



Ruling on OHS sends wake-up call to Shearing Industry.

Below is a summary of a NSW Court of Appeal judgment on a case that involved a shearer who suffered injuries to his back when he fell off a raised shearing platform while attempting to attach his harness. The platform was 0.8 metres above the ground.

As you will read, the case raises concerns for shearing contractors in all states as the shearing contractor in this case has been found 25% liable (for the \$478,589 cost) for not providing a safe work place for workers

At this stage I do not have any definitive answers as to what it means for you if the same accident were to happen on your worksite 'tomorrow'. The date the accident occurred was October 2000 and the laws have changed.

I have written to Workcover NSW requesting information on

- the OH&S aspects of the accident : if it happened today, what action would they take against the shearing contractor given that the Workcover literature on shearing shed design recommends a mandatory guard rail where the height of a raised board is 1.0 metre or more. Below this height a guard rail is NOT mandatory - only a painted / highlighting line along the edge of the raised board is required.

- whether or not your workers compensation policy would cover the financial costs of the claim.

Interestingly, the case will affect all industries with similar work heights – all loading docks for example, are likely to be affected. The ruling contradicts many other industries' OH&S standards along with many Australian Standards building codes.

As soon as I have more information on what the full ramifications of the case are under current laws, I will let you know.

Article : Negligence finding sends a warning to shearing industry

The NSW Court of Appeal has recently issued a clear warning to shearing contractors and woolgrowers that they have a duty of care to shearers, and they should install guardrails on raised shearing platforms.

The case involved a shearer who suffered injuries to his back when he fell off a raised shearing platform while attempting to attach his harness. The platform was 0.8 metres above the ground.

The worker successfully sought damages against his employer and the owners of the shearing shed, with the trial judge finding the employer (shearing contractor) was 25 per cent liable and the property owners 75 per cent liable.

The shed owners appealed, arguing firstly that there had been no breach of duty and secondly that the worker hadn't established that the accident was due to their negligence. They also argued that the trial judge should have found that the worker negligently contributed to his injuries.

The shed owners claimed it was not usual practice in the industry for shearing platforms to be guarded by a rail, and that such a rail, if installed, would interfere with the working ability of all the shearing shed staff.

The appeal bench - Justices of Appeal Margaret Beazley, Kim Santow and Murray Tobias - found there was no error in the trial judge's finding that there had been a breach of duty.

The bench agreed with the judge that a reasonable person could have foreseen that the failure to provide a guardrail would have involved a risk of injury to a person working on the platform, and "it is a matter of common sense that a fall from that height could cause injury".

The bench said a reasonable response to the risk was the provision of a guardrail, and pointed out that such was required by the relevant Australian Standard. Justice Beazley said that although Australian Standards had no legislative force, "they are a factor to be taken into account in determining whether or not there has been negligence".

The shearing shed owners also claimed that the worker had actually fallen backwards down the steps to the platform rather than off the edge, and so causation hadn't been established.

But the bench found the trial judge was entitled to accept that the worker had fallen off the edge.

The bench also found that there had been no contributory negligence. Justice Beazley said: "This was an accident which happened in the course of undertaking an activity where a piece of machinery gave way unexpectedly. In those circumstances, I am of the opinion that it has not been established that the respondent failed to take reasonable care for his own safety, and his Honour's finding of contributory negligence should be upheld."

Shearing industry on notice

Justice Tobias said he expected the decision would "have some resonance within the shearing industry".

He said it appeared that it was common for shearing platforms to be raised by about 80 centimetres (to allow shedworkers to gather up shorn fleece at waist level), and that it was "patently clear" that a platform without a guardrail gave rise to a foreseeable risk of a shearer overbalancing and falling.

Justice Tobias said there was little substance in the argument that a guardrail would interfere with shed workers' duties, saying "commonsense would also seem to bear this out".

He concluded: "In these circumstances it seems to me that this case will have some significance in terms of the appropriate design and construction of raised shearing boards in shearing sheds. This case also indicates that this Court has imposed on a shearing shed owner not only a duty of care (which in this case was not contested) but has also made clear that, absent some exceptional circumstances which would otherwise militate against it, the foreseeable risk of a shearer or other person falling from the raised board requires as a reasonable response by that owner the installation of a guard rail of the nature of that to which I have referred and which generally complies with the Australian Standard."

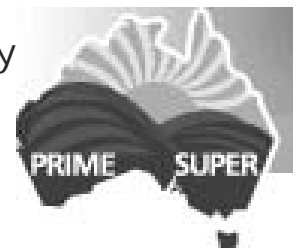
Increased damages for gratuitous care


The bench found the trial judge had given no reasons for failing to award the worker damages for gratuitous care beyond one year after his operation, and increased his award by about \$77,000 to \$478,589.10, including interest.

Sheridan & Anor v Borgmeyer [2006] NSWCA 201 (21 July 2006)

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SCAA Meeting in Tasmania

At the invitation of the AWU, SCAA committee members Frank Sutherland and Ivan Letchford travelled to Launceston to meet representatives from the AWU and review changes to the shearing industry. This meeting addressed the new 'WorkChoices' laws. The meeting coincided with an Australian Wool Innovations demonstration display of their Upright Posture Shearing Platform (UPSP). The SCAA took the opportunity to invite all Tasmanian based shearing contractors to attend the demonstration and to learn the benefits of SCAA membership.

New Australian Workplace Relations laws (WorkChoices)

The WorkChoices laws came into effect in March this year. However the extent and full ramifications of the laws are yet to be understood. The changes in the laws are summarised as:

- All awards have been reviewed by the Award Review Taskforce. Recommendations are yet to be made public. Prior to Workchoices there were over 3,000 Awards in Australia. Part of the Taskforce's role is to condense the 3,000 Awards down to approximately 40 Awards.
 - Employers and employees who were bound by a federal award immediately before WorkChoices commenced will continue to be bound by that award.
 - Other parties who are not incorporated trading entities (Pty Ltd & Ltd companies) and were bound by a federal award before commencement (including employers in Victoria that are not corporations) will continue to be bound by a 'transitional' federal award. Transitional awards will operate for a period of five years to allow employers to decide whether to remain in the federal system (by incorporating as a trading or financial corporation), or move to a state system.
 - Wages will no longer be included in awards (other than transitional awards). Minimum wages are instead protected in Australian Pay and Classification Scales (APCSs) Classification-based wages and casual loadings are also included in Australian Pay and Classification Scales. APCSs are initially taken from federal and state awards. Wage rates will be set and adjusted by the Australian Fair Pay Commission (AFPC)
 - Hours of work will remain in awards, but will be subject to the Fair Pay and Conditions Standard after a transitional three-year period. The Standard guarantees that a person cannot be required or requested to work more than 38 ordinary hours of work per week, plus reasonable additional hours. If agreed in writing, the 38 ordinary hours per week may be averaged over a period of no more than 12 months.
 - The Australian Fair Pay and Conditions Standard (the Standard) sets out the minimum wages and conditions of employment that apply to employees in the federal WorkChoices system. There are 5 minimum conditions.
 1. a maximum of 38 ordinary hours of work per week;
 2. four weeks of paid annual leave (with an additional week for shift workers);
 3. ten days of paid personal/carer's leave (including sick leave and carer's leave), with provision for an additional two days of unpaid carer's leave per occasion and an additional two days of paid compassionate leave per occasion;
 4. 52 weeks of unpaid parental leave (including maternity, paternity and adoption leave).
 5. Preserved Australian Pay and Classification Scales (APCS) and wages set by the Australian Fair Pay Commission (Fair Pay Commission)
 - Allowable and Non-allowable matters in Awards
- Under WorkChoices, the following matters can be included in awards. These are referred to as Allowable Award matters and include:
- ordinary time hours of work, rest breaks, notice periods and variations to working hours;
 - incentive-based payments and bonuses;
 - annual leave loadings;

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- state or territory public holidays, entitlements of employees to payment in respect of those days, and days to be substituted for public holidays;
- monetary allowances (for expenses, responsibilities or skills not included in rates of pay, or for the performance of particular tasks, or work under certain conditions or locations);
- loadings for working overtime or for shift work;
- penalty rates;
- redundancy pay by an employer of 15 or more employees;
- stand-down provisions;
- dispute settling procedures;
- type of employment, such as full-time employment, casual employment, regular part-time employment and shift work; and
- conditions for outworkers to the extent necessary to ensure that their overall conditions of employment are fair and reasonable.

Terms in awards that do not fall under this list will no longer be enforceable. These matters include provisions that deal with entitlements covered by the Fair Pay and Conditions Standard (the Standard). These are discussed in more detail below.

Under WorkChoices, a number of terms currently contained in some awards will become Non-allowable and will no longer be enforceable. These include:

- conversion from casual employment to another type of employment;
- restrictions on the range and duration of training arrangements;
- restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;
- union picnic days; and
- Trade union training leave.

Australian Workplace Agreements (AWA's)

Advantages of an AWA

- Potentially a more flexible agreement
- Can be tailored to suit your needs
- Could reduce bookkeeping efforts by simplifying what is paid
- Could reduce potential industrial disputes arising from the payment of allowances such as travel, accommodation and mess.

Disadvantages of an AWA

- Reducing overall remuneration to employees with the current labour shortages will make working in the shearing industry less attractive to current workers and any new entrants
- Maintaining conditions of work is essential from both OH&S and 'keeping the employee happy' perspectives.
- Reducing costs to the employer from a workers compensation and payroll tax perspective is not going to be achieved in that it is state based legislation and all remuneration will fall under the state's definition of wages.

Moving On

- o Bill and Lorraine Pryde are retiring from shearing contracting after 20 years.
- o Peter Maher from Forbes has changed tack. Partner Michael Coles is continuing to run Willshear Shearing Services

**SCAA Memo to members - 4 August, 2006.
Outcomes from the 'PANIC' Meeting - 13 July, 2006.**

The SCAA industrial committee recently met with the Australian Workers Union (AWU) and the National Farmers Federation (NFF) The main purpose of the meeting was to:

- discuss the perceived effect of the new workplace laws and their effect on the Federal Pastoral Industry Award
- review overall pay rates in light of the lack of new entrants and the declining number of existing workers in the shearing industry.

The meeting could be considered partially successful at best.

The positive outcome from the meeting was that the AWU, the NFF and the SCAA all agreed that the current formula that underpins the 'mechanics' behind the wage increases received by shearing industry workers when there is an increase in the Federal Minimum Wage is a very practical and effective method of adjusting wages for the industry. Therefore it was agreed that all three parties would make a submission to the Australian Fair Pay Commission to maintain the status quo in terms of keeping the formula in place.

In terms of addressing the labour shortages through scheduled, moderate pay increases, the NFF were categorically opposed to any pay increase for Federal Pastoral Industry Award workers above and beyond that payable under the current formula.

From SCAA members' perspective the meeting was disappointing. Feedback from the seven SCAA regional meetings held during the autumn provided unanimous agreement that the annual income of shearing industry workers, especially non-shearing shed staff and cooks, was falling further behind comparable industries. Members agreed that the industry's labour force needed to be offered greater financial incentive to stay in the industry and new members greater incentives to enter the industry. It was agreed that this was needed to keep the shearing industry competitive in the labour market with alternative industries such as mining and transport.

The effect of WorkChoices legislation is to deregulate labour markets and uncouple the cost of labour (wages) from Awards. A recent press release from the NFF (<http://www.nff.org.au/pages/nr06/058.html>) highlights the NFF's confusion around market deregulation (WorkChoices) and the pricing mechanism (wage rates) within a market (the shearing industry). Somehow the NFF believes that a regulated market (Award based wages) has firstly caused employers to be reluctant to employ workers in the shearing industry and, secondly, is why workers currently do not want to work or remain working in the industry. The fact of the matter is that it is price (wage rates), not market regulation that is causing the labour shortage problem i.e. employers are happy to pay the current price (minimum Award wages) but it is the workers who are reluctant to work for that price (Award wage rates) and are constantly seeking work in other industries where they can sell their labour for a higher price.

In a deregulated labour market, where demand (wool growers) is greater than supply (shearing staff), the price (wages) will inevitably have to increase. It is the responsibility of employer bodies (SCAA) and the producers' representatives (NFF) to try to moderate the rate of increase in wages (it is the Unions' job to control the fall or lack of increase in wage rates). A deregulated market means that the price (wages) is more likely to fluctuate to extremes. This obviously causes instability to the 'cost of production' for producers

The 'PANIC' meeting was the obvious forum for the NFF to 'control' the speed and size of any future wage increases for Federal Pastoral Industry workers. The NFF's non-negotiable 'no' position to any

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wage increases reflects an arrogance by NFF policy makers towards the industry that will result in negative outcomes for the wool industry as a whole, but will have the greatest negative effect on their members' livelihoods.

Therefore the NFF's position is irresponsible in terms of looking after two of the basic needs of their members: firstly, to ensure that there is enough labour available to harvest their livelihoods, and secondly, that the cost of the labour is at a viable level for production.

At this stage the size and timing of the next wage increase for Federal Pastoral Industry workers is unknown but will be handed down by the Australian Fair Pay Commission in due course.

Victorian OH&S Training

As a result of Workcover Victoria's recognition of the need for significant improvements in the area of OH&S in the shearing industry, Workcover Victoria has allocated \$200,000 towards the shearing industry to help improve accident and injury rates. Committee member, Frank Sutherland, has been working hard in coordinating the programme with Workcover. As a result, 3 OH&S training days have been organised for shearing contractors, farmers and shearing industry workers. The days will be:

- o Western Victoria, Ballarat region, 27 September 2006;
- o Gippsland region, Woodside, 4 October 2006;
- o Northern Victoria, Dookie, 1 November 2006.

Specific times and locations will be sent to Victorian members as soon as they are available. The meetings are a "MUST" for all SCAA members who contract in Victoria. This knowledge is essential for your business survival.

Further to this, the Workcover Victoria grant will be used to subsidise wool growers purchasing back harness supports for their shearing sheds. The back harness supports will be promoted at the workshops and a cash refund will be available through the SCAA. The workshops will also use the opportunity to distribute a booklet that provides advice to shearers on exercises and fitness that will reduce the risk of injury.

Victorian Small Business Safety Program funding

The SCAA has applied to Workcover Victoria for funding for a further 50 Shearing Shed Inspections. OH&S consultant Michael Lawrance has already conducted in excess of 50 of these inspections in the past 18 months. The inspections are a free service (the cost is approx \$400 per inspection) to SCAA members' clients in the state of Victoria. The service provides vital safety checks for your clients' shearing sheds – which is obviously your employees' workplace. The safety checklist allows shed owners to upgrade, or make plans to upgrade their sheds to meet minimum safety requirements. As the employer, you have an ongoing duty of care to provide a safe work environment for your workers. This service is a fantastic opportunity for SCAA members to initiate the process of improving your employee's workplace and fulfilling your OH&S requirements. To find out details or arrange an inspection, call Michael Lawrance on 0417 562 881.

State Award pay rises

On the 26 June, the NSW Industrial Relations Commission granted its lowest paid workers a \$20 a week pay rise. In a separate decision, Western Australia's minimum wage will also increase by \$20 a week. These wage decisions do not affect the Federal Pastoral Industry Award but will increase the NSW & WA State Award pays. The estimated rate for shearing under the NSW State Award will be \$2.14 per head and shedhands will receive \$42.50 per run. This means that shearing contractors who are not members of the SCAA should be paying these rates.

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Shearing Safety Summit

A Shearing Safety Summit is scheduled to take place in Melbourne on the 14th November 2006. The aims of the summit include coordinating national activity in relation to OHS and workers compensation issues for the shearing industry. The draft agenda sets out a strategic plan for sustainable improvement of OHS in the wool harvesting sector with shearing contractors and farming bodies in all states encouraged to adopt national standard initiatives.

"Reverse drag" OH&S Issue

The issue of what has been termed "reverse drag", has been debated by the SCAA, the NSW Farmers Association and the Australian Workers Union (AWU) over the past 18 months. Reverse-drag is where a shearer, when dragging a sheep from the catching pen has to lift and turn the sheep more than 90 degrees to position the animal for shearing. In other words it is the practice where a left-handed shearer has to work on a right handed stand and visa-versa. The issue was raised with Workcover NSW in 2005 by the AWU as an unsafe work practice. The AWU effectively have requested that Workcover prohibit the practice.

There seems to be confusion around the facts of reverse-drag: some parties seem to believe that left-hand stands are being banned. Left hand stands are "safe" for left handed shearers to shear on. Therefore Workcover cannot come into a shearing shed where there is no shearing taking place and write a "prohibition notice" on left hand stands. A prohibition notice can only be written where a left handed worker is working on a right handed stand and visa versa.

Although the issue has not been finalised it appears that Workcover NSW will prohibit the practise in the next 18 months (NSW Farmers has requested a "grace" period of 5 years). The end result is that wool growers that have shearing sheds where the practice of "reverse drags" occurs will need to look at adopting a 'conversion system' to solve the problem

Grouping Rules for NSW

A FAQ on the NSW Workcover website: Q:"Who will be grouped?" A: "Employers that are related entities where the combined wages of the group are greater than \$600,000" the website goes on to explain: "Under the new arrangements, which will apply for policies commencing on or after 30 June 2006, employers that are related entities with combined wages of more than \$600,000 will be grouped for workers compensation purposes".

I have formerly asked Workcover NSW the question: "If an individual was a Director of two shearing contracting businesses, where both businesses had wages of under \$300,000, would the two businesses be grouped together for the purpose of experience factor adjustment?". The website suggests that the businesses will not be Grouped but I still await an answer. Obviously I will notify you of the answer when it becomes available.

Bioclip Ram System

As a result of feedback from SCAA members, Bioclip has spent the last 12 months developing and refining a Bioclip system for Rams. Bioclip has recently announced that the system is now ready for commercial use. "Bioclipping" will certainly solve the dilemma over whether or not to sedate rams.



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Regional meetings

The SCAA have now completed their regional meeting programme for the year. Regional meetings were held in Armidale, Dubbo, Ballarat, Moama, Adelaide, Narrandera and Canberra. With the exception of Armidale, all meetings were well attended by members. The main subjects reviewed at the meetings included the Federal Governments new Workplaces Relations laws "WorkChoices", Australian Workplace Agreements, shearing training and funding, OH&S issues, Workers Compensation premium calculations, BIOCLIPing of rams and the sedation of rams. The SCAA committee would sincerely like to thank Australian Primary Superannuation, especially Ken Peters and Rod Stewart, for their continuous effort to support the SCAA and the shearing industry in general. Other supporters include TAFE NSW, Heiniger Australia and Combi-Clamp.

Drugs in shearing

Sandra Graetz, from Argyle shearing (Warrnambool, VIC) reports that employers are to be vigilant and not employ anyone who uses or is under the influence of drugs in the workplace. Sandra makes the point that as contractors we need to stick together and have a zero tolerance to anyone who uses drugs in the workplace in order to force the offenders to reform their behaviour or leave the industry. Further to Sandra's valid point, the laws are very clear on the matter, the employer has a duty of care to provide a safe work place for employees. Workers who are under the influence of drugs and cause injuries to themselves or fellow workers are clearly the responsibility of the employer and their workers compensation policy. Turning a blind eye and warnings without follow up are both unacceptable solutions to the problem.

Sedation of Rams

Baldwin Shearing has recently had one of their workers suffer a hand piece injury as a result of ram shearing. Once again, this unfortunate accident highlights the safety dilemma for contractors and the shearing of rams issue. The over riding fact is that employers have a duty of care to keep their workers safe. The various State Workcover / Worksafe authorities are now aware of the positive effects of the use of S4 class veterinary drugs, such as ACP, to sedate rams prior to shearing. In the event of an accident caused through the shearing of rams, Workcover/Worksafe authorities will want to see that contractors have a process in place that uses all safety equipment / materials available to them to prevent the injury or accident. Thus lies the dilemma - S4 drugs are not available for non-qualified users (basically use is limited to Vets and Doctors) - but as the use of ACP becomes more commonplace, authorities are going to expect that rams should be sedated.

"Panic" (Pastoral Advisory Negotiating Industrial Committee) Meeting

The SCAA, the Australian Workers union and the National Farmers met in Melbourne on the 13 July 2006 to discuss the new Australian Workplace relations laws. The meeting achieved agreement on lobbying the new Fair Pay Commission with a single voice as to the merits of maintaining the FPI Award formula in any future restructuring of the Award. (See Memo)

New AWI Training DVDs available

- o Improvers / Professional Shearer Training DVD provides comprehensive training, tips and instruction on shearing and gear preparation for improver and professional shearers. This is a follow up to the "Beginner" DVD that was released last year.
- o Wool Handler Training DVD for wool handlers covers throwing, skirting, rolling and other shed responsibilities.
- o To order your copies call 1800 070 099

AWI - Crutching DVD

AWI is producing a training crutching DVD - Members such as Geoff Templeton will be pleased to hear this as he confirms this is one area of the industry that has been neglected from the shearing training curriculum and resources.

AWI Training Funding

AWI has allocated \$2.5 million for its next round of training programmes. The breakdown is NSW - \$181,000, QLD - \$67,000, Vic - \$171,000, TAS - \$64,000, SA - \$116,000. Registered Training Organisation (RTO) - SCAA SWTI has been awarded the contracts to carry out the training in Victoria. TAFE NSW (Dubbo and Armidale) has been contracted to do the NSW training.