

Individual Flexibility Agreements (IFAs) & CSIRO's Balance initiative

KNOW YOUR RIGHTS

The Know Your Rights series of fact sheets assist CSIRO union members to better understand and enforce rights at work. The source of these rights is contained at clause 12 of the new CSIRO Enterprise Agreement 2017-2020 (EA) and the Fair Work Act 2009.

1) What is an Individual Flexibility Agreement?

Under the Fair Work Act, Individual Flexibility Arrangements (IFAs) allow for variations to modern awards or enterprise agreements in order to meet the genuine needs of employers and individual employees. Under the CSIRO EA, clause 12 allows for CSIRO and an officer covered by the Agreement to agree to make an individual flexibility arrangement to vary the effect of particular terms of the Enterprise Agreement.

2) What terms of the Enterprise Agreement can be varied?

CSIRO can enter into an arrangement to vary the terms of the EA if the arrangement meets the genuine needs of CSIRO and an officer in relation to one or more of the matters below. The arrangement must be genuinely agreed to by both CSIRO and the officer. The matters are:

- arrangements about when work is performed;
- overtime rates;
- penalty rates;
- allowances;
- remuneration;
- leave;
- part-time/ job share arrangements;
- return from lengthy absences;
- working away from home base;
- flexible working house – flextime;
- averaging pay over a reduced working year;
- phased retirement of mature aged staff

3) How are IFAs made?

CSIRO or an officer can initiate a request for an IFA. CSIRO must ensure that:

- the IFA is in writing;
- includes the name of CSIRO and the officer;
- is signed by CSIRO and the officer;
- includes details of:
 - the terms of the EA that will be varied by the arrangement;
 - how the arrangement will vary the effect of the terms;
 - how the officer will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- states the day on which the arrangement commences.

Important points

- An Individual Flexibility Agreement (IFA) can be made between CSIRO and an individual employee to meet a genuine need.
- The Staff Association view is that IFAs should only be used in exceptional circumstances.
- IFAs must be agreed to genuinely and can vary certain rights in the Enterprise Agreement (EA).
- An IFA must leave the employee better off overall compared to the EA or modern award. However there no tribunal has to see, test or approve IFAs.
- An IFA cannot be a condition of either obtaining or retaining employment at CSIRO
- Clause 12 of the EA sets out how IFAs are to be used at CSIRO.



**CSIRO STAFF
ASSOCIATION**

4) How can I ensure that I am better off overall?

Although IFA's must technically leave the officer better off overall, no tribunal has to see, test or approve them. Ensuring you are better off overall is interpreted and agreed by CSIRO and you. As a result, we recommended members seek expert advice and representation from the Staff Association at the earliest opportunity when considering or being offered an IFA.

5) Can I refuse to enter into an Individual Flexibility Arrangement with CSIRO?

Yes. An officer cannot be forced to enter into an IFA and cannot be treated adversely or discriminated against for refusing to agree to an IFA proposal. An IFA cannot be a condition of either obtaining or retaining employment at CSIRO.

6) What is a common example of an IFA in Australian workplaces?

An enterprise agreement might provide for ordinary working hours between 9am and 5pm. If an IFA between an employer and an individual employee provides for ordinary working hours of between 7am and 3pm, the enterprise agreement will apply to that employee as if the enterprise agreement provided for ordinary working hours of between 7am and 3pm. The unvaried enterprise agreement will continue to apply to other employees unaffected by the IFA so that they have ordinary working hours between 9am and 5pm.

7) Is it possible for an officer to lose access to EA entitlements through an IFA?

Yes. In the above example that varies working hours, if penalty rates or shift loadings applied to the work done between 7am and 9am in the EA, the individual employee would be foregoing these entitlements as part of the IFA. Other employees not on IFAs, would continue to get paid the penalty rates or shift loadings for that work. This is because the Fair Work Act would interpret that the individual employee on the IFA, derives a benefit from the flexibility of being able to work between 7am and 3pm that is greater than the financial loss of the penalty rates or shift loadings.

8) Does the Staff Association have concerns if IFAs proliferate at CSIRO?

Yes. IFA's have been used extensively by Australian employers to undermine specific entitlements in EAs. CSIRO CEO Larry Marshall made reference to IFAs being associated with organisations such as Telstra, Price Waterhouse Coopers and some of the big banks including ANZ. He states: "In these organisations, new and improved work arrangements and practices have been introduced to open up access and uptake of workplace flexibility." In practice in many of these organisations, collective union strength has been in decline due to the use of individual employment arrangements undermining EAs and driving general pay and conditions backwards.

9) Should IFAs be offered to staff to support CSIRO's Balance initiative?

Not in the Staff Association's view. IFAs are an optional industrial instrument under the Fair Work Act that should only be used in exceptional circumstances in CSIRO. This is because most work at CSIRO can be done flexibly without the need for IFAs or other formal contractual arrangements. Only if there are clear advantages to an officer's personal circumstance, should an IFA be entered into. Members should seek the professional assistance from the Staff Association in this situation.