



FINALLY A DECISION FROM THE OMBUDSMAN REGARDING AWARD COVERAGE IN BOARDING & DAYCARE

What awards have applied applies to animal attendants and groomers in Boarding Kennels and Day-care Facilities?

Having debated the issue with the Fair Work Ombudsman over the course of last year we obtained written advice that the following awards applied:

1. Victoria - the Veterinary Assistants and Animal Attendants (Vic) Award
2. NSW - Animal Welfare General (State) Award
3. Tasmania, South Australia, Queensland, Western Australia, Australian Capital Territory, NT –

Award Free

However the Ombudsman advised they were considering whether the Miscellaneous Modern Award might be applied to the 'Award-free States'

History of Review

Following review, early this year the Ombudsman responded indicated they were of the view the Miscellaneous Modern Award would apply to the Award-free States.

Our view was this was incorrect and we wrote a lengthy researched response as to why we believed that should not be the case. The Ombudsman agreed not to implement their decision until considering our response.

The Ombudsman reviewed our response over an eight month period, finally responding early this month.

Decision and current Award position in all States

The Ombudsman confirmed their initial decision that the Miscellaneous Modern Award will be applied.

While we do not agree with the outcome, their response is well considered and is open on the facts. Our advice is members do apply the Miscellaneous Modern Award.

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In the interim Fair Work Australia terminated the Victorian and NSW Awards which had applied to kennels and day-care facilities in those States. These Awards were also replaced by the Miscellaneous Modern Award.

The upshot is the Miscellaneous Modern Award should be applied to the position of Animal Attendant and Groomer at all Boarding Kennel and Day-Care facilities around the country – other than where an Enterprise Agreement applies as an EA overrides the Award

How will this apply to employers in differing States?

It is important to remember that wage rates and penalties (this does not include overtime obligations) can be applied on a transitional basis over a 5 year period commencing 1 July 2010 until 1 July 2014.

This 'transitional application' was included in all Modern Awards to lessen the impact of the introduction of Modern Award rates and penalties – particularly where they are higher than the previous State Award, or previous Award free status.

Award free States: So, for example, an employer in one of the Award free states (which is anywhere except NSW and Victoria) was not bound to pay a Sunday penalty rate (so 0%); however under the Miscellaneous Award is bound to pay time and a half (so an additional 50% loading).

The 'transitional amount' is the difference between the two – (0% and 50%) – which is 50%. Each year from 2010 to 2014, 20% of the transitional amount (which is 50%) would be applied as follows:

- ▶ So on 1 July 2010 – 30 June 2011 the Sunday penalty would be 10% (20% of 50);
- ▶ On 1 July 2011 – 30 June 2012 (**now**) the Sunday penalty would be 20% (40% of 50);
- ▶ On 1 July 2012 – 30 June 2013 the Sunday penalty would be 30% (60% of 50);
- ▶ On 1 July 2013 – 30 June 2014 the Sunday penalty would be 40% (80% of 50);
- ▶ On 1 July 2014 the Sunday penalty would be 50% (100% of 50);

This same transitional calculation can be applied to ordinary wage rates, loadings and penalties (other than overtime penalties which will apply in full).

NSW and Victoria: If you are in NSW or Victoria you will transition from the old Award to the Miscellaneous Modern Award. These Awards contained weekend penalties – however you can transition from the penalty in the old Award to the penalty in the Miscellaneous Award provided the employee is not worse off overall.

In short, employers moving from an Award free state will not have to pay the full award penalties straight away – they can progressively introduce them over a 5 year period. Employers in NSW and Victoria can do the same – however were already paying penalties under their old Award – so the benefit to them will be less

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So what do you need to do now?

Obtain a copy of the Miscellaneous Modern Award and make sure you are paying the correct amounts to staff under the new arrangements.

If you wish to transition the penalty rates – which will represent a significant cost saving to the business – conduct calculations based upon your old award (or award free) position to the new position.

The important thing is to make sure you are not underpaying staff and ensure you are compliant with the new arrangements.

There is a possibility that members in the old ‘award-free’ States can implement an Enterprise Agreement to avoid the obligation to pay penalty rates – as we have successfully achieved this for another member. If you are interested in pursuing this option contact IR Assist.

IR Assist will be offering Webinars to explain the changes and provide calculations to members

IR Assist will be producing transitional reviews for members and conducting online webinars (one for NSW, one for Victoria and one for the remaining States) to take members through what will apply for them with copies of the transitional calculation sheets being provided as part of the webinar.

The webinars will run for one to one a half hours for a fee of \$49 for members and \$69 for non-members; + gst.

Members wishing to attend will need to email andrew@irassist.com.au to register their interest and webinars will then be organised on the basis of first numbers registered.

To attend the webinar you will only require a computer with internet access – no additional software will be required.

Contact IR Assist on
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