

4 Yearly Review of Modern Awards

Exposure Draft: Animal Care and Veterinary Services Award 2014

Submission from the Australian Veterinary Association Ltd



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Introduction

1. The Australian Veterinary Association Ltd (AVA) makes this submission in response to the Fair Work Commission's (FWC) publication of Exposure Draft of the Animal Care and Veterinary Services 2014 award and the published list of identified issues as part of the Award Stage of the 4 Yearly Review of Modern Awards.
2. In 2014, the AVA surveyed its members on the provisions of this award and these results are supplied within this submission where relevant. The responses are separated into responses from employers and employees.
3. For clarity throughout the submission the current award is indicated by **CA** and the exposure draft by **ED**.

Technical and drafting issues related to exposure draft

4. **ED** Clause 8.3(c) Ordinary hours of work and rostering – Veterinary surgeons (minimum days off): The AVA agrees with the AWU's submission that the term "of paid overtime" is a drafting issue and should be removed.
5. **ED** Clause 8.3(c) Ordinary hours of work and rostering – Veterinary surgeons (minimum days off): The AVA agrees with the AWU's submission that the term "months" is incorrect and it should state "weeks".
6. **ED** Clause 8.3(c) Ordinary hours of work and rostering – Veterinary surgeons (minimum days off): The FWC poses the following question in the exposure draft

Parties should make submissions on whether the three full days off per fortnight includes being off duty from on call.

The AVA submit that the three days off per fortnight does include being off duty from on call.

7. **ED** Clause 10.7(b) Higher duties allowance paid to vet surgeons: The AVA agrees with the Ai Group submission that the term "their salary and" is incorrect and should be removed.
8. **ED** Clause 11.1 (c) (ii) On call: The AVA agrees with the Ai submission that the term "...when an employee is rostered to work on that Saturday" does not appear in the current award and is unnecessary.
9. **ED** Clause 11.2(a) (i) On call allowance and payment: The FWC poses the following question in the exposure draft

Is the payment in clause 11.2(a) (i) in addition to the allowance or instead of the \$37.76? Is the 'relevant hourly rate' the overtime rate or the ordinary hourly rate?"

The AVA submits that the payment in **ED** clause 11.2(a) (i) is in addition to the \$37.76 allowance.

10. Veterinary surgeons are presently paid overtime at the employee's ordinary working time rate (**CA** clause 24.1(a) (i)) and as such the overtime and ordinary hourly rate are the same. AVA supports that the term "relevant hourly rate" should be replaced with "overtime rate", in case at a later stage penalty rates are introduced for overtime for veterinary surgeons, in which case the overtime rates should apply in this clause.
11. **ED** Clause 11.3(a)(i) Laundry allowance: The AVA agrees with the AWU submission that the second dot point should read "• a laundry allowance of at least \$6.51 per week"
12. **ED** Clause 11.4(a)(i) Meal allowance: The AVA agrees the words "will be required to work the overtime" should be removed
13. **ED** Clause 15.3 Weekend and public holiday rates – shift work: The AVA agrees with the FWC's interpretation of this Clause

14. ED Clause 16.1(a) (ii) Overtime rates – employees other than vet surgeons: The AVA supports repeating this clause in the penalty rate clause.
15. ED Clause 16.4 On call: The AVA opposes this inclusion of this new Clause as it is confusing and unnecessary.
16. ED Clause 17.3(a) Annual leave loading: The AVA makes no submission on this.
17. ED Clause 20.3(a) Public Holidays other than veterinary surgeons and ED Clause 16.1(b) (ii) Overtime rates for employees other than veterinary surgeons, Sundays: ED Clause 16.1 (b) (ii) provides for a minimum payment of three hours for overtime worked on a Sunday. It is unclear whether the minimum payment period under applies for each occasion an employee is engaged to work overtime on a Sunday or if it applies once per day.
18. The FWO states in its correspondence dated 24th November 2014,
 “The FWO has received enquiries as to the operation of the minimum payment in circumstances where an employee works on two separate periods in the same day (for example a split shift). It may be unclear whether the minimum payment period under clause CA 24.2(b) (ii) applies for each occasion an employee is engaged to work overtime on a Sunday or if it applies once per day.
19. ED Clause 20.3(a) is similar in that it provides for a minimum payment of four hours when working on a public holiday
20. The AVA submits that if the employee is required to work a broken shift, and a broken shift allowance has been applied, then the minimum hours of engagement should apply over the combined shifts. E.g. one morning shift of 2 hours and one afternoon shift of 2 hours on a public holiday.
21. ED Clause 20.5(a) Non-standard working public holidays: There is a typographical error which states “Monday and Friday” which should read “Monday to Friday”
22. ED Clause 20.5(c) Substitute provision: The AVA makes no submission on this.
23. ED Clause 20.5(e) Public holidays: The AVA agrees with the FWC’s proposed replacement of the term “normal Saturday and Sunday rate” with “normal rate of pay”.

Other proposed changes to the award

24. ED Clause 8.3(a) Ordinary hours of work and rostering – veterinary surgeons (time taken to travel): The AVA supports both the AWU and AFEI’s submissions that the exposure draft alters the employee’s entitlements and as such the existing clause should be retained.
25. The AVA submits that the insertion of the word “**ordinary**” into the existing clause as follows would provide more clarity to the intent of the clause without changing any entitlements.
*Time taken for travel required in the performance of duties, except for active on call duty, will contribute to **ordinary** hours of work. Required in the performance of duties includes travel additional to one return trip between the associate’s place of residence and the place of work in any one day and travel between different locations of a practice.*
26. The reason for proposing the inclusion of this word is that quite a few of our members have sought clarification as to whether they need to pay a veterinary surgeon for time taken for travel while on active on call duty. The payment for active on call duty is dealt separately under CA Clause 16.1 (b) of the current award. CA Clause 16.1(b) (i) states “*should an associate perform active on call duty, the associate will be paid at no less than the relevant hourly rate for such duty*”. The Clause does not state whether active on call duty starts from the moment the vet leaves their home and ends when he or she returns, or whether it starts once they have reach the place of work (e.g. veterinary practice or owner’s farm) and finishes when they leave the place of work. In the absence of this clarification some members refer to CA Clause 22.3(a) and interpret it to mean that time to travel while performing active on call duty does not need to be paid, rather

than what the clause is intended to refer to which is that travel while on active on call duty does not contribute to ordinary hours of work.

27. The AVA submits that in support of this issue, **ED** Clause 11.2 (a)(i) should read:
An associate who performs active on call duty will be paid at no less than the relevant hourly rate for the duration of active duty. Payment to include travel time between the associate's place of residence and the place of work as needed in the performance of active on call duty.
28. We surveyed our members as to whether they thought that time travelled while on active on call duty should be paid:
- 85% of employees said it should be paid
 - 36% of employers said it should be paid
 - 15% of employees said it shouldn't be paid
 - 64% of employers said it shouldn't be paid
29. **ED** Clause 10.3 Minimum wages – veterinary surgeons: The AVA understands that for the FWC to consider a variation of modern award minimum wages during the 4 yearly modern award review a work value case would need to be put forward and justified. While the AVA believes that the minimum wages for veterinary surgeons should be reviewed and has given the reasons why we support this in our first submission, as a non-industrial professional body that represents both employees and employers we are not in the position to undertake this work. The union that represents veterinarians, APESMA has indicated that it will not be undertaking this work at this time.
30. **ED** Clause 13.3 Paid study leave (veterinary surgeons only): The AVA proposes that paid study leave should be provided to part-time associates on a pro-rata basis. This is a fair and equitable provision.
31. **ED** Clause 15.2 and ED 15.3 Shiftwork (other than veterinary surgeons): The AVA does not propose to pursue the removal of the shiftwork penalties for those other than veterinary surgeons. However, the clauses within the award relating to shiftwork for people other than veterinary surgeons are difficult for veterinary practice employers to interpret. There have been several reports from members who have accidentally breached these provisions. Shiftwork provisions and when they apply are very different from day work provisions and it is often difficult for employers to work out which of these provisions to apply to whom and when.
32. While **ED** clause 17.2 gives a definition of a shiftworker, it states that this is for the purpose of determining the additional week of annual leave provision. There is no general definition of a shiftworker within the award.
33. The FWO, in their correspondence dated 24th November 2014, identified the same issue,
CA Clause 25 contains entitlements for shiftworkers (other than veterinary surgeons) such as overtime and penalty rates for Saturdays, Sundays and public holidays, however the award does not contain a definition of "shiftworker" or "shiftwork". It may therefore be unclear when these entitlements apply."
34. The AVA proposes that including the following definition for a shiftworker would improve the clarity of the award:
Shiftworker: An employee is a shiftworker when they are regularly rostered to work their ordinary hours outside the ordinary hours of a day worker.
35. **ED** Clause 20.4 Public holidays – veterinary surgeons: The present award does not specify what the public holiday rate is for work performed on a public holiday by a veterinarian. It refers to the "appropriate public holiday rate" but does not specify what the rate is.
36. The FWO in their correspondence dated 24th November 2015 also identified this issue, indicating that the present award does not clearly establish a rate of pay for work performed on a public holiday for a veterinary surgeon.
37. The only mention of a public holiday rate **CA** Clause 29 - Public Holidays is poorly worded, formatted, too complicated and confusing to interpret and many members call the AVA HR Service for clarification. **CA**

Clause 29.2 (h) i-iii adds to this complication as it seems to specify another public holiday remuneration arrangement only applies when Christmas day falls on a weekend.

38. Our members were asked what rate they thought veterinary surgeons should be paid for working on a public holiday.

Employees responded:

No penalty rate	6%
150%	14%
200%	30%
250%	50%

Employers responded:

No penalty rate	23%
1.5x	3%
2.0x	28%
2.5x	13%

A public holiday rate for veterinarians needs to be determined and stated within the award.

39. With consideration to the modern award objective of ensuring that modern awards provide a fair and relevant minimum safety net of terms and conditions, taking into account the need to provide additional remuneration for employees working unsocial, irregular or unpredictable hours or working on public holidays, the AVA requests that the public holiday rate for veterinary surgeons should be aligned with the provisions for other employees within the award of 250% of the minimum hourly rate.
40. The AVA supports the new headings proposed by the FWC at ED Clause 20.4 to simplify and clarify the provisions.

41. ED Clause 16.2(b) Overtime rates – veterinary surgeons: In response to the FWC’s question

Should the award specify when and/or how frequently the allowance in clause 17.2(b) is payable? (The FWC has clarified this to refer to Clause 16.2(b) not 17.2(b))

The AVA would support this allowance being incorporated into an annualised salary, with some clear rules to ensure not less than what was payable if paid under ED clause 16.2(a) is paid.

42. The AVA proposes the inclusion of the following clauses:

In the event of termination of employment prior to completion of a year, the salary paid during such period of employment will at least cover what the employee would have been entitled to if all award entitlements had been complied with for the proportion of the year the person was employed.

When payment in accordance with this clause is adopted, the employer will keep a record of hours worked by the employee. The record will be available to the employee on request and kept for a period of at least seven years.

Any agreement reached under this clause must be recorded in writing and a copy retained by the employer.

The compensation and/or remuneration will be reviewed annually to ensure that it is set at an appropriate level.

43. Definition of intern and internship: The definition of the word “intern” in the Award needs to be more precisely defined. Presently in the award is the following definition: “intern” a *veterinary surgeon who is enrolled in a structured training program where the intern is provided direct supervision and training by at least one registered veterinary surgeon.*
44. When the Veterinary Surgeons Award 2001 (the origin of this definition) was established, the intent of the internships were to allow continued professional development through a structured training program outside regular general practice. Some general practices have recently started to offer internships in what is really general practice with no more structured training other than would be expected in introducing a recent graduate into general practice. As such we would like to clarify the meaning. The AVA is presently working on a clearer definition and will provide the FWC with the definition once decided. The timeframe involved to ensure that the proposed definition is supported by both employers and employees within the profession working under this award may preclude this being put forward at this review.