



Australian Government

Fair Work
OMBUDSMAN



DEFENCE RESERVES SUPPORT

Supporting Australia's Reservists and their Employers

Defence Reservists: rights and responsibilities at work

Australia's Defence Reserves are an essential component of the Navy, Army and Air Force. Our Reservists make a vital contribution to the defence and security of Australia, and to Australia's contribution to the global community as a good world citizen.

Reservists may be deployed on operations overseas or in Australia. These can range from combat operations, through peacekeeping operations to humanitarian and emergency relief in times of natural disasters.

As well as volunteering to serve their country in this way, Reservists often have civilian careers to which they are committed, and to which they bring valuable training and skills gained from their military experience. Legislation has been enacted to protect Reservists' civilian employment. To enable them to balance their military and civilian commitments, Reservists and their employers need to understand their respective rights and responsibilities.

What are the rights of Defence Reservists?

As well as workplace rights and entitlements under the *Fair Work Act 2009*, Reservists have additional workplace protections under the *Defence Reserve Service (Protection) Act 2001*.

Discrimination, disadvantage or dismissal

Reservists are protected in their civilian workplace from discrimination, disadvantage or dismissal for reasons associated with their Defence service. Breaching this protection is a criminal offence.

Right to be released and reinstated

Employers must not prevent or hinder Reservists from undertaking defence service. This means that employers are required by law to release employee Reservists to undertake all types of Defence service, and to continue to employ them on their return. This includes training.

Reservists should, as a matter of good practice, always try to give their employer as much notice as possible of the dates they will be absent from work on Defence service.

Other protections

There are also protections for Reservists who are commission agents, partners in trading partnership, contractors and students. In some circumstances, there are also financial protections.

Is there a right to be paid while absent on Defence service or training?

There is no legal obligation for employers to pay employees while they are absent on Defence service, including training.

However, many employers do provide paid leave, and some provide top-up pay to assist their employee Reservists, as military pay for many Reservists is less than their civilian pay. Employees should check their relevant industrial instrument – such as an enterprise agreement – or their contract of employment for any paid Defence service leave entitlements that may apply.

Employees cannot be required to take their annual leave or long service leave for absences on Defence service, but may voluntarily elect to do so by mutual agreement with their employer.

Defence Reserve leave policies

A Defence Reserve leave policy can help to ensure that both employees and employers understand the expectations and responsibilities that apply to them when an employee needs to be absent for Defence service or training. A template for a Defence Reserve Leave policy is available online (http://www.defencereservessupport.gov.au/media/97336/privatesectorleavetemplate_july06.doc) and the Defence Reserve Support Office in every capital city is happy to assist in developing a policy – just call **1800 803 485**.

The template policy is a minimum standard and should not constrain those employers who wish to pursue best practice from providing additional support such as paid leave or top-up pay for Defence Reserve service.

Employer Support Payment Scheme

Employers may be eligible for financial assistance to offset the costs of releasing employees for Defence service, through the Employer Support Payment Scheme. Employers are paid for eligible Defence service at average weekly earnings (regardless of the employee's salary), although there is provision in special circumstances for higher payments. For more information, contact the Defence Reserves Support helpline on **1800 803 485** or visit: www.defencereserves.com.

What do I do if I think I've been discriminated against or my employer has refused to release me?

Before making a complaint, Reservists should first talk to their employer and attempt to resolve the dispute. Where this is unsuccessful, Reservists should contact their Commanding Officer for assistance.

Should the complaint remain unresolved, a Reservist can make a complaint to the Office of Reserve Service Protection. For more information or to make a complaint, visit: <http://www.defencereservessupport.gov.au/for-reservists/being-a-reservist/making-handling-a-complaint.aspx>.

What does the Office of Reserve Service Protection do?

The Office of Reserve Service Protection works with employers, Reservists and their Defence units by providing advice on the legal obligations of the employers and rights and responsibilities of Reservists, and helping to resolve complaints. The Office of Reserve Service Protection may also provide a mediation service to assist with resolving complaints informally. Where complaints cannot be resolved informally, the Office of Reserve Service Protection may refer the matter for investigation and possible prosecution or support the Reservist in taking their own legal action.

Contact the Office of Reserve Service Protection (ORSP)

ORSP help line: **1800 671 998**

Website: www.defence.gov.au/reserves

Email: ORSP@defence.gov.au

What does the Fair Work Ombudsman do?

The role of the Fair Work Ombudsman is to promote harmonious, productive and cooperative workplace relations and to ensure compliance with Commonwealth workplace laws and industrial instruments.

The Fair Work Ombudsman can enforce compliance with Defence service leave entitlements when contained in industrial instruments such as enterprise agreements.

The Fair Work Act 2009

The *Fair Work Act 2009* sets out the rules and obligations for employees and employers under the national workplace relations system.

While Reservists have particular rights and protections under the *Defence Reserve Service (Protection) Act 2001*, all employees in the national workplace relations system have access to leave for certain community service activities, and protections for workplace rights.

Community Service Leave

Under the *Fair Work Act 2009*, employees are entitled to be absent from work for the purpose of performing certain community service activities, such as a 'voluntary emergency management activity'. This is separate to the right of Reservists to be absent on Defence service or training.

For more information on Community Service Leave, please see the *Fair Work Ombudsman Fact Sheet – Community Service Leave and the National Employment Standards*.

General Protections

The general protections provisions of the *Fair Work Act 2009* provide protection regarding:

- workplace rights
- freedom of association
- workplace discrimination.

Under the *Fair Work Act 2009*, these rights are protected from certain unlawful actions, including (but not limited to) adverse action. Adverse action can include:

- dismissing an employee, or altering their position to their detriment
- refusing to hire someone.

Workplace Rights

Under the *Fair Work Act 2009*, a 'workplace right' includes where a person is entitled to a benefit, or has a role or responsibility under a workplace law, workplace instrument (such as an award or agreement) or any order made by an industrial body. These also include rights under the *Defence Reserve Service (Protection) Act 2001*.

An employer must not take adverse action against an employee because they have or are attempting to exercise a workplace right.

For more information about general protections, including further information about workplace rights and adverse action, please see the *Fair Work Ombudsman Fact Sheet – General workplace protections*.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94