

Newsflash

27th March 2009



The Shearing Contractors'
Association of Australia

Dear Member

Here is the latest information at hand with regard to the 38 hour week.

Summary

AWARD	(Pre Reform Award) PAYSCALE	(Transitional) Award
change to 38 Hour Week	YES	NO
Pay Increase (to compensate for lost time)	NO	NO

Pay Rates

- **(Transitional) Award:** NO there will NOT be an increase in rates from the 28th March 2009
- **(Pre-Reform Award) PAYSCALE:** NO. It is extremely unlikely that you would be required to pay an increased rate of pay from 28 March 2009 - *see below for reasons and potential risks of back pay.

Hours of Work:

- **(Transitional) Award:** NO to "38 hour week"
- **(Pre-Reform Award) PAYSCALE:** YES you will have to conform to a "38 hour week" from 28th of March 2009

Details

(Pre-Reform Award) Payscale covering

- **Companies**
- **Trusts**
- **all Victorian registered contractors including Sole Traders and Partnerships:**

Contrary to what was "flagged" in the 9 March Newsflash, the rates of pay in this **PAYSCALE will NOT vary on the 28th March** however the working week will be limited to 38 hours.

The Australian Fair Pay Commission (AFPC) has advised that the only possible mechanism (there is for an increase to pay rates in a (Pre-Reform Award) PAYSCALE is via a specific application to the AFPC to vary it (and it is still being debated whether this is possible). Regardless, no such applications have been received to date. If an application was received, there would be a process run whereby all 'stakeholders' would be asked to make a submission. The arguments from these stakeholders would be weighed up and a decision would be made about increasing the Award etc. This process would obviously take months.

***Risks of under payment / back pay:** Unfortunately the situation where an employer has not increased the rate of pay from the 28th March in compensation for the loss of working hours and therefore earnings potential, is not completely without risk even though no government body has made an order to increase the pay rates. The risk of back pay would arise where an individual worker(s), more than likely backed by the AWU, could make a claim to the Workplace Ombudsman that he/she should have been compensated for their loss of working hours and earning potential from the 28 March 2009. The unbelievable part of this is that the two government agencies, the AFPC and the Workplace (Authority) Ombudsman who preside over these (Pre-Reform Awards) PAYSCALES, are not in a position to make a ruling as to how much the Rates of Pay should be increased. Incredulously, it is left with the individual employer to 'guess' if they should be increasing their rate of pay and if so by how much. The only body in the country who would make the determination as to whether or not you have 'short changed' your workers would be the High Court of Australia. Therefore, the possibility that the AWU would take up the challenge and expense of running a case to the High court, in light of the fact that the PAYSCALE will become obsolete in 8 months time, would seem very unlikely.

Note re payment of shed staff:

- **Daily Basis:** When paying shed staff on a 'daily basis', staff should not work past 5:06pm (24 minutes less per day) but will still be entitled to 4 full runs of pay.
- **Weekly basis:** When paying shed staff on a "weekly basis", shed staff should not work past 3pm on Friday but you will still pay them for 4 runs on the Friday.

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Details continued...

(Transitional) Award covering:

- **Sole Traders** not registered with a Victorian address
- **Partnership** not registered with a Victorian address

Contrary to what was "flagged" in the 9 March Newsflash, this Award **will NOT vary on the 28th March**. It has been advised that the expiry of the 3 year exemption to the conversion to the 40 hour week will only affect the (Pre-Reform Award) Payscale (see above). It has become apparent that the AWU has not made an application to the AIRC regarding the conversion of the (Transitional) Award to the 38 hour week. The AWU's submission, summarised in the 9 March Newsflash, is in relation to the 38 hour week's conversion to the new 'Modern Award' which will come into affect in 2010 and affect the (Pre-Reform Award) Payscale, not the (Transitional) Award.

Any changes to this Award will only be made when the AWU makes a specific application to change this Award and the application will NOT have grounds for back pay to the 28 March.

Future changes to Pay Rates and Awards

(Pre-Reform Award) Payscale

The AWU may make applications to the AFPC to vary the PAYSACLE. As time goes on, this becomes less likely as this PAYSACLE will cease at the end of 2009 and be replaced by the "**Modern Agricultural Award**". The 'final draft' of this Award is what will be handed down on in early April. It will contain provisions around the 38 hour week and a relative pay increase for workers losing their earning potential by the shortening of the working week. This Award will come into effect on 1 January 2010 and the (Pre-Reform Award) PAYSACLE will cease to exist.

October Pay Increase.

It appears that this PAYSACLE will be increased at the beginning of October as a result of the AFPC's increase to the minimum wage.

(Transitional) Award

Again the AWU may choose to make an application to the Australian Industrial relations Commission (AIRC) to vary this Award to a 38 hour week. The AWU has had the right to make this application for the past 3 years and the expiry of the 40 hour week exemption has no effect on this Award. This (Transitional) Award expires on 27 March 2011. At this time, employers who are 'respondents' to this Award will have to transition to the "Modern Award" or a State Award

October Pay Increase

It would be 'normal' for the AWU to make an application to vary the (Transitional) Award at the same time as the PAYSACLE is varied (1 October). As always, if you have any questions, please contact me.

Regards,

Jason Letchford

Secretary

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