

FACT SHEET- Shearers and Shed staff working as Subcontractors

(The information below is not new – just a reminder to some of the newer members who may not be familiar with the full extent of Australian employment laws and the dangers of breaching them.)

Shearers and shed staff working as subcontractors is not a new concept. It has been around for years. Since shearing moved from being a unionised 'closed shop' in the 1980's, engaging shearers and other shed staff as 'subcontractors' rather than employees, has seemed like a great idea.

Is it a great idea (or not)?

Like most things, there are pros and cons to be considered:

Obviously, engaging workers as subcontractors, there is less bookkeeping - paying one invoice total is far more convenient in comparison to having to withhold tax, report ('One-Touch Reporting') the wages, pay the tax withheld, calculate, report and pay the Super etc.

If you do choose this path, in the first year you may have happier workers because they are getting paid 'more' by not having the tax withheld. This is all good until they receive a tax bill and have to borrow the money to pay the ATO.

Then on top of the convenience there is 'the big carrot' of saving money - If the workers are not employees, then you must not have to pay workers compensation, Superannuation and Payroll tax? Is this the case? Well, like the old adage, 'if you think it is too good to be true, it's probably not' and this is definitely the case for the shearing industry.

Why doesn't subcontracting work for the Shearing Industry?

If you read no further, remember this: the laws at both Federal and State level are consistent in considering workers in shearing sheds to be 'DEEMED WORKERS'. So, even if you do engage your workers on an ABN number (Sole trader or partnership) and at the end of a shed they hand you a piece of paper called a 'Tax Invoice' with all the correct numbers on it, they are still 'deemed' to be a worker.

What happens when a subcontractor is 'deemed' to be a Worker?

When an employer is audited (Note - 'WHEN' not 'IF'), any payments to so-called 'subcontractors' working in the shearing shed will be 'deemed' to be 'wages' and this will trigger at least two, possibly three, additional liabilities for the employer:

1. Superannuation (SGC)

Under the SGC Act, any payments to workers (deemed or otherwise) require an additional 9.5% payment to a 'bona fide' Superfund. This means that you will need to show evidence that an additional 9.5% payment (of the worker's 'Gross' payment) ended up in a registered Superfund. If you just add 9.5% to the Gross and write a cheque for that total (say $\$100 + \$9.5 = \$109.50$), then in an audit an additional 9.5% will need to be paid on the whole amount – so in other words, you will need to pay them 9.5% on the 109.5% you have already paid them ($\$109.50 + \$10.40 = \$119.90$) plus 100% of the amount as a fine, plus interest. Furthermore, the whole payment is not tax-deductible.

2. Workers Compensation

Again any payments to subcontractors will require this money to be declared as part of the remuneration declaration and workers compensation premiums will need to be paid on it. If it is not declared, the additional premium will be charged with at least 100% penalty, plus interest on the whole amount. Again, none of this payment is tax-deductible and that is not the worst of it:

In addition to this, the 'new' (audited) remuneration total will increase your 'size' and therefore possibly re categorise you as an employer. If this new 'Size' category, is anything but 'small' you will need to pay 'claims history adjustments' on any claims that you have experienced in the past (up to 5 years). In some cases this type of audit has cost the shearing contractor (additionally) hundreds of thousands dollars.

Before you say *"this won't affect me because my subcontractors have shown me 'Certificate of Currency' for their own workers Compensation policy"*, unfortunately unless the subcontractor has invoiced you through a *Pty Ltd Company* or a *Trust*, the workers compensation policy is effectively 'invalid' for the reason that Sole-traders and the 'Partners' in a Partnership, cannot insure themselves under their own workers compensation policy. The policy they have shown you may be legitimate but only covers the Sole-trader's or Partner's own employees (that is why they are available to sole-traders and Partnerships). See table below

3. Payroll tax

Similar to Workers Compensation, any subcontractor remuneration that is deemed to be that of a 'worker', will be added to your total remuneration. If this new total is above the payroll tax threshold in the State or States you operate in, then you will be up for the Payroll tax, plus the fines and interest. Again, all of which are not tax deductible.

4. PAYGW

Here is the good news. Well sort of. Payments to 'Subcontractors' even if they are 'deemed workers', as long as the employee does have a correct ABN number and presents the employer with a correct Tax Invoice, the ATO will chase the worker for the PAYGW tax, not the employer. That said, this is all good until the worker receives a tax bill and has to borrow the money from you to pay the ATO.

Are there Exceptions?

Yes. The 'exception' to all this is if the worker does have their own Pty Ltd Company (or Trust) and the worker invoices you through this Company. The difference here is that when the payment goes into the company, then the 'owner' of the company will then have to jump through the same hoops as you of paying SGC, Workers comp and potentially payroll tax, on money drawn from the company.

Some Contractors Get away with it ?

Short answer is 'NO'. The longer answer is that they will get away with it for a while, say a year or so but then it catches up with EVERYONE. Auditors will look back up to 7 years. Compliance and the business of 'catching people' is a big industry. It is not the case of a few ATO inspectors running around knocking on doors, it is hundreds of accounting firms across the country, who are contracted by the ATO and the OSRs in each State, who make a great living from catching out employers, regardless of their good or bad intentions. In most States, Workcover has an unwritten policy of

auditing you every five years. Some members have been audited 3 years running and they had not been found to have had any breeches. So it is certainly a case of 'when' rather than 'if'.

See the table below as a guide to when Workers Compensation, Superannuation, PAYGW and Payroll Tax need to be paid on 'remuneration' to workers.

Worker status	Do you have to declare "wage" payments on:			TAX withholding required ?
	Workers Compensation policy ?	Payroll Tax declaration ?	SGC Superannuation Remittance ?	
	State Government (OSR)		Federal Government (ATO)	
Employee TFN	YES	YES	YES	YES
Sole trader w ABN	YES	YES	YES	NO
Partnership w ABN	YES (no in QLD)	YES	YES (no in QLD)	NO
Pty Ltd Company	NO - Cert of Currency req'd	YES (some exemptions apply)	NO	NO
Trust	NO - Cert of Currency req'd	YES (some exemptions apply)	NO	NO

Summary (Morals of the Story)

Moral of the story #1: 'The System' (Super, Workers Comp, Payroll Tax & PAYGW), needs to be paid. Engaging so called 'Subcontractors' means that 'The System' missus out and it can't afford to miss out, so it will come after you with the full force of the law.

Moral of the story # 2: Setting up a business model where you win business by being 'cheaper than the other contractor' is not a path to long-term success. 'Corner Cutting' just results in the Farmer getting a cheap job while you

- artificially lower the price of shearing in that district.
- pay a huge price in terms of fines and penalties at some stage in the next five years.

Moral of the story # 3: There are no successful businesses that only compete on price! Winning new business based on 'price' is an attractive but 'tricky game to play' successfully. In an industry where margins are very tight, unless you have a business plan as to how you will increase your margins in the near-term, without cutting corners on meeting your employee liabilities (Workers Comp, Super and Payroll tax), then you need to ask yourself as to why you are bothering to be in business – all the headaches without the reward (profit). Price is important but profitability (margin) is king !

If you have any questions on any of this, please contact the SCAA Secretary.