

**Senate Standing Committee on Education Employment and Workplace  
Relations**

**QUESTIONS ON NOTICE  
Budget Estimates 2012-2013**

**Agency - Fair Work Ombudsman**

**DEEWR Question EW0189\_13**

**Senator Abetz asked on 28 May 2012 , Hansard page 62**

**Question**

**FWO - Non monetary benefits in individual flexibility arrangements**

Senator ABETZ: We are told in paragraph 6 of this model arrangement: [Insert clause that the parties agree that the employee is better off overall due to the IFA. For example, if an all inclusive salary or hourly rate of pay provides a higher rate of pay than if the Award terms were to apply then the clause would state as follows ... Has any advice been given in relation to non-monetary benefits as to how that might work and how the employer might be able to calculate that and still be confident that the worker is 'better off overall' as the test requires. Mr Wilson: In relation to that guidance material, we will need to take that on notice.

**Answer**

*The Fair Work Ombudsman has provided the following response.*

The Fair Work Ombudsman does not provide specific advice to employees or employers on whether a particular individual flexibility arrangement (IFA) results in the employee being better off overall. Such elements are to be determined by the employee and employer, with the responsibility on the employer to ensure that the employee is better off overall under an IFA.

However, the Fair Work Ombudsman does regularly provide general advice about IFAs. The Fair Work Ombudsman assists both employers and employees to identify the modern award or enterprise agreement which may apply and to identify the terms that can be varied by an IFA.

The FWO can investigate claims that an IFA was not genuinely agreed to. These would include where an employer applied coercion, undue influence or pressure. Section 341 (2) (g) of the FW Act defines the process of 'making or terminating an IFA under a modern award or enterprise agreement' as a workplace right. A person must not take adverse action against another because of their workplace right.

This has the effect of preventing a prospective employer from making an offer of employment conditional on the prospective employee entering an IFA. In cases where it appears that the process of making or terminating an IFA or offering employment has contravened these general protections provisions, the FWO can investigate the matter.

Where an IFA is in place, the FWO can investigate where the employer has allegedly failed to comply with the undisputed terms of an [IFA](#). Sub sections 144 (2) (b) and 202 (3) (b) make IFAs a term of the relevant modern award or enterprise agreement.

The Fair Work Ombudsman's Best Practice Guide on the 'Use of Individual Flexibility Arrangements' contains a checklist for employers to ensure that the arrangement is lawful, fair and productive. The Guide does provide an example of a non-monetary benefit (Refer EW0266\_12).