

Background

Defence Reservists play a vital role in the Australian Navy, Army and Air Force and can be deployed on operations both locally and internationally. Reservists undertake their role in a number of ways including combat operations, peacekeeping operations and humanitarian and emergency relief in times of natural disasters. Although Reservists may have a substantive form of employment which they are committed to, such as teaching, there may be times when they are required to perform Reservist duties. On these occasions, a number of protections are afforded to Reservists to protect their position within their substantive employment at a school.

What are the rights of Reservists?

When a Reservist is called upon to perform military duties or participate in military training, their position with their substantive employer is protected. Under Part 4 and Part 5 of the *Defence Reserve Service (Protection) Act 2001 (Defence Service Act)* an employer cannot discriminate, disadvantage or dismiss a Reservist for reasons associated with his or her Defence service. A breach of this protection is a criminal offence.

It is also the responsibility of an employer to release a Defence Reservist when they are required to perform military duties or training. This means that an employer has an obligation to not hinder or prevent a Reservist from undertaking Defence service and to maintain their employment whilst on duty.

When Reservists are absent on Defence service, the period of leave is not taken to be a period of employment, unless the Reservist is taking some type of paid or unpaid leave.

Relevantly, under section 25 of the Defence Service Act, an employer cannot require Reservists to use any form of unpaid or accrued leave entitlements (such as annual leave or long service leave) when undertaking Defence service unless both parties agree otherwise.

After returning from Defence service, a Reservist may apply to resume work at a school. Importantly an employer must, as soon as reasonably practicable, allow the Reservist to resume work, or be reinstated in the same capacity that the Reservist was employed with the school immediately prior to going on Defence leave (except in the circumstances set out in section 28(2) of the Defence Service Act).

In addition to the protections under the Defence Service Act, Reservists are afforded all employee protections under the *Fair Work Act 2009 (FW Act)*. For example, under the FW Act an employer must not take adverse action against an employee because he or she has, or attempts to, exercise a workplace right which includes participating in Defence service (see for example, sections 340 and 342 of the FW Act).

Schools should note that the right of a Reservist to take Defence leave is separate to other leave entitlements under the *Victorian Catholic Education Multi-Enterprise Agreement 2018 (VCMEA)* and the National Employment Standards (**NES**). This includes

Community Services Leave for activities such as emergency management activities. For further information on Community Services Leave please click [here](#).

What are the responsibilities of a Reservist?

Reservists should, as far as is reasonably practicable, consider the impact of their absence on his or her employer and try to give as much notice as possible of their requirement to participate in Defence service. In the event that a Reservist's absence will have a significantly detrimental impact on an employer, a Reservist should contact their Unit Commanding Officer to discuss alternative arrangements.

Is a Reservist entitled to be paid whilst on Defence service or training?

Defence service is a form of unpaid leave. There is no legal obligation for an employer to pay an employee whilst he or she is absent on Defence service, including training. As outlined above, schools should note that Reservists cannot be required to take any form of paid or unpaid leave when undertaking military duties or training unless otherwise agreed.

Employer Support Payment Scheme

Subject to satisfying eligibility criteria, an employer may be eligible to receive financial assistance from the Employer Support Payment Scheme (**ESPS**) if the employer

employs a Reservist who is absent for a period of not less than five consecutive days to perform Defence service. Financial assistance is paid as a set weekly rate regardless of an employee's salary. Further information regarding ESPS can be located by clicking [here](#).

Further queries and information

Any queries in relation to this Information Sheet or the relevant legislation should be directed to the Employee Relations Unit on 03 9267 0431 or ceoir@cem.edu.au.