



Memorandum of Understanding

BETWEEN

Fair Work Ombudsman

and

**The Commonwealth of Australia represented by the
Australian Defence Force**

For the Administration of Reservists

2013

**MEMORANDUM OF UNDERSTANDING BETWEEN THE ADF AND THE FWO
REGARDING THE ADMINISTRATION OF RESERVISTS UNDERTAKING RESERVE
SERVICE UNDER THE *DEFENCE RESERVE SERVICE (PROTECTION) ACT 2001***

This MEMORANDUM OF UNDERSTANDING ('MOU') is dated this 21st day of March 2013 between the Fair Work Ombudsman (FWO) and the Commonwealth of Australia represented by the Australian Defence Force ('ADF').

RECOGNISING THAT:

- A. The FWO mission is to work with Australians to educate, promote fairness and ensure justice in the workplace.
- B. The ADF mission is to defend Australia and its national interests.
- C. FWO employs significant numbers of ADF Reservists. Concurrent requirements of the ADF and the FWO for these personnel can create challenges in balancing the needs of FWO and of the ADF in the context of whole-of-government interests. While FWO is a strong supporter of the ADF Reserves, the ability of FWO to achieve its mission can be affected by the long term or large scale absence of personnel on ADF Reserve service, especially in respect of key personnel, or on short notice, or concurrently with major company commitments.
- D. A co-operative approach to management of a shared workforce can mitigate most issues and conflicts in an equitable and mutually beneficial manner.

1. INTRODUCTION

- 1.1. The signatories enter into this MOU in order to establish a co-operative and mutually supportive and beneficial approach to the employment of personnel who are members of the ADF Reserves employed by FWO ('Reservists') and processes for avoiding or mitigating conflict in their respective requirements of Reservists.

1.2 The signatories acknowledge that this MOU is not legally binding, is not a substitute for any legislation, and does not purport to prevail over any legislation to the extent of any inconsistency.

2. ADF OBLIGATIONS AND UNDERTAKINGS. The ADF will:

- a. Forecast any requirement for a Reservist to undertake Reserve service, with as much notice as possible, to both the Reservist and to FWO.
- b. Actively encourage all Reservists to discuss potential patterns of Reserve service for the next twelve months with FWO, especially any known potential requirement for Reserve service that may be at short notice and/or for a period in excess of two weeks.
- c. Inform FWO of the potential for any period of continuous full time service (CFTS), and provide the opportunity for the FWO to raise any objections it may have to the ADF.
- d. Provide FWO with information pertaining to FWO's obligations under the *Defence Reserve Service (Protection) Act 2001* (Cth) ("the Act"), and the Employer Support Payment (ESP) Scheme, including advice on how FWO may claim employer support payments.
- e. Provide financial support to FWO through and in accordance with the ADF Reserve Employer Support Payment (ESP) Scheme, in respect of eligible periods of Reserve service.
- f. Provide, where possible, opportunities for an appropriate nominated representative of FWO to undertake a BOSS LIFT activity to observe first hand the benefits of Reserve service to both the Reservist and to FWO.
- g. Where authorised under the *Privacy Act 1988* (Cth) ('Privacy Act'), and the consent of the Reservist provide to FWO appropriate information regarding any skills, qualifications or competencies developed by the Reservist during the period of ADF service that may be of subsequent benefit to FWO.
- h. Where authorised under the Privacy Act or any other Act, provide appropriate information to FWO of any medical condition arising from a Reservist's service that may affect the future employment of the Reservist with FWO or be of relevance to the FWO's medical compensation insurer.

- i. Ensure, where possible, that the Reservist exhausts any ADF recreation leave accrued as part of the period of Reserve service, before returning to their civilian employment.

3. FWO OBLIGATIONS AND UNDERTAKINGS. FWO will:

- a. Actively encourage all Reservists to discuss potential patterns of Reserve service for the next twelve month period with FWO.
- b. Provide as much notice as possible to the Reservist and to the ADF of any event of national and state significance, to allow the ADF and the Reservist to de-conflict the event with any potential Reserve service if such de-confliction is appropriate or required.
- c. Actively seek equitable solutions where there is a conflict between Reserve service and FWO requirements.
- d. Comply with all provisions of, and obligations under, the Act.
- e. Prepare and submit claims for employer support payments in accordance with the requirements of the ESP scheme.
- f. Provide leave for Reservists in accordance with FWO's ADF leave policy.
- g. Where authorised under the Privacy Act, provide appropriate information to the ADF of any medical condition that may affect the future ADF employment of the Reservist or the ADF medical compensation insurance.
- h. Ensure that any objections raised with the ADF regarding the impact of a period of proposed ADF service are valid and justifiable.
- i. Not make arrangements or policies limiting the number of Reservists who may apply for leave from FWO for any one or any number, of periods of CFTS.

4. DISPUTE RESOLUTION. In the event that good faith negotiations between the relevant contact officers is unable to resolve an objection or dispute, each signatory will provide a point of contact at Major General and (General Manager or CEO) level so that the issue can be escalated to and discussed at that level.

5. COSTS AND EXPENSES. Unless otherwise agreed by the signatories, with the exception of Employee Support Payments referred to in sub-paragraph 2(e), each signatory will be

responsible for all costs and expenses incurred by it in performing its obligations under this MOU.

6. NOTICES

6.1 Any notice, request or communication to be given pursuant to this MOU is to be in writing and addressed as follows:

- a. to FWO – Group Manager Finance and Corporate GPO Box 9887, Melbourne Victoria 3001.
- b. to the ADF - Head, Cadet, Reserve and Employer Support Division, PO Box 7925 Canberra ACT 2610

7. DURATION, VARIATION AND TERMINATION

7.1. This MOU will come into effect on the date at the top of this MOU. It will remain in effect for five years thereafter, unless terminated by either signatory in accordance with paragraph 7.4.

7.2 Notwithstanding termination of this MOU under paragraph 7.4, activities being undertaken pursuant to this MOU immediately before its termination will continue to be governed by this MOU until their completion, unless otherwise agreed by the signatories.

7.3 The signatories may vary or extend this MOU by mutual agreement in writing. The signatories will negotiate in good faith in relation to any proposed variation.

7.4 Either signatory may terminate this MOU by giving the other signatory 30 days notice in writing of its intention to do so.

7.5 The operation and effectiveness of this MOU will be formally reviewed by the signatories on each anniversary of the date at the top of this MOU, unless otherwise determined by the signatories.

7.6 For the purposes of interpretation, notwithstanding that this MOU is not legally binding, the provisions of this MOU are intended to be governed by, and construed in accordance with the laws in force of the Australian Capital Territory, as amended from time to time.

**Signed by Nicholas Wilson
Fair Work Ombudsman**

(signature)

(date)

**Signed by MAJGEN Paul Brereton - HCRESA,
(Head Cadet Reserve and Employer Support Division)
for the Commonwealth of Australia**

(signature)

(date)