rate prescribed appropriate to the class of sheep</td> </tr> </tbody> </table>	Description	% of applicable rate	Shearers required to provide their own stud combs	107.5% of the rate prescribed appropriate to the class of sheep
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FWC Item ? (SCAA3) Weekly rate quote	45.3 Rates for Shed hands (a) If not found employee: <table border="1"> <thead> <tr> <th>Adults</th> <th>Weekly \$</th> <th>Per Run \$</th> </tr> </thead> <tbody> <tr> <td>For adults with less than 65 work days experience as a shed hand</td> <td>1051.33</td> <td>52.57</td> </tr> <tr> <td>For adults with 65 or more work days experience as a shed hand</td> <td>1105.65</td> <td>55.28</td> </tr> </tbody> </table>	Adults	Weekly \$	Per Run \$	For adults with less than 65 work days experience as a shed hand	1051.33	52.57	For adults with 65 or more work days experience as a shed hand	1105.65	55.28	40.4 Rates for Sshed hands (a) If not found employee: <table border="1"> <thead> <tr> <th>Adults</th> <th>Weekly Rate \$</th> <th>Per Run Rate \$</th> </tr> </thead> <tbody> <tr> <td>For adults with less than 65 work days' experience as a Sshed hand</td> <td>1051.33</td> <td>52.57</td> </tr> <tr> <td>For adults with 65 or more work days' experience as a Sshed hand</td> <td>1105.65</td> <td>55.28</td> </tr> </tbody> </table>	Adults	Weekly Rate \$	Per Run Rate \$	For adults with less than 65 work days' experience as a Sshed hand	1051.33	52.57	For adults with 65 or more work days' experience as a Sshed hand	1105.65	55.28	New Item – no comment from NFF as yet	<p>Additional item SCAA1 – Quoting of Shed Hand's 'Weekly Rate' Details: Amending Clause 40.4 regarding quoting of Shed Hand rate as a 'Weekly Rate' and a 'Per Run Rate'.</p> <p>Issue: the Award is currently stating that that the weekly rate is 20 times the 'run rate' but many workers legitimately only work 19 runs per week and are only entitled to 19 runs of pay.</p> <p>Comment: This is the result of the move to the 38 hour week and the 'Per Run Rate' was adjusted accordingly in 2010. Currently, the two ways shed staff can be requested to work are: (a) 5 days of 3x two hour (120minutes) runs and a fourth run that finishes after 96 minutes (5.06pm on a normal day). The worker would be paid for 20 runs during the week or (b) 4 days of 4xtwo hour runs and on the fifth day (normally Friday) they would work only 3x two hour runs. The worker would only be entitled to 19 runs of pay.</p> <p>Solution: (a) Remove the quote 'weekly rate' amount and only quote the per 'run rate' or (b) Quote both the weekly rate as 19 runs and 20 runs</p> <p>Note: A.3.2 – "Shed Hand</p>	
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				Junior Formula" Does not show the weekly rate therefore there is no problem and can be left as proposed
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Jason Letchford
Secretary

On behalf of the Shearing Contractors Association of Australia (SCAA)
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