DEcision

Fair Work Act 2009
s.185—Enterprise agreement

Commonwealth of Australia as represented by the Australian Federal Police
(AG2016/2174)

australian federal police executive level enterprise agreement 2016-2019

Australian Capital Territory

COMMISSIONER LEE MELBOURNE, 2 FEBRUARY 2016


[1] An application has been made for approval of an enterprise agreement known as the Australian Federal Police Executive Level Enterprise Agreement 2016-2019 (the Agreement). The application was made pursuant to s.185 of the Fair Work Act 2009 (the Act). It has been made by the Commonwealth of Australia as represented by the Australian Federal Police. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[3] The Australian Federal Police Association being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.
The Agreement was approved on 2 February 2016 and, in accordance with s.54, will operate from 9 February 2016. The nominal expiry date of the Agreement is 1 February 2019.

COMMISSIONER

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Executive Level Enterprise Agreement 2016 – 2019
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GENERAL ARRANGEMENTS

1. Background
This Agreement is a single enterprise agreement made in accordance with section 172 of the Fair Work Act.

2. Title
This Agreement shall be known as the Australian Federal Police Executive Level Enterprise Agreement 2016-2019.

3. Parties
This Agreement is between the Commissioner of the Australian Federal Police (AFP) (on behalf of the Commonwealth) and the Employees specified in section 5 below employed within the classifications set out in this Agreement.

4. Dates of Operation
This Agreement comes into operation seven days after the date of approval by the Fair Work Commission.

The Agreement will nominally expire three years after the Commencement Date.

5. Application of the Agreement
This Agreement covers and applies to all employees engaged under section 24 of the Act in the substantive classification of Executive Level Employees, with the exception of:

   a. SES Employees; and
   b. Employees who are deployed overseas under section 40H(1) of the Act and where a determination under section 40H(2) of the Act is in place (except for those Employees engaged in External Territories).

This Agreement also covers and applies to Executive Level Employees for a period of four months from the date they are redeployed into a role at a lower classification under sub-section 35.4.

This Agreement does not apply to Special Members of the AFP, with the exception of those Executive Level Special Members who were Employees of the AFP before being declared a Special Member.

6. Delegation
The Commissioner may, in writing, delegate any of the Commissioner’s powers or functions under this Agreement other than under this section or in relation to an Individual Flexibility Arrangement which varies an Employee’s entitlements to remuneration, allowances or leave.

A person exercising delegated powers or functions under this Agreement must comply with any directions of the Commissioner.
This section does not limit the power of the Commissioner to authorise a person to act for and on their behalf.

7. Definitions

The Act means the *Australian Federal Police Act 1979* (as amended from time to time).

AFP means the Australian Federal Police.

Employee means an employee covered by this agreement.

Base Salary means an Employee’s base salary determined in accordance with sub-sections 10.1-10.3 and does not include any Individual Flexibility Arrangement as provided under section 37.

Casual Employee means an Employee engaged on a casual basis to perform work that is intermittent or irregular in nature.

Charter of Performance means the document created under the AFP’s performance development and performance appraisal system as varied from time to time.

Commencement Date means the date on which this agreement comes into operation, in accordance with section 4.

Commissioner means the Commissioner of the Australian Federal Police, or his/her delegate(s).

Designated public holiday has the meaning given in section 33.

Executive Level means the classification of employees determined by the Commissioner to be the Executive Level.

External Territories has the meaning given by section 2B of the *Acts Interpretation Act 1901*.

Fair Work Act means the *Fair Work Act 2009* (Cth).

Immediate Family of an Employee means:

(a) A spouse, de facto partner (irrespective of gender), child, parent, grandparent, grandchild or sibling of the Employee; or
(b) A child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee; or
(c) A person with whom the Employee has a traditional kinship where there is a relationship or obligation, under the customs and traditions of the community or group to which the Employee belongs.

Incremental advancement means advancement in accordance with sub-section 10.3.

Individual Flexibility Arrangement (IFA) means an agreement made in accordance with section 37 of this Agreement.

Localised Business Travel means business travel that is no more than 150km, via the most direct route, from the Employee’s primary work location.
**Part-time Employee** means an Employee, who is not a Casual Employee, who has an approved regular working pattern of less than 40 hours per week.

**Pay Scales** means the rates of pay specified in Attachment A to this Agreement.

**Satisfactory Evidence** means a certificate from a registered health practitioner.

**SES Employee** means an employee declared as a Senior Executive AFP Employee under section 25 of the Act.

**Supervisor** means a person who carries the responsibility for the supervision of one or more Employees, including the monitoring of attendance and performance.

**WORKING PATTERNS**

8. **Hours of Duty**

An Employee will adopt a working pattern that meets the demands of the position occupied and which is consistent with the attainment of business objectives established through the AFP Strategic Plan and the Employee’s Charter of Performance.

The Commissioner may direct an Employee to work a specific pattern of hours when operational needs require it.

The required hours of work for an Employee will be 40 hours per week as averaged over a 12-month averaging period. The 40 hours of work per week consists of 38 ordinary hours of work, plus two additional hours, which comprise a daily paid meal break of 24 minutes.

The level of remuneration that an Employee receives reflects an expectation that the Employee may be required to work other reasonable additional hours (which may include rostered shifts and/or hours outside of normal business hours) without further remuneration.

Where an Employee’s working pattern is less than full time hours, all the terms and conditions contained within this Agreement will be applied on a pro-rata basis.

9. **Casual Employment**

When a Casual Employee is engaged, the Commissioner will determine the Employee’s Base Salary, consistent with the Pay Scales in Attachment A. The casual loading will apply in addition to the Base Salary. A Casual Employee’s Base Salary will be varied each year in accordance with sub-section 10.2 of this Agreement (Base Salary Increases). A Casual Employee will not receive any Incremental Advancement.

A Casual Employee will be paid an hourly rate calculated using the following formula:

\[ \frac{(Base \ Salary \ plus \ 20\%) \times \ 12}{313} \div 80 \]

Only the following sections of this Agreement apply to Casual Employees:

a. Sections 1 – 8
b. Section 9
c. Sub-section 10.1 – 10.2  
d. Section 14  
e. Sections 16 - 19  
f. Section 24  
g. Section 27  
h. Section 28  
i. Sub-section 29.2  
j. Section 30 (unpaid leave only)  
k. Section 31 (unpaid Community Service Leave only)  
l. Section 32  
m. Sub-section 36.2  
n. Section 37  
o. Sections 41 – 42  
p. Attachment A

All remaining sections within this Agreement do not apply to a Casual Employee.

Any additional entitlements that a Casual Employee may have by virtue of the National Employment Standards will apply in accordance with the Fair Work Act.

REMUNERATION PACKAGE AND RELATED BENEFITS

10. Salary

10.1 Base Salary on Commencement
Where an Employee is internally promoted to the Executive Level classification, the Employee’s commencement Base Salary will be the minimum increment in the Pay Scales.

Unless otherwise agreed by the Commissioner, when an Employee is engaged from outside the AFP, the minimum increment in the Pay Scales will be used as the person’s commencement Base Salary.

Where an Employee is engaged from outside the AFP and:

- a. the role they are to perform is comparable in level and responsibility to their previous external role; and
- b. the person’s remuneration (which incorporates base salary and any ongoing guaranteed allowances that count as salary for superannuation purposes) in their previous external role, exceeds the maximum increment in the Pay Scales,

the Commissioner may agree to a commencement Base Salary that is higher than the maximum increment in the Pay Scales.

Where the Commissioner agrees to a commencement Base Salary higher than the maximum increment in the Pay Scales, in accordance with this section, the Employee is not entitled to any salary advancement under sub-sections 10.2 or 10.3 until the maximum increment applicable to the person pursuant to the Pay Scales equates to, or exceeds, the Employee’s commencement Base Salary as agreed pursuant to this section.
10.2 Base Salary Increases

An Employee is entitled to a Base Salary increase in accordance with the provisions of this section.

The Base Salary increases will be:

a. 2% effective from the Commencement Date.
b. 2% effective 12 months from the Commencement Date.
c. 2% effective 24 months from the Commencement Date.

Where an Employee is subject to a formal underperformance process within their Charter of Performance and has been rated as underperforming over the assessment period as detailed in sub-section 10.3, the Employee will not receive the Base Salary increase for that year.

Employees whose Base Salary exceeds the maximum increment in the Pay Scales are not eligible for a Base Salary increase. If a Base Salary increase would result in the Employee’s Base Salary exceeding the maximum increment, the Employee’s Base Salary will only be increased to the maximum pay point.

10.3 Incremental Advancement

Incremental advancement within the Pay Scales will occur on 1 July annually.

To be eligible for incremental advancement, an Employee is required to have participated in their Charter of Performance and have a rating of Fully Effective over an entire 12-month period.

An Employee newly promoted or engaged during an assessment period will be eligible for incremental advancement where they have:

a. completed at least 6 months over the previous 12-month period at the AFP Executive level (or at a higher classification), including periods of higher duties; and
b. participated in a Charter of Performance during that period.

Where an Employee:

a. has not met the eligibility criteria as detailed in this section; or
b. is subject to a formal underperformance process within their Charter of Performance and has been rated as underperforming over the assessment period;

the Employee will not receive any incremental advancement for that assessment period.

The assessment period is 1 July to 30 June each year.

An Employee and their Supervisor will establish the performance expectations at the beginning of the assessment period.

11. Parking Facilities

An Employee will be provided with car parking facilities at or within a reasonable distance from their primary work location.
Where car parking facilities are not available, the Employee will receive an allowance of $2,000 per annum, paid fortnightly on a pro-rata basis in the form of a regular taxable payroll amount. An Employee cannot encash this entitlement.

The parking facility, whether used or paid as an allowance, will count as salary for superannuation with the value of the facility set at $2,000 per annum.

12. Fitness Allowance
If an Employee achieves the AFP standard for fitness by completing the AFP annual fitness testing, he or she will be entitled to a one off taxable payment of $650 per financial year.

This payment will not count as salary for superannuation.

13. Flexible Remuneration Packaging (Salary Packaging)
An Employee is entitled to participate in the AFP’s Flexible Remuneration Packaging arrangements.

14. Superannuation
Where the AFP is obliged to make superannuation contributions in compliance with such legislation, those contributions will be paid into a complying superannuation fund as notified by an Employee.

Where an Employee fails to nominate a complying superannuation fund, superannuation will be paid to the AFP’s default fund (the Public Sector Superannuation Accumulation Plan), unless the Employee is eligible to be a member of the Public Sector Superannuation Scheme (PSS) or the Commonwealth Superannuation Scheme (CSS), in which case the AFP will make contributions in accordance with the rules of that fund.

15. Higher Duties Allowance
Where an Employee is required to perform duties at the level of an SES Employee for a period of four weeks or more (20 consecutive working days), the Employee will be paid a pro-rata allowance for the duration of the higher duties. This allowance will be equal to the difference between the Employee’s Base Salary, payable immediately before commencing duties at the higher level, and the minimum Base Salary payable at the level of an SES Employee.

Where an Employee is required to perform duties at the level of an SES Employee for an aggregate of more than 20 working days in a financial year, the Employee will be paid a pro-rata allowance for any period of higher duties in excess of the initial 20 working days per financial year. In this instance, the Employee’s Base Salary payable immediately before commencing those duties in excess of 20 days will be used for the calculations as outlined above.
16. Travel

16.1 General
With the exception of Localised Business Travel, the AFP will meet all approved costs associated with AFP employment related travel requirements.

16.2 Travel Benefits
Employees are entitled to one AFP-funded membership of an AFP approved airline lounge. The AFP may cease to fund the lounge membership if the Commissioner determines the Employee is no longer required to travel for work-related purposes. If an Employee’s membership ceases whilst they are on any form of leave without pay, the membership will not be renewed until such time as the Employee returns to the workplace.

As approved by the Commissioner, where an Employee travels to a location outside of Australia, they will be eligible for Premium Economy class of travel (where available) for the international leg/s associated with the travel and any domestic leg/s outside of Australia undertaken as part of the continuous journey to the Employee’s primary destination.

This section applies to travel undertaken as official travel directly associated with an Employee’s employment.

17. Communications Package
An Employee will be provided with appropriate facilities to meet after work hours and/or off site communication requirements associated with their role. Where provided, reasonable personal use of such facilities is permissible.

18. Use of Own Vehicle
Employees covered by this Agreement will be required to make their own arrangements at their own cost for all Localised Business Travel and do not have access to AFP provided fleet vehicles for this purpose.

The use of taxis for any Localised Business Travel is also at the Employee’s own cost and will not be reimbursed by the AFP.

The Commissioner may approve the use of an AFP vehicle for operational purposes, with regards to Work Health and Safety and security concerns.

19. Recovery of an Overpayment
The AFP may recover any overpayment of an Employee’s salary or allowances by making one or more deductions from any monies due to be paid to the Employee, if the Employee authorises the AFP to make the deduction.

Nothing in this Agreement prevents the AFP from seeking to recover an overpayment through other means, or from otherwise making deductions in accordance with legislation.
LEAVE PROVISIONS

20. Standard Annual Leave
The Employee will accrue 190 hours Annual Leave per annum progressively. Annual Leave credits will be deducted at the rate of 7.6 hours per day.

Subject to section 20.4 any periods of Annual Leave count as service for all purposes.

20.1 Cash Out of Annual Leave
Employees may cash out once in a financial year a period of Annual Leave they have accrued and been credited. The minimum amount for cash out is one month’s accrual of (15.83 hours) of Annual Leave.

Employees may only cash out Annual Leave in accordance with this section during a period where they are performing at their substantive classification level and have taken a minimum Annual Leave period of 38 hours in the 12 months immediately preceding the request for cash out.

Paid Annual Leave must not be cashed out if the cashing out would result in the Employee’s remaining accrued entitlement to paid Annual Leave being less than four weeks (152 hours).

Each cashing out of a particular amount of paid Annual Leave must be by a separate agreement in writing between the AFP and Employee.

The Employee will be paid in a lump sum the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone.

The lump sum payment does not affect an Employee’s salary for superannuation purposes.

20.2 Reduced Accrual of Annual Leave
Employees may elect to reduce the accrual rate of Annual Leave in return for an allowance paid fortnightly over 52 weeks. This allowance will be equal to the value of the Annual Leave that is reduced.

Employees may only reduce their accrual by a total of 38 hours per financial year. As such, accrual of Annual Leave cannot, at any stage be less than four weeks (152 hours) per year.

Applications will only be approved for reductions of future Annual Leave credits. Applications to retrospectively reduce already accrued Annual Leave credits will not be approved. An application will not be approved if it would result in the employee receiving a lesser entitlement to Annual Leave than that in the National Employment Standards.

The allowance does not affect an Employee’s salary for superannuation purposes.

20.3 Purchasing Annual Leave
Employees may nominate to purchase additional Annual Leave in 38 hour blocks in return for a pro-rata deduction in their fortnightly pay.
Applications to purchase Annual Leave of up to 76 hours per year will be subject to approval.

Any purchased Annual Leave must be used within 12 months of the purchased Annual Leave being credited and prior to other standard Annual Leave being utilised.

The Commissioner may approve applications to purchase Annual Leave in excess of 76 hours per year.

Only prospective purchased Annual Leave requests may be approved.

Purchased Annual Leave cannot be taken at half pay.

20.4 Annual Leave at Half Pay
An Employee may seek approval to take a period of Annual Leave at Half Pay. Where an Employee is approved to take a period of Annual Leave at Half Pay:

a. the first half of the period of leave is characterised as Annual Leave (First Period);
   b. the second half of the period is characterised as unpaid leave (Second Period);
   and
   c. for the entire duration of the leave, the Employee is paid at the rate of 50% of the amount the Employee would be entitled to for the First Period.

The First Period will count as service for all purposes. The Second Period will count for continuity of service only.

An Employee’s Annual Leave credits will only be deducted for the First Period.

Unless approved by the Commissioner, Employees with an Annual Leave accrual of more than 20 days (152 hours) at the time of application cannot access Annual Leave at Half Pay.

The minimum approval period for Annual Leave at Half Pay is five working days.

An Employee is not eligible to utilise Annual Leave at Half Pay in the 12 months following an approved application to purchase Annual Leave.

20.5 Requirement to take Annual Leave
Employees are required to take a minimum Annual Leave period of 38 hours in a continuous block each financial year. The 38 hour block can be inclusive of a maximum of two public holidays or days that are treated as public holidays.

The minimum Annual Leave period for Part-Time Employees will be calculated on a pro-rata basis.

It is expected that an Employee will use their Annual Leave as it accrues resulting in a maximum accrued Annual Leave balance of 25 days (190 hours) at any point in time.

Where accrued Annual Leave balances are considered excessive, the AFP may require the Employee to take a period of Annual Leave at a suitable time, determined by the Commissioner, in order for the leave balance to be reduced to an acceptable level.

The Commissioner will consider the reasonableness of the requirement to take Annual Leave before making such a direction.
21. Maternity Leave

Employees shall be entitled to Maternity Leave in accordance with the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*.

An Employee with twelve (12) months continuous service with the AFP, or a qualifying Agency under the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*, is entitled to be paid for an additional two (2) weeks Maternity Leave in excess of that provided by the *Maternity Leave (Commonwealth Employees) Act 1973*.

The payment of any paid Maternity Leave may be spread over a maximum period of twenty eight (28) weeks at a rate of half the normal salary. Any paid Maternity Leave beyond the first 14 weeks does not count as service for any purpose. This administrative arrangement does not extend the total period of paid or unpaid Maternity Leave available under the *Maternity Leave (Commonwealth Employees) Act 1973*.

A period of Maternity Leave is not broken or extended by public holidays.

22. Adoption Leave

An Employee with at least 12 months continuous service with the AFP, who adopts a child and is the primary carer, will be entitled to six weeks paid Adoption Leave at the time the adoption is recognised by the making of an adoption order.

The adoptive child must not be a child or stepchild of the Employee or the Employee’s partner unless that child had only been in the custody and care of the Employee or the Employee’s partner for a period of less than 6 months.

23. Long Service Leave

Employees are entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976*.

An eligible Employee may access, with approval from the Commissioner, Long Service Leave for a minimum period of seven calendar days at full pay or 14 calendar days for leave at half pay.

Long Service Leave cannot be broken with other periods of leave, except otherwise provided by legislation.

24. Unpaid Parental Leave

An Employee will be entitled to Unpaid Parental Leave in accordance with Part 2-2 Division 5 (Parental Leave and related entitlements) of the Fair Work Act.

25. Paid Supporting Partner Leave

An Employee who is the parent of a newborn or newly adopted child and;

a. is not the birth mother of a newborn child; or
b. is not the primary carer of an adopted child,

will be entitled to paid Supporting Partner Leave for up to five continuous working days.
Supporting Partner Leave is forfeited unless taken within the first three months of the birth or adoption order for the child.

26. Personal/Carer’s Leave with Pay

26.1 Accrual
Employees, other than Casual Employees, will be entitled to 136 hours 48 minutes (18 seven hour 36 minute days) Personal/Carer’s Leave credits per annum accrued progressively.

Part-time Employees will accrue Personal/Carer’s Leave on a pro-rata basis.

Personal/Carer’s Leave will accrue from year to year but Personal/Carer’s Leave will not be paid out on termination of employment.

An Employee will not be entitled to paid Personal/Carer’s Leave while also taking paid Maternity or Adoption Leave, except as otherwise provided by legislation.

26.2 Approval
Personal/Carer’s Leave will be granted to an Employee if the leave is taken in the following circumstances:

a. where the Employee is not fit for work because of a personal illness or personal injury; or
b. to provide care or support to a member of the employee’s immediate family, or a member of the Employee’s household, who requires care or support because of:
   i. a personal illness, or personal injury, affecting the member; or
   ii. an unexpected emergency affecting the member.

Upon request, an Employee will be required to provide Satisfactory Evidence of the need to take Personal/Carer’s Leave.

Where an Employee does not provide the requested Satisfactory Evidence, any Personal/Carers Leave will be without pay and treated as an unauthorised absence.

26.3 Access to other Leave when Paid Personal/Carer’s Leave has been Exhausted
An Employee who has exhausted all paid Personal/Carer’s Leave entitlements and has provided satisfactory documentation to evidence the requirement to take further Personal/Carer’s Leave, may access their Annual Leave or Long Service Leave accruals.

27. Personal/Carer’s Leave without Pay
Unpaid Personal/Carer’s Leave will be granted in accordance with the terms of the Fair Work Act.

Unpaid approved Personal/Carer’s Leave will not break continuity of employment. However, unless otherwise determined by the Commissioner, periods of unpaid Personal/Carer’s leave in excess of 30 days in any 12-month period will not count as service for any purpose, unless required by legislation.
28. Referrals for Medical Advice
Where the Commissioner is concerned about an Employee's fitness for duty, the Commissioner may, at AFP expense, direct an Employee to:

   a. attend an assessment by a suitably qualified and independent medical practitioner; and
   b. give the Commissioner a report of the examination.

In the circumstance where the medical certificate provided by the Employee's treating medical practitioner or specialist conflicts with that obtained from an independent medical practitioner engaged by the AFP, the latter would prevail unless otherwise advised by the AFP Principal Medical Officer.

29. Compassionate Leave

29.1 Paid Compassionate Leave
Compassionate Leave with pay will be granted to an Employee for a period of two days for each eligible occasion.

An eligible occasion is:

   a. for the purpose of spending time with a person who is a member of the Employee's immediate family or a member of the Employee's household who has contracted or developed a personal illness, or sustained a personal injury, that poses a serious threat to his or her life; or
   b. after the death of a member of the Employee's immediate family or a member of the Employee's household.

An Employee will be granted a further five days paid Compassionate Leave after the death of a member of the Employee's immediate family.

An Employee may be required to provide evidence to support each application for Compassionate Leave.

29.2 Unpaid Compassionate Leave
A Casual Employee will be granted unpaid Compassionate Leave in accordance with the terms of the Fair Work Act.

30. Defence Reserve Service Leave
Employees who are members of a Defence Reserve will be granted paid leave to undertake Defence service and training. The maximum period of paid leave is four weeks in a financial year. An additional two weeks paid leave will also be provided once only to allow an Employee to attend recruitment or initial Defence Reserve employment training.

For training or absences that exceed these allowances, leave without pay may be granted.

Periods of Defence Reserve Service Leave without pay do not count as service for the accrual of Annual and Personal/Carer's Leave. Leave granted for Defence Reserve purposes counts as service for all other purposes.
31. Community Service and Jury Service Leave

An Employee will be entitled to Community Service Leave and Jury Service Leave in accordance with Chapter 2, Part 2-2 Division 8 (Community Service Leave) of the Fair Work Act.

Annual Leave may be re-credited to the extent of the period of Community Service Leave should the Employee request it.

32. Miscellaneous Leave

Miscellaneous Leave is leave that is not provided under any specific leave arrangements.

The Commissioner may grant Miscellaneous Leave with or without pay and may determine that only part of the period of leave will be with pay.

Miscellaneous Leave that is granted with pay will be paid at the Employee’s Base Salary.

The Commissioner may grant Miscellaneous Leave without pay. Unless deemed otherwise by the Commissioner, Miscellaneous Leave without Pay will not count as service for any purpose.

33. Public Holidays/Christmas Stand Down

The AFP will treat the following days (or gazetted substitute day) in any location as designated public holidays:

- New Year’s Day;
- Australia Day;
- Good Friday and the following Saturday;
- Easter Monday;
- Anzac Day;
- Queen’s Birthday Observance Day;
- Labour Day or equivalent;
- Christmas Day;
- Boxing Day;
- an additional day, to be observed as a public holiday on the first working day after the Boxing Day public holiday; and
- any gazetted local public holidays in the State or Territory where the Employee is assigned that is not already listed in this section above.

In addition to the above public holidays, the two normal working days between Christmas and New Year and the Sunday within the Easter weekend will be treated as designated public holidays.

If an Employee is required to work on a designated public holiday prescribed by this agreement as a public holiday, they will not be eligible for any additional remuneration for that period.

If an Employee is not required to work on a designated public holiday, they are entitled to be absent from work without loss of pay.

If an Employee is taking Annual Leave or paid Personal/Carer’s Leave over a period which includes a designated public holiday, they are entitled to be absent from work
on the designated public holiday without deduction from their Annual Leave or Paid Personal/Carer’s Leave credits.

RESIGNATION, RETIREMENT AND TERMINATION OF EMPLOYMENT

34. Resignation and Retirement
An Employee may resign or retire at any time, subject to the provisions of the Act, by giving the required period of notice in writing to the Employee’s Supervisor.

If an Employee and the AFP agree, the Employee may be released prior to the expiry of the notice period with payment of salary to the date of resignation.

35. Workforce Adjustment
Where the Commissioner declares that an Employee is excess to requirements, the Employee will be subject to a workforce adjustment process.

An Employee is excess to requirements if:

- a. the Employee forms part of a class of AFP Employees (however described) and there are more Employees in the class than is necessary for the efficient and economical working of the AFP; or
- b. the services of the Employee cannot be effectively used because of technological changes within the AFP, or because of changes to the nature, extent or organisation of the functions of the AFP; or
- c. the duties usually performed by the Employee are to be performed at a different location and the Employee is not able to perform the duties at that location and the Commissioner has determined that these provisions will apply to the Employee.

35.1 Notification of Proposal to Declare Excess and Voluntary Redundancy
Where the Commissioner determines that an Employee is likely to become potentially excess to requirements, the Commissioner will notify the Employee in writing as soon as practicable.

The Employee will be given seven calendar days (first consideration period) from the date of the notification of proposal to declare excess to consider the option of voluntary redundancy, raise any issues of concern relating to the proposed declaration and to provide a written response to this notification.

At the end of the first consideration period, the Commissioner may declare the Employee excess, with any response from the Employee and any redeployment opportunities available at the time of the notification to be taken into account.

35.2 Declaration of Excess Status and Voluntary Redundancy
Where the Commissioner declares that an Employee is excess to requirements and that the Employee has at least six months continuous eligible service, they will be provided with a declaration of excess status which will include an offer of voluntary redundancy payment (in writing).

The Employee will then have 14 calendar days (second consideration period) from the date of the declaration of excess status to consider the option of voluntary redundancy in accordance with section 35.3 below, or decline an offer of voluntary
redundancy and pursue redeployment or reduction options during a seven month retention period, as described by section 35.4 and 35.5 below.

Where an Employee does not accept a voluntary redundancy payment within the second consideration period, the Employee will be subject to the processes associated with the seven month retention period and subject to an involuntary redundancy if a suitable position for redeployment cannot be identified during the retention period.

35.3 Voluntary Redundancy Payment
Where the Employee decides to accept an offer of voluntary redundancy, they will have 14 calendar days in which to separate from the AFP, unless a later date is agreed to by the Commissioner.

For voluntary redundancy under the terms of this Agreement, the following payments are to apply for eligible service:

a. 12 weeks pay for up to and including three years' service;
b. 18 weeks pay for service in excess of three years and up to six years;
c. 36 weeks pay for service in excess of six years and up to nine years;
d. 52 weeks pay for service in excess of nine years.

The above payments do not include payments in lieu of notice.

The above payments do not include payments in the form of final monies for statutory entitlements including unused accrued Annual Leave and Long Service Leave.

35.4 Redeployment
Where the Commissioner declares that an Employee is excess, the AFP will endeavour to redeploy the Employee into a suitable role subject to consideration of relevant skills, performance and any re-training requirements.

Where appropriate, redeployment into a role at a lower classification may be offered in writing.

Where an Employee is redeployed into a role at a lower classification:

a. the Employee's substantive Base Salary applicable the day before the redeployment will be maintained from the date of the reduction in classification for a period of four months; and
b. this Agreement will continue to cover and apply to the Employee until the conclusion of the four month period, after which this Agreement will cease to cover the Employee and the relevant agreement for the lower classification will cover and apply to the Employee.

35.5 Retention Period
During the seven month retention period, the Employee will be considered for any redeployment opportunities as they arise and will be considered in isolation for any identified vacant positions without the requirement to be ranked or assessed against any other applicants.

The retention period commences on the day the Employee is notified in writing that they have been declared excess.

The Employee may be required to enter into a development plan that will be designed to enhance the Employee's redeployment prospects and may include re-training and development in employment seeking skills.
The Employee has a responsibility for his or her own career management and will actively participate in reassignment and redeployment processes as well as seek out alternative employment opportunities as they arise.

Where, five weeks prior to the conclusion of the retention period, the Employee has not been successfully redeployed into an alternative, suitable role, the Employee may be notified in writing that the Employee may be made involuntarily redundant at the conclusion of the seventh month of the Retention Period.

Where the Employee has been notified in writing that they are involuntarily redundant, the Employee's last day of work with the AFP will be at the conclusion of the retention period.

35.6 Support during Notice Period
Where an Employee is made voluntarily or involuntarily redundant, the Employee will be entitled to reasonable time off with full pay during the relevant notice period to attend to necessary employment interviews from the date the period of notice commences.

35.7 Involuntary Redundancy Payment
Where an Employee is made involuntarily redundant, the Employee will receive the minimum redundancy pay prescribed by the Fair Work Act upon termination of employment.

35.8 Eligible Service for Redundancy Pay Purposes
For the purposes of calculating a voluntary or involuntary redundancy entitlement, the following will apply:

a. eligible service will be calculated up to the date of redundancy;

b. for the purposes of calculating "eligible service", prior service or employment with any authority or body constituted by or under a law of the Commonwealth, Australian Public Service or the Australian Defence Force will be aggregated with service or employment with the Australian Federal Police, provided there was no break other than one attributable to leave of absence (whether with pay or without pay), from the prior service or employment and if the member's prior service or employment was not terminated by reason of:

i. retrenchment/redundancy;

ii. retirement on the grounds of invalidity, inefficiency or loss of a necessary qualification;

iii. forfeiture of office;

iv. dismissal on disciplinary grounds; or

v. termination of an appointment for reasons of unsatisfactory service or employment.

c. absences during a period of eligible service or employment that do not count as service for employment for Long Service Leave purposes do not count for the purposes of calculating the benefits specified above.

35.9 Rate of Payment
For the purposes of calculating any voluntary or involuntary redundancy payment under the above section, "salary" means:

a. for a full-time Employee: the Employee's full-time Base Salary;
b. for an Employee who was a Part-time Employee for any period during their period of service:

i. the Employee’s Base Salary calculated on a pro-rata basis for any period where an Employee has worked part-time hours during their period of service and the Employee has less than nine years full-time service; and

c. for Employees in receipt of Higher Duties Allowance:

i. the Base Salary rate on which salary and higher duties payments are made where the Employee has been acting in a higher position for a continuous period of at least 12-months immediately preceding the date on which the Employee is given notice of termination the Employee is entitled to be paid at a higher rate including both the Employee’s Base Salary and higher duties allowance.

36. Termination of Employment

36.1 Period of Notice
Where an Employee’s employment is terminated, the period of notice will be;

a. four weeks; or
b. in the case of an Employee over 45 years of age with at least two years continuous service - five weeks.

With respect to any period of notice, the AFP may do any of the following:

a. pay the Employee in lieu of any part or all of the notice period;
b. require the Employee not to report to work during the whole or any part of the notice period;
c. provide the Employee with duties different from those that the Employee would ordinarily perform.

The period of notice in this section does not apply in the case of an Employee’s dismissal for serious misconduct as defined in the Act.

36.2 Review of Decisions to Terminate Employment
The sole and exhaustive rights and remedies of an Employee in relation to termination of employment are those that the Employee has under:

- The Fair Work Act;
- Other Commonwealth laws (including the Constitution, the Australian Federal Police Act 1979 and the Administrative Decisions (Judicial Review) Act 1977);
- Common law.

Termination of, or a decision to terminate employment, cannot be reviewed under the procedures for preventing and settling disputes or under any procedures for internal review of employment action.
MISCELLANEOUS

37. Individual Flexibility Arrangement
The AFP and an Employee may agree to vary the effect of certain terms of this Agreement to meet the genuine individual needs of the AFP and the Employee; Individual Flexibility Arrangement (IFA).

The IFA must be genuinely agreed to by the AFP and the Employee.

The IFA may deal with one or more of the following matters:

a. remuneration;
b. hours of duty;
c. allowances; and
d. leave.

The AFP must ensure that the IFA:

a. states each term of this Agreement that the AFP and the Employee have agreed to vary;
b. details how the application of each term has been varied by agreement between the AFP and the Employee;
c. is about permitted matters under section 172 of the Fair Work Act 2009;
d. does not include terms that are unlawful terms under section 194 of the Fair Work Act 2009;
e. results in the Employee being better off overall in relation to the terms and conditions of their employment as a result of the arrangement than they would have been if no Flexibility Arrangement were agreed to;
f. is in writing, names the parties to the IFA and is signed by the AFP and the Employee and, if the Employee is under 18 years of age, the Employee’s parent or guardian;
g. is given (or a copy is given) to the Employee, and a copy kept on file by the AFP;
h. is able to be terminated by the AFP or the Employee giving four weeks’ notice of termination in writing to the other party, or at any time by agreement in writing by the AFP and the Employee; and
i. states the date the IFA commences to operate.

The request for an IFA which enhances an Employee’s entitlements to remuneration, allowances or leave will only be considered by the Commissioner on the advice and recommendation of the AFP Remuneration Committee and must be supported by workforce analysis conducted by AFP Industrial Relations.

38. Part-Time
The Commissioner may approve a request from an Employee to become a Part-Time Employee. Where an Employee is a Part-Time Employee, remuneration and other employment conditions outlined in this Agreement will be calculated on a pro-rata basis unless otherwise specified.

39. Reduction in Classification
An Employee may be reduced in classification to any level within the AFP band level system as a result of:
a. an adverse Professional Standards finding under Part V of the Act, in relation to a Category 3 conduct issue or a corruption issue, where the associated review processes have been exhausted, and the Commissioner has made a determination that the appropriate action in relation to the finding is to reduce, or includes a reduction in, the Employee’s classification; or
b. a process to manage underperformance, where the Employee has failed to meet performance expectations and the subsequent action taken in relation to the underperformance process is to reduce the Employee in classification.

Where an Employee is reduced in classification consistent with this section, the reduction in classification will be ongoing and all the terms and conditions, including the Base Salary applicable to the classification to which the Employee is reduced, will apply from the date of the reduction.

An Employee will cease to be classified as Executive Level where the Employee is reduced in classification in accordance with this section. This Agreement will cease to cover and apply to an Employee from the date of effect of the reduction in classification below Executive Level.

If an Employee’s classification is reduced, nothing in this section prevents an Employee from subsequently seeking promotion to Executive Level through a merit selection process.

Nothing in this section limits the Commissioner’s ability to take other action in relation to either an adverse Professional Standards finding or underperformance process.

40. Variation to Agreement
The parties to this Agreement acknowledge that this Agreement can be varied by consent of the parties at any time during the currency of the Agreement, consistent with Part 2-4, Division 7, of the Fair Work Act.

41. Consultation

1. This section applies if the AFP:

   a. has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
   b. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

   **Major change**

2. For a major change referred to in paragraph (1)(a):

   a. the AFP must notify the relevant employees of the decision to introduce the major change; and
   b. sub-sections (3) to (9) apply.

3. The relevant employees may appoint a representative for the purposes of the procedures in this section.
4. If:

   a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

   b. the employee or employees advise the employer of the identity of the representative;

   the AFP must recognise the representative.

5. As soon as practicable after making its decision, the AFP must:

   a. discuss with the relevant employees:
      i. the introduction of the change; and
      ii. the effect the change is likely to have on the employees; and
      iii. measures the AFP is taking to avert or mitigate the adverse effect of the change on the employees; and

   b. for the purposes of the discussion—provide, in writing, to the relevant employees:
      i. all relevant information about the change including the nature of the change proposed; and
      ii. information about the expected effects of the change on the employees; and
      iii. any other matters likely to affect the employees.

6. However, the AFP is not required to disclose confidential or commercially sensitive information to the relevant employees.

7. The AFP must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

8. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the AFP, the requirements set out in paragraph (2)(a) and sub-sections (3) and (5) are taken not to apply.

9. In this section, a major change is likely to have a significant effect on employees if it results in:

   a. the termination of the employment of employees; or
   b. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
   c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
   d. the alteration of hours of work; or
   e. the need to retrain employees; or
   f. the need to relocate employees to another workplace; or
   g. the restructuring of jobs.

*Change to regular roster or ordinary hours of work*

10. For a change referred to in paragraph (1)(b):
a. The AFP must notify the relevant employees of the proposed change; and
b. Sub-sections (11) to (15) apply.

11. The relevant employees may appoint a representative for the purposes of the procedures in this section.

12. If:
   a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
   b. the employee or employees advise the employer of the identity of the representative;

the AFP must recognise the representative.

13. As soon as practicable after proposing to introduce the change, the AFP must:
   a. discuss with the relevant employees the introduction of the change; and
   b. for the purposes of the discussion—provide to the relevant employees:
      i. all relevant information about the change, including the nature of the change; and
      ii. information about what the AFP reasonably believes will be the effects of the change on the employees; and
      iii. information about any other matters that the AFP reasonably believes are likely to affect the employees; and
   c. invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

14. However, the AFP is not required to disclose confidential or commercially sensitive information to the relevant employees.

15. The AFP must give prompt and genuine consideration to matters raised about the change by the relevant employees.

16. In this section:
   *relevant employees* means the employees who may be affected by a change referred to in sub-section (1).

42. Dispute resolution

1. If a dispute relates to:
   a. a matter arising under the agreement; or
   b. the National Employment Standards;

this section sets out procedures to settle the dispute.

2. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this section.
3. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

4. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

5. The Fair Work Commission may deal with the dispute in 2 stages:

   a. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

   b. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

      i. arbitrate the dispute; and

      ii. make a determination that is binding on the parties.

Note: If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Fair Work Act.

A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Fair Work Act. Therefore, an appeal may be made against the decision.

6. While the parties are trying to resolve the dispute using the procedures in this section:

   a. an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

   b. an employee must comply with a direction given by the AFP to perform other available work at the same workplace, or at another workplace, unless:

      i. the work is not safe; or

      ii. applicable occupational health and safety legislation would not permit the work to be performed; or

      iii. the work is not appropriate for the employee to perform; or

      iv. there are other reasonable grounds for the employee to refuse to comply with the direction.

7. The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this section.
TRANSITIONAL ARRANGEMENTS

43. Transition of Higher Duties Allowance
Where an Employee has been performing higher duties at the Senior Executive level, the time spent in the higher duties position since 1 January 2015 will continue to count for the aggregate of more than 20 working days for the 2015/16 financial year.

44. Transition to Incremental Advancement
For the purposes of section 10.3, incremental advancement on 1 July 2016 will occur as follows:

a. an Employee with a Base Salary equal to or greater than the maximum increment will not receive incremental advancement;

b. an Employee who is eligible for incremental advancement will advance to the next highest increment above their Base Salary as at 30 June 2016; and

c. an Employee who is not eligible for incremental advancement will remain on their Base Salary as at 30 June 2016, and will not transition to the increments in the Pay Scales. The Base Salary increase scheduled for 12 months from the commencement date (if applicable) will be calculated against the Employee’s actual Base Salary, and not the increments in the Pay Scales.

45. Transition of Defence Reserve Service Leave
Despite the provisions of section 30, the maximum period of paid Defence Reserve Service Leave is six weeks for the period 1 January 2015 to 30 June 2016.
### ATTACHMENT A – PAY SCALES

**Table A - Executive Level Incremental Advancement**

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</table>
Signed On Behalf Of

Australian Federal Police

By its duly authorised officer:

(Signature of Authorised Officer)

ANDREW COUVIN
(Name of Authorised Officer)

6PO BOX 401
CANBERRA ACT 2601
(Address of Authorised Officer)

COMMISSIONER APP
(Position of Authorised Officer)

20 JAN 2016
(Date)

In the presence of:

(Signature of Witness)

(Peter Cunningham)
(Name of Witness)

(Address of Witness)

Representative of Employees

By:

(Signature of Representative)

ANGELA SMITH
(Name of Representative)

(Address of Representative)

National President
(Position of Representative)

21/1/16
(Date)

In the presence of:

(Signature of Witness)

(Emma Hardy)
(Name of Witness)

(Address of Witness)

21/1/16
(Date)