

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

**QUESTIONS ON NOTICE  
Supplementary Budget Estimates 2011-2012**

**Outcome 5 - Workplace Relations & Economic Strategy**

**DEEWR Question No.** EW0508\_12

**Senator Abetz provided in writing.**

**Question**

**Individual Flexibility Arrangements (IFAs)**

Please provide an explanation of how IFAs work as a condition of employment.

**Answer**

The *Fair Work Act 2009* (the FW Act) requires modern awards and enterprise agreements to include a flexibility term that permits an employee and employer to agree to an IFA. An IFA:

- is an arrangement between an employer and an individual employee that varies the effect of a modern award or enterprise agreement in relation to that employee and the employer, in order to meet their genuine needs;
- is enforceable as a term of the modern award or enterprise agreement; and
- operates until it is terminated, by either the employer or employee with 28 days written notice (ss 145(4)(a) and 203(6)(a) of the FW Act), or at any time if agreed by both the employer and employee in writing (ss 145(4)(b) and 203(6)(b)).

The flexibility term of an enterprise agreement can provide for the effect of any enterprise agreement term to be varied in relation to a particular employee by an IFA, provided the employee is better off overall than if no IFA were in place (s 203(4)). Flexibility terms of modern awards enable IFAs to vary the effect of award terms concerning the time at which work is performed, overtime or penalty rates, allowances, or leave loadings. If an enterprise agreement does not include a flexibility term, the model flexibility term is taken to be a term of the agreement. The model flexibility term is prescribed by the *Fair Work Regulations 2009* and is based on the modern award flexibility term determined by Fair Work Australia.

As to IFAs as a condition of employment, modern award and enterprise agreement flexibility terms must require that any IFA is genuinely agreed to by the employer and the employee (ss 144(4)(b), 203(3) of the FW Act).

An employer must not unduly pressure or influence an employee to agree to an IFA (s 344(c) of the FW Act). The practical effect of this is to prevent an employer from making an offer of employment conditional on an employee signing an IFA.

This provision was recently considered in *Fair Work Ombudsman v Australian Shooting Academy Pty Ltd* [2011] FCA 1064. In that case, a casual employee was told that if he signed an IFA he would become a permanent employee but otherwise he would not have a job. The Federal Court found that this conduct amounted to undue influence and pressure in contravention of s 344(c).