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**AFL PLAYERS**

**LONG SERVICE LEAVE AGREEMENT**

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2 September 2002

**(NAME OF RELEVANT CLUB)**

**CERTIFIED AGREEMENT 2002**

**1 TITLE**

This Agreement will be known as the AFL Players Long Service Leave Agreement.

**2 ARRANGEMENT**

This Agreement is arranged as follows.

1. Title;
2. Arrangements;
3. Purpose;
4. Definitions;
5. Commencement;
6. Who is Bound by this Agreement;
7. Long Service – Existing Entitlements;
8. Future Long Service Leave;
9. Dispute Resolution Procedure;
10. Relationship with State Legislation;

Schedule 1. Name of AFL Club;

Schedule 2. Determination Procedure – Long Service Leave Panel;

Schedule 3. Dispute Resolution Procedure.

**3 PURPOSE**

The AFL Club and AFL Players recognise that in addition to the leave entitlements of the AFL Players contained in the Collective Bargaining Agreements, some AFL Players may have also accrued a long service leave entitlement under Relevant Long Service Leave Legislation. The purpose of this Agreement is to:

- (1) set out a fair and equitable process by which any such accrued long service leave entitlement of an AFL Player can be addressed and extinguished; and

- (2) address and make provision for future long service leave entitlements of the AFL Players to the exclusion of the Relevant Long Service Leave Legislation.

#### 4 DEFINITIONS

In this Agreement, the following words have the following meanings unless the contrary intention appears:

**Additional Leave** means the leave (if any) the Relevant AFL Player has taken during his period of service with the AFL Club which is in addition to:

- (1) his statutory or other annual leave entitlement if the leave was taken before the commencement of the 1993 AFL football season; or
- (2) his leave entitlements under the Collective Bargaining Agreements, (other than leave taken pursuant to Clause 16 of the 1998 CBA), if the leave was taken after the commencement of the 1993 AFL football season.

**AFL** means the Australian Football League.

**AFL Club** means the club whose name and address is listed in Schedule 1, being a club which competes under licence in a national football competition conducted by the AFL.

**AFLPA** means the Australian Football League Players Association Incorporated.

**AFL Player(s)** means the Players who are or in the future become contracted to play Australian football for the AFL Club.

**Average Weekly Payment** means the AFL Player's base payment, match payments and any incentive or other like payment connected with the number of matches played by the AFL Player during the season.

**Collective Bargaining Agreements** means each of the following agreements:

- (1) the agreement between the AFLPA and the then AFL clubs competing in the AFL competition, dated 21 December 1993;
- (2) the collective agreement between the AFL and the AFLPA dated 6 November 1995, which operated for the period 1 November 1995 to 31 October 1998;
- (3) the collective agreement between the AFL and the AFLPA dated 12 July 1999, which operates from 1 November 1998 until 31 October 2003 and will continue to operate until a new agreement is negotiated between the AFL and the AFLPA (in this Agreement described as the 1998 CBA); and
- (4) any future collective agreement between the AFL and the AFLPA which records the minimum terms and conditions of employment for the AFL Players.

**Continuous Service** where the term appears in this Agreement other than in Clause 8, has the same meaning given to that or a similar or like term in the Relevant Long Service Leave Legislation. The meaning of Continuous Service where it appears in Clause 8 of this Agreement is given in Clause 8.3.

**Grievance Tribunal** means the tribunal established by the AFL and the AFLPA pursuant to the Collective Bargaining Agreements.

**Long Service Leave Panel** means the panel established by this Agreement, whose function and powers are described in Schedule 2 of this Agreement.

**Relevant AFL Player** means an AFL Player who at the end of the 2002 AFL football season:

- (1) will have 9 or more years of Continuous Service with the AFL Club where that club is located in Victoria, Queensland or Western Australia; or
- (2) will have 6 or more years of Continuous Service with the AFL Club where that club is based in South Australia; or
- (3) will have 4 or more years of Continuous Service with the AFL Club where that club is based in New South Wales.

**Relevant Long Service Leave Legislation** means the legislation or any other industrial instrument in the state in which the AFL Club is based which prescribes long service leave entitlements for employees in that state.

## **5 COMMENCEMENT**

### **5.1 Condition Precedent**

This Agreement is conditional upon and will not operate until:

- (a) the other 15 clubs who compete in the AFL Competition have made an Agreement with their players on identical terms to this Agreement; and
- (b) the Agreement is certified.

### **5.2 Term of Agreement**

Upon Clause 5.1 being satisfied, this Agreement will operate for a period of 3 years from the date of certification.

## **6 WHO IS BOUND BY THIS AGREEMENT**

This Agreement applies to and is binding upon the AFL Club and the AFL Players.

## **7 LONG SERVICE – EXISTING ENTITLEMENTS**

### **7.1 Purpose of this Clause**

The purpose of this Clause is to:

- (1) set out a process by which the AFL Club and a Relevant AFL Player must negotiate and attempt to agree upon Additional Leave to be off-set against a Relevant AFL Player's accrued long service leave;
- (2) establish a mechanism by which the Long Service Leave Panel can conclusively determine disputes about existing long service leave entitlements if the AFL Club and the particular AFL Player cannot agree; and
- (3) provide that leave already taken or to be taken by the Relevant AFL Player (as agreed or determined), is in complete satisfaction of and extinguishes any long service leave entitlement that the Relevant AFL Player has or may have had under the Relevant Long Service Leave Legislation at the date of certification of this Agreement.

### **7.2 Parties to Negotiate**

The AFL Club and Relevant AFL Player must comply with the procedure set out in Clause 7.3 to determine:

- (1) whether and to what extent Additional Leave has been taken by the Relevant AFL Player; and
- (2) further leave to be given to and taken by the Relevant AFL Player if any Additional Leave that has already been taken does not satisfy the Relevant AFL Player's actual or notional long service entitlement.

### **7.3 Negotiation Procedure**

The procedure which the AFL Club and Relevant AFL Player must comply with is as follows:

- (1) the parties must first determine the actual or notional long service leave entitlement of the Relevant AFL Player under the Relevant Long Service Leave Legislation. For the purposes of this Clause 7, notional long service leave means the period of leave calculated on a pro rata basis on the Relevant AFL Player's actual period of Continuous Service with the AFL Club;
- (2) the AFL Club and Relevant AFL Player must then negotiate and use their best endeavours to agree upon the Additional Leave (if any) the Relevant AFL Player has taken during his period of Continuous Service with the AFL Club;
- (3) any Additional Leave agreed between the parties is deemed by this Agreement to be leave already granted and taken in satisfaction or part

satisfaction (as the case may be) of any actual or notional long service leave entitlement of the Relevant AFL Player;

- (4) if the parties agree that no Additional Leave has been taken or after the application of Clause 7.3(3), there remains to be satisfied part of the Relevant AFL Player's actual or notional long service leave entitlement, then the parties must negotiate and use their best endeavours to agree on the time or times for the remaining long service leave to be granted and taken by the Relevant AFL Player so that such entitlement is satisfied;
- (5) any agreement reached between the parties under sub-clauses (2) or (4) ("**Existing Long Service Leave Agreement**") must be recorded in writing and:
  - (a) be signed by the AFL Club and the Relevant AFL Player; and
  - (b) specify that it has been made pursuant to this Agreement once certified or in contemplation of this Agreement being certified.
- (6) the negotiations may commence before, but must end within four weeks of the certification of this Agreement. If the negotiations have not been satisfactorily concluded by this time, Clause 7.6 applies. For the avoidance of doubt the AFL Club and Relevant AFL Players acknowledge and agree that any breach of an Existing Long Service Leave Agreement is enforceable as a breach of this Agreement.

#### **7.4 Rules of the Negotiation**

The following rules apply to the negotiation to be conducted between the AFL Club and Relevant AFL Player pursuant to Clause 7.3:

- (1) the parties must negotiate in good faith and free from duress;
- (2) the Relevant AFL Player may be accompanied by his manager or an AFLPA representative at the negotiations;
- (3) in determining the Additional Leave already taken by the Relevant AFL Player, the following applies:
  - (a) any leave taken by the Relevant AFL Player under Clause 16 of the 1998 CBA must be counted as Additional Leave taken;
  - (b) leave taken before the commencement of the 1993 AFL football season can only be counted as Additional Leave taken if the leave was for a continuous period of at least 2 weeks and during that period or periods, the Relevant AFL Player was not required to attend any training or other activities conducted by or on behalf of the AFL Club;
  - (c) leave taken after the commencement of the 1993 AFL football season can only be counted as Additional Leave taken if the leave was for a

continuous period of at least 1 week and during that period or periods, the Relevant AFL Player was not required to attend any training or other activities conducted by or on behalf of the AFL Club;

- (4) where, after accounting for any Additional Leave which has been taken, there remains to be satisfied an actual or notional long service leave entitlement, the parties must, wherever practicable having regard to all relevant circumstances (including but not limited to the circumstances of the AFL Club), provide for leave to actually be taken rather than any payment in lieu of such leave being made. Leave may be granted and taken in any number of separate periods of no less than one week as agreed between the AFL Club and Relevant AFL Player.
- (5) where it is not practicable for leave to actually be taken, any payment in lieu can only be made at the termination of the Relevant AFL Player's employment with the AFL Club.

#### **7.5 What Happens if the AFL Club and Relevant AFL Player Cannot Agree**

The AFL Club and Relevant AFL Player must follow the determination procedure set out in Schedule 2 if they have been unable to satisfactorily conclude their negotiations under Clause 7.3 within 4 weeks of the date of certification of this Agreement. Either the AFL Club or the Relevant AFL Player may commence the determination procedure before this time if they consider that further negotiations will not resolve the issue.

#### **7.6 What Happens if the Relevant AFL Player's Employment is Terminated?**

- (1) Where:
  - (a) the parties have agreed, or the Long Service Leave Panel has determined, the time or times for any leave to be granted and taken in satisfaction of the Relevant AFL Player's actual or notional long service leave entitlement; and
  - (b) before all of that leave is taken, the employment of the Relevant AFL Player is terminated otherwise than by his death,

the AFL Club must pay to the Relevant AFL Player the full amount in respect of such leave which has not been taken, less any amount already paid to the Relevant AFL Player in respect of that leave.

- (2) The rate of payment to calculate the amount to be paid under sub-clause 7.6(1) is the Average Weekly Payment the Relevant AFL Player received over the 12 month period immediately before the date of termination in respect of base and match payments only, and does not include bonuses or any other form of incentive payments linked to the AFL Club's or Relevant AFL Player's performance.

#### **7.7 Future Long Service Leave Not Affected**

Any leave taken by or paid in lieu to a Relevant AFL Player under this Clause 7, (whether agreed under Clause 7.3 or determined by the Long Service Leave Panel), is in addition to the future long service leave entitlements applicable to all AFL Players under Clause 8.

### **7.8 Extinguishing Existing Long Service Leave Entitlement**

Any agreement reached between the AFL Club and the Relevant AFL Player under Clause 7.3, or a determination made by the Long Service Leave Panel, is in complete satisfaction of and extinguishes any long service leave entitlement or accrual that the Relevant AFL Player has or may have had under the Relevant Long Service Leave Legislation at the date of certification of this Agreement.

## **8 FUTURE LONG SERVICE LEAVE**

### **8.1 Long Service Leave Entitlement**

In addition to the greater of the AFL Players' statutory annual leave entitlement or annual leave entitlement under the Collective Bargaining Agreement (other than leave taken pursuant to Clause 16 of the 1998 CBA), as and from the date of certification of this Agreement, the AFL Players are entitled to and must take the following leave as long service leave entitlements:

- (1) if the AFL Player has more than 4 years but less than 8 years of Continuous Service with any one or more AFL Club, , 1 week each year;
- (2) if the AFL Player has more than 8 years of Continuous Service with any one or more AFL Club , 2 weeks each year;

### **8.2 Avoidance of Doubt**

For the avoidance of doubt, Clause 8.1 means that any AFL Player's service as a football player is continuous with and portable between any AFL Club.

### **8.3 Meaning of Continuous Service**

For the purpose of this Clause 8 only, Continuous Service means service which is to be regarded as continuous despite:

- (1) the taking of any annual leave or long service leave;
- (2) any absence on account of illness or injury;
- (3) the taking of any other leave granted by any AFL Club;
- (4) any interruption or ending of the employment by any AFL Club if the interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (5) any other absence approved by any AFL Club either before or after it occurs;



- (6) delisting by any AFL Club, if the AFL Player is re-employed by any AFL Club within 3 months of such delisting;
- (7) the AFL Player being involved in a trade from any AFL Club to any other AFL Club where the trade occurs on or after the date of certification of this Agreement.

#### **8.4 Taking Leave**

- (1) Subject to Clause 8.4(2), the long service leave referred to in Clause 8.1 will be taken:
  - (a) at a time agreed between the AFL Club and AFL Player; and
  - (b) in 1 week periods, unless the AFL Club and AFL Player consider that to be impracticable.
- (2) With the consent of the AFL Player (which shall not be unreasonably withheld), the AFL Club may require the AFL Player to take all or part of the long service leave entitlement under Clause 8.1 before it has accrued by giving at least 21 days notice in writing to the AFL Player. Leave in advance taken pursuant to this clause is in satisfaction of the long service leave due under Clause 8.1 to the extent of the period of such leave.

#### **8.5 Activity Free Leave**

During the period/s of long service leave granted and taken under Clause 8.3 the AFL Player must not be required by the AFL Club to attend training or any other activities conducted by or on behalf of the AFL Club.

#### **8.6 Leave Not Taken**

- (1) If for any reason the long service leave referred to in Clause 8.1 is not taken as prescribed in Clause 8.4 then, on the cessation (for any reason) of the AFL Player's employment with the AFL Club with whom he last played a match, that AFL Club must pay to the AFL Player the full amount of the long service leave which has accrued, but which has been unused.
- (2) The rate of payment to calculate the amount to be paid under sub-clause 8.6(1) is the Average Weekly Payment that the AFL Player received over the 12 month period immediately before the date of termination in respect of base and match payments only, and does not include bonuses or any other form of incentive payments linked to the AFL Club's or AFL Player's performance.

**9 DISPUTE RESOLUTION PROCEDURE**

The AFL Club and each AFL Player will follow the dispute resolution procedure set out in Schedule 4 for a dispute arising out of or relating to the entitlements provided to the AFL Players under this Agreement. However, this dispute resolution procedure does not apply to a matter to be determined by or a decision of the Long Service Leave Panel under Clause 7.

**10 RELATIONSHIP WITH STATE LEGISLATION**

The provisions of this Agreement apply to the exclusion of the provisions of the Relevant Long Service Leave Legislation. No claims or demands shall be made or pursued for long service leave entitlements or accruals arising under or based on such Relevant Long Service Leave Legislation after certification of this Agreement.

Service after the certification of this Agreement shall not count for the purposes of the Relevant Long Service Leave Legislation.

**EXECUTED AS AN AGREEMENT**

Dated: 2002

SIGNED for and on behalf of the )

**[AFL CLUB]** by its )

Chief Executive Officer )

.....  
Signature

.....

.....  
Print Name

SIGNED for and on behalf of the )

AFL Players by **[INSERT NAME]** )

**OF THE AFLPA** )

**DELEGATE AT EACH CLUB]** )

.....  
Signature

.....

.....  
Print Name

**SCHEDULE 1**

**Name and Address of AFL Club**

## SCHEDULE 2

### 1 DETERMINATION PROCEDURE – LONG SERVICE LEAVE PANEL

1. For the purposes of this Agreement, the Long Service Leave Panel is hereby established and will consist of:
  - (a) a person appointed from time to time by the AFL;
  - (b) a person appointed from time to time by the AFLPA; and
  - (c) a person jointly appointed from time to time by the AFL and AFLPA, or failing agreement, a person appointed by the President of the Law Institute of Victoria. This person will act as chairperson of the Long Service Leave Panel.
  
2. A person must not be appointed to the Long Service Leave Panel if:
  - (a) he or she has or has had a personal or professional relationship with the Relevant AFL Player; or
  - (b) he or she is or has been an Officer (as that term defined in the Corporations Act (Cth) 2001) of the AFL Club or is or has been a person who makes or has made decisions that affect the whole, or a substantial part, of the business of the AFL Club.
  
3. Where the AFL Club and Relevant AFL Player have been unable to satisfactorily conclude their negotiations under Clause 7.3 of this Agreement, the matter must be resolved in accordance with the following procedures:
  - (1) The matter must first be expeditiously referred by both the AFL Club and Relevant AFL Player to the AFL General Manager – Football Operations and the Chief Executive Officer of the AFLPA for further discussion, with a view to resolving the matter by conciliation;
  - (2) If, after a period of 7 days from that referral, the matter still remains unresolved, the AFL Club, within a further period of 7 days, must by notice in writing to the AFL General Manager – Football Operations refer the matter to the Long Service Leave Panel for resolution. The AFL General Manager - Football Operations must, upon receiving notice, convene a meeting of the Long Service Leave Panel as soon as possible;
  - (3) In hearing and determining a matter, the Long Service Leave Panel:
    - (a) may seek to have further discussions with the parties with a view to resolving the matter by conciliation;
    - (b) must hear from both parties either orally or in writing, or both;

- (c) must deal with the matter expeditiously,  
  
but may otherwise conduct the proceedings required to determine the matter in such manner and at such times as it sees fit.
- (4) The Long Service Leave Panel must determine the matter in accordance with the provisions of this Agreement and in particular, Clause 7.
- (5) The Long Service Leave Panel has the power to conclusively determine the matter in dispute between the AFL Club and Relevant AFL Player. Without limiting this power, the Long Service Leave Panel may, in making a determination:
  - (a) decide the actual or notional long service leave entitlement of the Relevant AFL Player under the Relevant Long Service Leave Legislation;
  - (b) decide whether and to what extent Additional Leave has been taken by the Relevant AFL Player;
  - (c) apply any Additional Leave in satisfaction (in whole or in part) of the Relevant AFL Player's actual or notional long service leave entitlement;
  - (d) decide the amount of and time when any long service leave must be granted to and taken by the Relevant AFL Player;
  - (e) decide the amount and timing of any payment to be made by the AFL Club to the Relevant AFL Player in lieu of any untaken long service leave.
- (6) The Long Service Leave Panel acts as an expert panel and not as an arbitrator. Unless a decision is made in bad faith, the decision of the Long Service Leave Panel is final and binding on the AFL Club and the Relevant AFL Player concerned.
- (7) The chairperson of the Long Service Leave Panel may allow any further period of time for any of the steps set out in the determination procedure to be completed.

### SCHEDULE 3

#### 2 DISPUTE RESOLUTION PROCEDURE

If a dispute cannot be satisfactorily resolved through normal communication between the relevant individuals, the dispute must be resolved in accordance with the following procedures:

1. The AFL Player must first raise the dispute with the football manager of the AFL Club.
2. If the matter is not resolved within 7 days of the AFL Player submitting it to the football manager of the AFL Club, the dispute must be referred to the AFLPA and the General Manager or Chief Executive Officer of the AFL Club for further discussion.
3. If the matter is unable to be resolved at AFL Club level, the matter must within 7 days be referred to the AFL General Manager – Football Operations and the Chief Executive Officer of the AFLPA for further discussion.
4. If the matter still remains unresolved, the dispute may be referred by either party to the Grievance Tribunal for resolution. The AFL General Manager- Football Operations must convene a meeting of the Grievance Tribunal as soon as possible but no later than 7 days after the matter has been referred by either party for resolution.
5. In determining a dispute, the Grievance Tribunal:
  - (a) may seek to have further discussions with the parties with a view to resolving the dispute by conciliation;
  - (b) must hear from both parties;
  - (c) must deal with the dispute expeditiously,but may otherwise conduct the proceedings required to determine the dispute in such manner and at such times as it sees fit.
6. The decision of the Grievance Tribunal will be final and binding on the AFL Club and the AFL Player concerned.