

# Attachment A - Guidelines for implementing Individual Flexibility Agreements in non-family based care settings during the COVID-19 pandemic period

## About the Guidelines

The purpose of these guidelines is to assist Employers operating non-family based care services and their employees in negotiating Individual Flexibility Agreements to enable quality essential services to continue to be delivered to children and young people during the COVID-19 pandemic period. The guidance provided is consistent with the COVID-19 public health orders currently in place and takes account of the increased health and safety risks for employees in the current environment and potential workforce shortages facing agencies due to isolation and quarantine requirements.

These guidelines need to be read alongside the model COVID-19 Individual Flexibility Agreements (IFAs). Both documents have been prepared collaboratively by the Community Services Industry Alliance (CSIA)— the industry organization representing community service organisations, Peak Care – a Queensland peak body for Child Protection, Service Providers (Employers) and The Services Union (TSU) — which represents and advocates for the rights and interests of its members working in the social and community services sector, via a consensual process which was facilitated by the Fair Work Commission.

The model COVID-19 IFAs have been developed to allow Employers to roster staff for extended shifts of 12-hours or 24-hours in emergency situations — by agreement with employees — where ordinary hours of work and shift patterns covered in the *Social, Community, Home Care and Disability Services Industry Award 2010* (the Award), do not contemplate managing the types of health risks currently facing employing agencies associated with the COVID-19 pandemic. The model COVID-19 IFAs have also been developed to help employees and employers to more efficiently enter into local agreements by outlining standard terms and conditions which have been formulated via consultations with Employers, employees, and the Department of Children, Youth Justice and Multicultural Affairs, which have been tailored to suit the non-family based care setting. The model COVID-19 IFAs have been developed to comply with Clause 7 – Individual Flexibility Arrangements of the Award. Where employees' terms and conditions of employment are regulated by an Enterprise Agreement (EA) these guidelines are still applicable however, where the provisions of the EA will apply to the extent of any inconsistency. The model COVID-19 IFAs can be utilised and amended where applicable to meet the requirements of the EA. In these circumstances where an EA applies and the employer intends to utilise the guidelines and model COVID-19 IFAs, the employer must notify The Services Union.

## Guiding principles

The following principles must guide the use of the industry agreed model IFAs for COVID-19:

1. That employers balance the requirement to continue their essential services to children and young people in their care with the well-being and legitimate personal, family and community responsibilities of their employees.

2. The employer and employees will commit to wise financial stewardship, act in good faith for the best interest of children and young people and have a shared responsibility for infection prevention and control.
3. That it is voluntary for employees to enter into the agreed COVID-19 IFAs, and that they will suffer no detriment as a result of declining to enter into such an agreement.
4. That there shall be no diminution of minimum employee entitlements as a result of entering into the COVID-19 IFAs.
5. That wherever possible, the standard conditions of the Award are utilised to respond to Covid-19 related issues, and that activating the COVID-19 IFAs will be a measure of last resort by employers.
6. That the flexibility arrangements covered in the model COVID-19 IFAs come to an end on the date that the current public health orders relating to infection control cease.
7. That all placement decisions made in response to COVID-19 issues, are in the best interests (including health needs) of the child or young person directly involved, and other children and young people in the care of the employer who are also affected by the decision.
8. That all decisions made in response to COVID-19 issues address the relevant work, health and safety requirements of the employee directly involved, and other employees affected by the decision, and are fair and industrially compliant.
9. That consistent with state and federal government health advice, the model COVID-19 IFAs provides extended shift options, related entitlements and new allowances, which recognise the need for contact between clients and different employees working in residential care homes to be minimised, and the additional risks posed to employee's safety and wellbeing during this period.
10. That as part of utilising emergency staffing options outlined in the COVID-19 IFAs attached to this Guideline (see Appendix 1, 2) the following conditions must be adhered to:
  - a. Employers must not roster an employee to perform consecutive 12-hour shifts for a period greater than 7 days, and where an employee is rostered for 7 consecutive 12-hour shifts, they must provide the employee with 7 rostered days off before rostering them on again for another consecutive period of 7 x 12-hour shifts.
  - b. Employers must not roster an employee to perform consecutive 24-hour shifts for a period greater than 3 days, and where an employee is rostered for 3 consecutive 24-hour shifts, they must provide the employee with 4 rostered days off before rostering them on again for another consecutive period of 3 x 24-hour shifts.
  - c. Employers must append the employee's anticipated roster for the relevant period to the COVID-19 IFA.
  - d. In undertaking either 12-hour or 24-hour shifts, employees are to be paid overtime in accordance with the overtime and penalty rates outlined in cl. 28 of the Award.
  - e. When rostering employees for either 12-hour or 24-hour shifts, employers must be guided by the conditions contained in the Award relating to the provision of meal breaks and reasonable rest breaks for employees.

- f. Employers must only roster employees to undertake 24-hour shifts where a sleepover period is viable given the needs and behaviours of the relevant client(s) being cared for, and employees are to be paid a sleepover allowance in accordance with cl.25.7 of the Award.
  - g. Employers must ensure that an additional employee is rostered to perform support duties for a reasonable period for each consecutive 24-hour shift, to assist employees undertaking a 24-hour shift with particular duties and to provide them with a reasonable rest period.
  - h. Employers must closely monitor the health and wellbeing of employees undertaking 12-hour or 24-hour shifts and provide them with additional practical supports as necessary.
  - i. All employees who enter in to a COVID-19 IFA and who are required to provide care and support to a client who is directed to isolate while waiting testing or upon being diagnosed with COVID-19, are entitled to up to 14 days special leave, on each occasion, if required to isolate/quarantine. Should an employee, through occupational exposure, return a positive test to COVID-19, the employee is to access personal leave and consider making a claim for workers' compensation. The exception being casual employees who will have access to up to 14 days special leave (or remainder of the 14 days special leave if already isolating or quarantining prior to positive test result) and may consider making an application for WorkCover — see cl.9 of the model COVID-19 IFAs.
  - j. In exceptional circumstances where an unanticipated event occurs, an employer may determine that it is necessary to roster an employee for a consecutive period greater than the periods outlined in 8(a) and 8(b) above. In such circumstances, the employer is to notify the TSU of relevant shift details (excluding personal information relating to clients and employees) as follows:
    - i. the rostered shift period including the number of consecutive days rostered, the length of the shift, and the number of employees involved
    - ii. the intended duration of the 'out of guidelines' rostered shift for each involved employee.
    - iii. the reasons why the options outlined in the model COVID-19 IFAs were either unavailable or inappropriate to address the particular health and welfare issues arising from the unanticipated event
    - iv. the nature of the consultation which occurred with the relevant employee(s), and
    - v. the outcome of the risk and safety assessment undertaken to support the 'out of guidelines' rostering decision, including the nature of the safeguards and supports put in place to maintain the safety, welfare and wellbeing of the involved employee(s).
11. That employees who enter into a COVID-19 related IFA are better off overall as a result of doing so.
12. That employers directly consult their employees on COVID-19 related measures prior to the introduction of the COVID19 IFA, which includes providing employees with contact details of their industrial representative, TSU, and supporting information. In consulting employees about entering into a COVID-19 IFA, they should be provided with a copy of their anticipated roster for the relevant period.

13. That employees and employers agree on suitable arrangements for isolation and quarantine prior to the beginning of the IFA should they be required, which may include alternative accommodation arrangements.
14. On application, the employer will outline all costs to the Department for consideration, including suitable accommodation for isolation and quarantine.

### Providing a safe system of work while COVID-19 restrictions are in place

All non-family based care agencies need a plan for dealing with COVID-19. Employers should ensure that there are appropriate measures in place that will seek to prevent and control infections within the workplace/residential care home setting and facilitate a prompt and effective response to any matters which arise that require a health and safety response.

Any use of the COVID-19 IFA between employers and employees must be aimed at maintaining service continuity in the COVID-19 environment and should be underpinned by, but not be limited to, the following safeguards and measures being in place, in conjunction with the standards and measures implemented by SafeWork Australia.

Safework Australia provides up to date information that reflects the current status of the COVID-19 Pandemic in in-home services workplaces. This information can be found here: <https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/homeservices/covid-19-your-workplace?tab=tab-toc-worker>

**Communication** ○ All information and updates related to COVID-19 in the workplace have been made available to all employees.

- Employees have been made aware of their rights at work during the period that COVID-19 public health orders are in operation, including what work they can and can't be directed to perform; and information about offers made to staff to take up different working arrangements.
- Employers make clear that special leave provisions are available for workers who need to isolate or quarantine — see cl.9 of the model COVID-19 IFAs.
- Employers make clear when employees become sick as a direct result of occupational exposure that sick leave applies and the option of applying for workers' compensation is readily available to all employees.
- Employees and their representatives have been consulted about and have influenced the development of service continuity plans prepared by their employer. ○ Employees have been provided with the contact details of TSU to seek advice and/or clarify any questions or concerns they may have about their rights at work.

**Training and support** ○ Employees have been provided with training on hygiene and infection control consistent with current health directives issued by Queensland Health for COVID-19 (or other Queensland Government agency for the non-family based care setting), and have been provided an opportunity to seek clarification on any associated requirements.

- Employees have been provided with training about responding to potential scenarios that may arise in a non-family based care setting if the virus or symptoms of the virus are detected (including managing non-compliant clients).

- Employees are provided with practical supports to maintain their physical and mental health and broader wellbeing.
- Employers will ensure the continuity of service plan that specifies all reporting requirements, and actions to be taken, in circumstances dealing with exposure to known and suspected cases of COVID-19 are available to all staff.