

4 yearly review of modern awards –Pastoral Award

Matter No. AM2014/239

NATIONAL FARMERS' FEDERATION

**FURTHER SUBMISSIONS ON EXPOSURE DRAFT –
PASTORAL AWARD 2016**

Date: 23 November 2016

1. The National Farmers' Federation (NFF) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia's major agricultural commodity groups.
2. This submission responds to Directions issued by the Fair Work Commission (**Commission**) on 5 October 2016 asking the parties to file submissions in reply by 23 November 2016.
3. It deals specifically with the submission of the Shearing Contractors Association of Australia (SCAA) dated 20 October 2016.

Shearing Operations

Additional Item SCAA1 – Clause 40.2 Shearers providing their own stud combs

4. This represents a new substantive claim and one that is beyond the scope of these proceedings.
5. The award stage review of the Pastoral Award 2010 has largely been finalised, with hearings held in 2015.
6. The Commission has made clear that Exposure Draft proceedings in the four yearly review of modern awards are not intended to give rise to substantive changes to the relevant award.
7. In addition, the modern award review has created a significant regulatory burden for all concerned, and there is much work still to be done in order to finalise matters over the next twelve months.
8. For each of these reasons, the claim should not be considered further in these proceedings.

Additional Item SCAA2 – Clause 40.4 – Quoting of additional rates.

9. The NFF is not opposed to the SCAA's proposal to quote all rates at clause 40.4 as a consistent percentage. We propose the following alternate wording for those additional rates that are currently inconsistent.

10. We note that this is not an endorsement of the rate itself but rather, the form of wording used to quote the rate.

Hand Shearing	107.5% of the rate of the appropriate class of sheep.
Shearers required to provide their own stud combs	125% of the rate of the appropriate class of sheep.

11. If the current wording of the exposure draft is maintained, the replacement of the word ‘for’ with ‘of’ in the revised exposure draft dated 17 August 2016 should be consistent for both shearers required to provide their own stud combs and hand shearing.

Additional Item SCAA3 – Clause 40.4 – Quoting of Shed Hand’s ‘Weekly Rate’

12. Shed hands are paid a ‘run rate’ under the award, calculated as 1/20th of the weekly rate. This rate was determined by agreement during the Award Modernisation process, in conjunction with an increase in the ordinary hours of work reducing from 40 hours to 38 hours for the shearing industry (discussed further below).
13. It is common in the industry to arrange shearing in either 19 or 20 run weeks, adjusted to ensure a 38 hour week in each case.
14. For example, many large, expeditionary sheds finish on Friday at the end of the third run. Work performed from Monday to Thursday occurs in four runs of 2 hours each, as follows:

7:30 am – 9.30am	First run
10:00 am – 12.00 pm	Second run
1:00 pm- 3.00pm	Third run
3:30 pm – 5.30pm	Fourth run (Monday to Thursday only)

15. Under this arrangement, hours of work are calculated as follows:

Day	Calculation
Monday to Thursday	4 x 2 hour runs x 4 days = 32 hours
Friday	3 runs x 2 hours = 6 hours
Total	38 hours; 19 runs

16. The other common way in which shed hours of work are structured is to work 4 runs on each day, Monday to Friday, but finish earlier on the fourth run at 5.06pm each day:

7:30 am – 9.30am	First run
10:00 am – 12.00 pm	Second run
1:00 pm- 3.00pm	Third run
3:30 pm – 5.06pm	Fourth run

17. Where runs are structured in this manner, shed hands work the following hours:

Number of Runs	Calculation
Monday to Friday	3 runs x 2 hours x 5 days = 30 hours 1 run x 1 hour 36 minutes x 5 days = 8 hours
Total	38 hours; 20 runs

18. During Award Modernisation in 2008, a Full Bench of the Australian Industrial Relations Commission determined that the standard hours of work for shearing employees would be 38 hours, reducing from the longstanding provision for 40 hours. In making its determination, the Full Bench stated:

“we have increased the relevant piecework rates to reflect a reduction of ordinary hours from 40-38 with respect to shearing, crutching, wool pressing and related classifications”.¹

19. Along with the reduction in ordinary hours of work, minimum weekly wages were increased by 5 per cent. To offset this increase having regard to the ‘no increase in cost for employers’ principle, a divisor of 20 runs was adopted for the purpose of the shed hand rate.
20. The shed hand’s run rate now found in the award reflects this approach. It applies to each two hour run. There is no lower run rate for runs of less than two hours, even though many shed hands work one shorter run each day.
21. While we acknowledge that industry practice is not always reflected in the award, amending the shed hand rate in the manner suggested by the SCAA would amount to a substantive change and one that was not contemplated during the award stage of the review.
22. For the reasons outlined above in relation to stud or ‘cover’ combs, we do not consider it appropriate to deal with the SCAA claim further in these proceedings.

¹ [2009] AIRCFB 345, [58].

Additional Item SCAA4 - Sleeping Quarters Allowance

23. The NFF relies on our previous submission in response to the SCAA's submission in relation to clause 46.1 of the Exposure Draft.
24. In our view, where workers move to a town for an extended period of time to work in a number of sheds, the town becomes their 'usual place of residence' for the purpose of the award. This is consistent with the nature of work in the industry, as contemplated by the award.
25. Shearers who move to a particular region to take up the opportunity for work are employed in that region. In other words, the region becomes their usual place of residence for the period of employment, regardless of the duration of their stay. In these circumstances, no accommodation allowance is payable.

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