

## Defence reservists – rights & responsibilities at work

Read our fact sheet on the rights and responsibilities at work of Defence reservists.

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Download the fact sheet:

- [Defence reservists - rights and responsibilities at work \(PDF 244.2KB\) \(www.fairwork.gov.au/ArticleDocuments/723/Defence-reservists-rights-and-responsibilities-at-work.pdf.aspx\)](#)

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. In developing a Defence Reserve leave policy please contact the Defence Reserve Support Office in every capital city on 1800 333 362.

The leave 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 Employer Support and Service Protection on 1800 333 362 or visit [Defence Reserves Support !\[\]\(de95854c7ee024cfadc48187bbb781b2\_img.jpg\)](https://defencereservessupport.gov.au/) (<https://defencereservessupport.gov.au/>).

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

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 issue remain unresolved, a Reservist can may contact [Employer Support and Service Protection !\[\]\(c50c8b7b2cc2cf9ff925edec0ee94c0d\_img.jpg\)](https://www.defencereservessupport.gov.au/contact-us/) (<https://www.defencereservessupport.gov.au/contact-us/>).

## What does the Employer Support and Service Protection do?

Employer Support and 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 issues. Employer Support and Service Protection may also provide a mediation service to assist with resolving issues informally. Where issues cannot be resolved informally, Employer Support and Service Protection may refer the matter for investigation and possible prosecution or support the Reservist in taking their own legal action.

## Contact Employer Support and Service Protection (ESSP)

ESSP help line: 1800 333 362

Website: [https://www.defencereservessupport.gov.au/contact-us/ !\[\]\(f1c5da15572e3e09d343161be98f508d\_img.jpg\)](https://www.defencereservessupport.gov.au/contact-us/) (<https://www.defencereservessupport.gov.au/contact-us/>)

## 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 [Community Service Leave fact sheet \(www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/community-service-leave\)](http://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/community-service-leave) .

## 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, please see our [Protections at work fact sheet \(www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/protections-at-work\)](http://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/protections-at-work) .

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

### Need language help?

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

### Hearing and speech assistance

Call through the National Relay Service (NRS):

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

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