



15 July 2015

The Associate to the Honourable Justice Ross AO  
President  
Fair Work Commission

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Associate,

***AM2014/199 - ANIMAL CARE AND VETERINARY SERVICES AWARD 2010 [MA000118]***

I refer to the amended directions of Justice Ross dated 6 May 2015. I note the request for written submissions on the technical and drafting issues related to the exposure draft of the *Animal Care and Veterinary Services Award 2010* ('the Award').

United Voice has coverage for animal care and welfare workers across Australia in veterinary practices and animal welfare organisations.

**Submissions on technical and drafting issues**

United Voice submits the following in relation to the exposure draft:

***Clause 8.3 (c)***

At clause 8.3 (c), the exposure draft states:

'Days off and time off instead of paid overtime will accumulate if not given and must be paid out the associate's ordinary rate of pay if not taken within six months'.

This Award currently states that accumulated days off and time off instead of paid overtime must be paid out if not used within six weeks. United Voice supports the retention of the existing entitlement.

***Clause 11.2 (a)***

In answer to the Fair Work Commission's question at clause 11.2 (a) of the exposure draft, the on call allowance should be paid in addition to payments for any time worked. The relevant rate is the overtime rate.

The on call allowance is remuneration for the associate's availability to attend to unscheduled cases outside of their ordinary or extra hours. 'On call duty' is defined by Schedule G:

**on call duty** means duty where the associate is not required to remain at the veterinary practice but is required to be available to attend unscheduled cases and that duty commences outside the associates ordinary hours of duty and extra hours of duty. On call duty is not counted towards ordinary hours of duty or extra hours of duty under this award unless the associate undertakes scheduled work.

The payment at clause 11.2 (a) (i) is not paid for 'on call duty', it is paid when the associate performs 'active on call duty'. 'Active on call duty' is define by Schedule - G:

**active on call duty** means where the associate, who is on call duty, actually attends cases. Active on call duty is not counted towards ordinary hours of duty or extra hours of duty under this award unless the associate undertakes scheduled work.

The payment at clause 11.2 (a) (i) is remuneration for work performed by an associate when called in. The payment does not compensate for the inconvenience of being available for duty outside of ordinary hours. Time spent on call is not time spent at leisure. An on call employee must maintain themselves in a state of readiness for work throughout a period of on call duty. Additionally, time taken for travel in the performance of duties during active on call duty is not counted for as time worked. Finally, it is accepted industrial practice that an on call allowance is paid in addition to any time worked as a result of a call in. These factors indicate that payment at 11.2 (a) (i) must be paid in addition to the on call allowance.

### **Clause 11.3 (a) (i)**

The clause in the exposure draft states:

#### **(a) Clothing and laundry allowance**

- (i) An employee who is required to wear a uniform must be provided with:
- an allowance equivalent to the cost of the uniform; and
  - an allowance of \$6.51 per week.

This alters the entitlement in the current award. The current entitlement is: 'a laundry allowance of at least \$6.51 per week'. This wording makes it clear that the payment is a laundry allowance and a minimum payment. We submit that for the sake of clarity the second dot point in the exposure draft should read 'a laundry allowance of at least \$6.51 per week'.

### **Clause 15.2 (a)**

We submit that the shift penalty in clause 15.2 (a) applies to shift workers when their shift finishes after 8.00 pm. The span of ordinary hours specified at clause 8.2 are expressly for 'day workers' and do not apply to shift workers.

### **Clause 16.1 (b)**

The exposure draft clause is likely to create confusion because it refers to both the 'ordinary hourly rate' and the 'minimum hourly rate':

**(b) Overtime rates for employees other than veterinary surgeons**

**(i) Monday to Saturday**

**150%** of the minimum hourly rate for the first three hours and **200%** of the ordinary hourly rate thereafter.

**(ii) Sunday**

**200%** of the minimum hourly rate with a minimum payment of three hours provided the employee is ready willing and available to work such overtime.

To ensure that consistent language is used throughout the Award, the phrase 'minimum hourly rate' should be used.

**Clause 16.2**

The Award should specify how frequently and when the allowance is payable. The allowance should be paid pro-rata each pay period.

**Clause 16.4**

We submit that this clause should be deleted. It is unnecessary because clauses 11.1 (c) and 11.2 already clearly provide for the entitlements of employees that are on call.

Further, the use of the word 'may' will introduce confusion about the entitlements of employees. The language of clauses 11.1 (c) and 11.2 (a) is mandatory. Both clauses state that employees rostered on call 'will' be paid an allowance for each period of on call duty. The use of the word 'may' at 16.4 suggests that there is some alternative to the payment of an allowance.

**Clause 20.5**

We support the inclusion of a public holiday substitution provision.

**Outline of submission in relation to substantive claims**

United Voice will seek the following variations to the Award during the current 4 yearly review of modern awards.

**Clause 16 (1) (c) - Overtime**

We seek to amend 16.1 (c) to read: 'When calculating overtime each day's work will stand alone, except where the overtime is continuous with overtime commenced on the previous day'.

**Schedule A – Classifications, B.2 Practice managers, Veterinary nurses, Receptionists, Animal attendants and Assistants**

United Voice seeks to vary the classifications in Schedule A.2 Practice Managers, Veterinary Nurses, Receptionists, Animal Attendants and Assistants to provide for a classification diploma qualified veterinary nurses.

United Voice anticipates calling employee witnesses from within the industry.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Robson', is written over a light blue rectangular background.

Michael Robson  
**National Industrial Officer**