INDIVIDUAL FLEXIBILITY AGREEMENT
(Pastoral Award 2010 only)

**Dated** the <insert day> day of <insert month> <insert year>

BETWEEN:

<insert employer name> [the employer]

AND

<insert employee name> [the employee] **(See Note 1)**

1. This Individual Flexibility Agreement is made under the Pastoral Award 2010.
2. This Individual Flexibility Agreement begins to operate on the <insert date agreement begins>
3. The employer and the employee hereby agree that the Pastoral Award 2010 is varied as follows: ***(See Note 2)***

<You must detail each award term which has been varied and how it has been varied.>

<You must detail how the employee is Better off Overall as a result of the variation to each award term.>

*Sample clauses to implement a flat rate of pay.* ***(See Note 2)***

* 1. *Clause 23.4 (which deals with annual leave loading), clause 31 (which deals with overtime) and clause 32 (which deals with payment for public holidays) of the award are varied as follows:*
	2. *In place of payment for annual leave loading, overtime and payment for working public holidays, the employee will be paid a flat hourly rate of pay of*  <insert $ amount> *for all hours worked.*
	3. *The employee is Better Off Overall than the award because under the award the employee would have received a total of* <insert $ amount*> per week/month/year* <delete where not applicable>. *See attached spreadsheet.*
	4. *The weekly hours of work will be* <insert total weekly hours> *which is made up of 152 hours over 4 weeks of ordinary time (as defined in the Pastoral Award 2010) at $<*insert $ rate for ordinary hours> *and* <insert number of overtime hours> *at $<*insert $ rate for overtime hours>.***(See Note 2 re superannuation)***
1. This Individual Flexibility Agreement can be terminated in the following ways:
	* 1. if the employer and the employee agree in writing to its termination this Individual Flexibility Agreement will be terminated as of the date of the agreement.
		2. by either the employer or the employee giving 13 weeks’ written notice of termination to the other person. At the end of the notice period this Individual Flexibility Agreement will cease to operate.
2. The employer and the employee have genuinely agreed to enter into this Individual Flexibility Agreement to meet the genuine individual needs of both parties and without any coercion or duress. ***(See Note 3)***
3. SIGNATURES (See note 4)

The Employer

Date

Signed

Name in full (printed)

Position

Employer address

The Employee

Signed

Name in full (printed)

Employee address

Parent or Guardian (if the employee is under 18 years of age)

Signed

Name in full (printed)

Parent or Guardian’s address

NOTES TO THE INDIVIDUAL FLEXIBILITY AGREEMENT

GENERAL NOTES

All of the clauses in this agreement are compulsory.

They should all be completed where applicable and none should be removed.

If the employer wishes to enter into an IFA with an employee they must put the request in writing.

A [template letter of request](http://www.peopleinag.com.au/media/1091/ifa_letter_of_offer.docx) is on the website.

It is suggested that at this stage a draft of the proposed IFA be given to the employee.

*NOTE 1*

An IFA can also only be made after the employee has commenced employment and is entitled to the minimum award conditions contained in the relevant modern award.

This means an employer cannot ask a prospective employee to agree to an IFA as a condition of employment.

*NOTE 2*

This clause must detail each award term which has been varied and how it has been varied.

IFAs can only vary the following award terms:

* arrangements for when work is performed such as working hours;
* overtime rates;
* penalty rates;
* allowances, and
* leave loading.

In addition, the clause must detail how the employee is Better off Overall as a result of the variation to each award term.

What is the Better Off Overall Test?

The Better Off Overall Test compares the agreement with the relevant award. The agreement will pass the Better Off Overall Test if on balance the employee is better off than they would have been if no agreement had been entered into and they remained subject to the award

In most cases this will amount to a comparison of the financial rewards the employee receives before and after the enterprise agreement is entered into.

The following is a step-by-step process you could use to work out if the agreement passes the Better Off Overall test.

**What about superannuation?**

Better Off Overall TEST CALCULATOR

1. Calculate the minimum amount due under the award

* Assess the total hours needed to be worked over a given period (say 4 weeks if using the Pastoral Award 2010 which provides for 152 hours over a 4 week period before any overtime is payable).
* Work out the total rate of pay for this period of time taking into account any overtime and penalty rates which will be payable.
* Multiply by 12 months if hours of work will be regular over that time. If hours will not be regular break the calculation down into the various periods when hours will be regular.
* Add in the value to the employee of double time pay for any public holidays which are usually worked.
* Add in the value of annual leave loadings if you wish to include these.
* This will give you the minimum annual amount you will need to pay employees in each classification to meet the Better Off Overall Test.

2. Divide the total amount by the total number of hours to be worked over the year.

3. The final amount is the hourly rate you will enter into the agreement for that employee.

Superannuation is payable on Ordinary Time Earnings which are defined in the taxation laws.

Overtime is NOT defined as Ordinary Time Earnings but if you pay a flat rate of pay which incorporates overtime then the overtime cannot be separately identified and therefore superannuation must be paid on the full amount.

The ATO has recently issued an administratively binding advice which is on the ATO website. The reference number is 1012597896867.

The advice states that if the hours which are **ordinary time** **hours** are **clearly specified in an IFA** then superannuation need only be paid on these hours not on all of the hours worked.

This is because the IFA does not alter the hours which are ordinary hours of work but rather varies the rate of pay for the overtime hours and those hours.

Sample *Clause 3.4* above is therefore **essential** if you only wish to pay superannuation on the 38 hours worked not the hours inclusive of overtime

*NOTE 3*

An employee or employer must not be forced to enter into an IFA and a person must not be treated adversely or discriminated against for refusing to agree to an IFA.

It is the employer’s responsibility to ensure that an employee has genuinely agreed to an IFA.

Employers should be careful not to make false or misleading statements about the effect of the IFA or penalties could apply. Statements made carelessly may also attract penalties if the employee is misled, even if this was not intended.

It is the employer’s responsibility to ensure that an employee has genuinely agreed to an IFA. This means that the employer should take steps to ensure that the employee fully understands the effect of the agreement as compared to the award entitlements. It is a good idea to have a copy of the award available for the employee to look at.

When making an IFA, an employer should keep in mind any language or cultural differences that might affect the employee’s understanding of the terms of the IFA or their choice to agree to an IFA.

If any employees have limited literacy, employers will need to be especially careful to make sure they understand the effect on them of each clause of the proposed agreement.

*NOTE 4*

Unlike enterprise agreements, IFAs do not need to be approved by the Fair Work Commission.

It is the employer’s responsibility to ensure that the IFA is made correctly, and meets all of the requirements of the FW Act.

An IFA must be in writing and signed by the employer and employee. If the employee is under 18 years of age, it must also be signed by the employee’s parent or guardian.

Once an IFA has been made, it is the employer’s responsibility to ensure that a copy of the IFA is given to the employee.

The employer must also keep a copy with the employee’s employment records.