



Thursday, 21 March 2024

**BEFORE THE FAIR WORK COMMISSION**

**VARIATION OF MODERN AWARDS TO INCLUDE A DELEGATES' RIGHTS TERM (AM 2024/6)**

**Submissions by the Australian Federal Police for the  
*Australian Federal Police Enterprise Award 2016 [MA000142]***

1. The Australian Federal Police (**AFP**) refers to the directions issued by the President on 18 January 2024, directing interested parties to make submissions with respect to the variation of modern awards to include a delegates' rights term by 1 March 2024.
2. The AFP apologises for the delay in its submission, and seeks the leave of the Vice President to file this late submission with respect to the *Australian Federal Police Enterprise Award 2016 (AFP Award)*.

**Background to the AFP Award**

3. A Full Bench of the Fair Work Commission issued a decision on 19 August 2016 [PR580563], making the AFP Award as a modern enterprise award under Division 2 of Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
4. Since that decision, there have been no material variations to the AFP Award, other than annual adjustments to wages and allowances following each Annual Wage Review.
5. The AFP appreciates that the commencement of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* requires the first material variation to the AFP Award since the making of the AFP Award, being the insertion of a delegates' rights term.

**Development of draft delegates' rights term**

6. The AFP is a non-APS Australian Government agency, which determines terms and conditions for its employees under the *Australian Federal Police Act 1979 (AFP Act)*. It is a policing agency with responsibilities including Commonwealth law enforcement, community policing in the Australian Capital Territory and external territories, and protective service functions at a number of Commonwealth establishments.
7. The AFP is currently bargaining with the Australian Federal Police Association (**AFPA**), Community and Public Sector Union (**CPSU**) and employee bargaining representatives for an enterprise agreement to replace the *Australian Federal Police Enterprise Agreement 2017-2020* and the *Australian Federal Police Executive Level Enterprise Agreement 2019-2021*. Bargaining for this agreement commenced on 26 September 2023. The AFP currently aims to have employees vote on a proposed agreement before 25 May 2024.

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8. As stated in paragraph 10 of the Australian Public Service Commission's submission of 1 March 2024, non-APS agencies such as the AFP have been encouraged to adopt terms from the APSC's Statement of Common Conditions in their new enterprise agreements.
9. The AFP has adopted the above approach, and where practicable, proposes to adopt terms from the Statement of Common Conditions in its enterprise agreement. Where necessary, these terms will be tailored to the specific requirements of the AFP.
10. The AFP and bargaining representatives have reached in-principle agreement to include a delegates' rights term along the lines of that included in the Statement of Common Conditions. However, as some elements of that term are APS specific, the parties have not yet agreed on the precise wording of the term.
11. The AFP has drafted in the Annexure a proposed delegates' rights term for inclusion in the AFP Award. The term is broadly consistent with the term the APSC proposed for the Australian Government Industry Award, save for some modifications to subclause (8), reflecting the information handling requirements at an operational policing agency, and the risks that may arise if operational policing information is improperly disclosed. The AFP submits this term is consistent with the modern enterprise awards objective in section 168B of the *Fair Work Act 2009*.
12. The AFP has notified the AFPA and CPSU of the need to insert a delegates' rights term into the AFP Award, and of the AFP's position that the AFP Award term should reflect the term ultimately agreed in the new enterprise agreement, being a term tailored to reflect employment arrangements developed in relation to the AFP.
13. The AFP will continue to engage with the AFPA and CPSU in relation to the drafting of the term in both the AFP Award and the enterprise agreement, and will keep the Fair Work Commission informed if the parties reach a consent position.

Yours sincerely,



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## Draft delegates' rights term

### Delegates' rights

1. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials, and providing employee views to the employer.
2. The role of union delegates is to be respected and supported.
3. The employer and union delegates will work together respectfully and collaboratively.

### *Supporting the role of union delegates*

4. The employer respects the role of union delegates to:
  - 4.1 provide information, consult with and seek feedback from employees in the workplace on workplace matters;
  - 4.2 consult with other delegates and union officials, and get advice and assistance from union officials;
  - 4.3 represent the interests of members to the employer and industrial tribunals; and
  - 4.4 represent members at relevant union forums, consultative committees or bargaining.
5. The employer and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.
6. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.
  7. To support the role of union delegates, the employer will, subject to legislative and operational requirements, including privacy and security requirements:
    - 7.1 provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;
    - 7.2 advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email;
    - 7.3 allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information.

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Any assistance in facilitating email communications does not include the employer vetoing reasonable communications;

7.4 provide access to new employees as part of induction; and

7.5 provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.

8. Where employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or before speaking publicly in that capacity on workplace matters, subject to the AFP Code of Conduct, Commissioner's Orders, section 60A of the *Australian Federal Police Act 1979* and other legislative requirements. This subclause X.8 does not permit an employee to otherwise disclose information specific to an operational matter without appropriate authorisation.

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