



## FINALLY A DECISION FROM THE OMBUDSMAN REGARDING AWARD COVERAGE for GROOMERS

### What awards have applied to Groomers?

This has been a difficult issue to determine with the Ombudsman providing various responses – often conflicting.

Our view has been that -other than in boarding kennels and day care facilities in NSW and Victoria – the position of Groomer was award free.

With the introduction of Modern Awards the position has been open to argument however we have finally received written direction from the Ombudsman in this regard.

### Ombudsman original view

Following extensive correspondence between IR Assist and the Ombudsman regarding the Award position for Boarding Kennels and Day-Care facilities we also sought a response from the Ombudsman regarding Groomers in various environments.

The Ombudsman had previously advised IR Assist in writing that:

*...If the employer is operating within the retail industry*

*(The definition of 'general retail industry' is provided under subclause 3.1 of the General Retail Industry modern award which states that 'general retail industry' means: ...the sale or hire of goods **or services** to final consumers for personal or household consumption...)*

*we are inclined to the view that the dog grooming work performed at the retail premises is 'incidental to or in connection' with the retail establishment and the other work outlined for the **Level 1 classification** and is therefore covered by the classification structure of the modern award.*

***We are therefore of the view that the General Retail Industry Award 2010 provides coverage in both scenarios you presented (where the groomer only grooms and also where the groomer does some occasional retail sales of 5-10% of their total work) including where an employee is solely performing dog grooming and does not have contact with customers.***

The issue was whether or not the General Retail Award would be applied to all Groomers in all environments (ie. mobile, from home, from stand-alone facilities etc.).

## IR UPDATE – PIA OCTOBER 2011

Certainly it was arguable on the basis of the definition of the ‘general retail industry’ that all Groomers – by selling a service – could potentially be covered by the General Retail Award.

### Most recent Ombudsman written view

Following further correspondence and discussion between IR Assist and the Ombudsman, the Ombudsman provided the following written opinion:

*It is our view that, groomers employed by a dog grooming business would also **typically be covered by the Miscellaneous Award.***

*In considering this, it would be necessary to **determine the primary nature of the business.***

*A business with **significant retail sales but also performing dog grooming, would be covered by the Retail Award.***

*A business primarily performing dog grooming, which may include some incidental sales of goods, would not be covered. Rather in our view it **would be covered by the Miscellaneous Award, in respect of the groomers.***

Of course the Ombudsman also pointed out:

*Finally, as you are aware, the Fair Work Ombudsman is not a court and does not have judicial powers under the Act. If parties were to take a matter relating to this issue to a court of competent jurisdiction and the court provided a view that was not aligned to the positions outlined above the FWO would reconsider its position.*

Nevertheless as it is the Ombudsman that investigates award breaches and back-pay claims we would advise complying with this latest written direction.

#### ***In a nutshell the Ombudsman has advised:***

*(i) that if the business has ‘significant’ retail sales – but also does Dog Grooming – the General Retail Award will apply.*

*(ii) If however the business primarily does dog grooming, but which may include some ‘incidental’ sales of goods – then the Miscellaneous Modern Award will apply.*

### 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 – based upon your pre Modern Award obligations.

## IR UPDATE – PIA OCTOBER 2011

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.

### So what do you need to do now?

Obtain a copy of the Miscellaneous Modern Award (or General Retail Award if sales of retail goods are 'significant') and make sure you are paying the correct amounts to staff under the new arrangements.

If you wish to transition the penalty rates – which could 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.

### 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 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](mailto: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.

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