

Office of Reserve Service Protection Questions and Answers

This document is a compilation of common public and private sector questions and answers surrounding Reserve Service and the *Defence Reserve Service (Protection) Act 2001* (the Act).

The Act was introduced in 2001 and sets out the provisions and prohibitions with respect to Australian Defence Force Reserve service.

This following information is intended to provide answers to some of the common questions employers may have when employees are required to provide Australian Defence Force Reserve service.

Please note that information contained within this table is a guide only. Reference should be made to the Act whenever a comprehensive answer is required.

For any further assistance or advice please contact -

The Office of Reserve Service Protection (ORSP) 0n- 1800 671 998

Glossary of Terms	
ADF	Australian Defence Force
CFTS	Continuous Full Time Service (<i>As an ADF Reservist</i>)
ORSP	Office of Reserve Service Protection
ESPS	Employer Support Payment Scheme
DRS	Defence Reserves Support (State or Territory) Office

	Question	Answer
1.	Does the employee have to provide an employer with at least 3 months notice prior to carrying out ADF Reserve service?	The Act does not set a minimum period of notice that must be provided to employers. However, Reservist employees should always provide as much notice as they can. However, this is not always possible for the ADF and short notice requirements will sometimes come up and the Reservist must be released for all Reserve service.
2.	Does the employer have to continue to pay the employee's wages while they are absent from the work place to carry out ADF Reserve service?	The employer is under no obligation to pay the employees wages while they are absent from the workplace to carry out ADF Reserve service. However they may have an industrial instrument in place that provides for payment or top up allowance and this should be adhered to.
3.	Can an employer refuse to release an employee for Reserve service if they are busy at that time of year?	An employer must not refuse to release an employee to carry out ADF Reserve service. The Act makes it unlawful to prevent or hinder a person from carrying out ADF Reserve service. However we do encourage employers to speak to their Reservists unit point to discuss possible options.
4.	My Reservist says I am not allowed to speak directly with an ADF Unit Commander concerning his Reserve commitments, is that true?	Not true! Employers are encouraged to contact the ADF Unit when ever the absence of an employee is going to have a serious and significant impact on the company, business or organisation.
5.	Does an employer have to re-employ an employee when they return from Protected Continuous Full Time service	Once an employee provides written notification of their return date, an employer must re-employ the employee on return from ADF Reserve service.

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6	Should the employee resign when they are going to be away from the workplace for an extended period to carry out ADF Reserve service?	There is no requirement for an employee to resign in order to carry out ADF Reserve service. It would be a breach of the Act should an employee be coerced or forced into resigning.
7	Can an employer refuse to employ a person because they are an ADF Reservist?	The Act prohibits discriminating against an employee or potential employee because they are a Reservist.
8	Does an employer have to pay the employee while they are on Reserve Service in order to receive financial assistance from the Employer Support Payment Scheme (ESPS)?	To receive ESP, an employer is under no obligation to pay the employee's wages while they are carrying out ADF Reserve service.
9	Can an employer force an employee to use Annual and Long Service leave to cover a period of absence to carry out ADF Reserve service?	No -The Act prohibits an employer from forcing or coercing an employee from using accrued forms of leave to carry out ADF Reserve service. However, an employee may elect to use accrued leave at the discretion of the employer.
10	Should a Reservist employee provide their employer with written notification prior to carrying out ADF Reserve service when requested?	While it is not a requirement of the Act, Defence has given an undertaking to employers to provide prior written notification whenever possible and an employer can request this. This could be as a defence letter or a form the AE380
11	Does an employer have to maintain an employees' terms and conditions of employment even when an employee's ADF Reserve service commitments impacts on the company or organisation	The Act prohibits an employer from changing the terms and conditions of employment to those that are less favourable because of the employee's ADF Reserve status.
12	How does time away from the workplace to carry out ADF Reserve service benefit the company or organisation?	The technical, administrative skills and training accomplishments gained by an employee will often relate directly to the duties carried out in the civilian workplace. In addition, ADF Reservists receive leadership, managerial, WHS, fire fighting, first aid, equity and diversity training. All this experience is a definite benefit to any organisation.
13	Can an employer insist that the employee pays all or part of their ADF Reserve wages to the company on return from ADF Reserve service?	The Act prohibits an employer from taking the military wages of an ADF Reservist when they carry out ADF Reserve service. This is not to be confused where an ADF Reservist has an agreement to voluntarily hands over their military wages as part of a "Top-Up" or "Make-Up" pay arrangement.
14	Can an employer dismiss an employee when their ADF Reserve service commitments continually interfere with the smooth running of the business or organisation?	The Act prohibits the dismissal of an employee because they have, they are or they are going to carry out ADF Reserve service.

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15	Are the ADF interested in employers' concerns, particularly when the absence of the employee is going to result in the company or business losing money?	<p>ADF Unit Commanders (or their delegates) will always take the time to listen to employers who have a legitimate issue regarding their employee's ADF Reserve commitments.</p> <p>An employee should provide their employer with a relevant ADF Unit point of contact whenever requested by their employer.</p>
16	Can an employer prevent or hinder an employee from becoming an ADF Reservist?	The Act prohibits an employer from refusing to release or hindering an employee from carrying out ADF Reserve service this includes recruitment.
17	Should an employer expect written notification when their employee has completed their ADF Reserve service?	While it is not a requirement of the Act, Defence will provide employers with written notification of completed ADF Reserve service when requested. There is a Defence form called the AE380 that you can request.
18	Is an employer obliged to have a formal Military Leave Policy for employees who are ADF Reserve members?	<p>No -you are not required to have a formal Military Leave Policy however having such a policy clearly explains the obligations and responsibilities to employees, supervisors and managers.</p> <p>The policy also provides an opportunity to explain how leave to undertake ADF Reserve service is to be managed. It also publicly demonstrates support for the ADF and the Reserve member. ORSP can help you with a policy.</p>
19	My Reservist tells me that he can't discuss his intended ADF Reserve commitments or service with us, is that true?	<p>All ADF Reservists are encouraged to sit down with their employer at the beginning of each year and discuss what plans they have for the next 6-12 months.</p> <p>Such plans may include training courses. Military exercises and other known activities. Even when specific dates are unknown, ADF Reserve members should provide an outline and inform their employers as soon as dates and times are confirmed by the ADF.</p>

Defence is fully committed to providing relevant and up-to-date information that aims to simplify how the Reservist/Employer relationship works.

Information on the employers obligations, Reservist responsibilities, supportive initiatives and financial assistance provided to employers is available on the DRS website- defencereservessupport.gov.au

Or call DRS State and Territory offices- **1800 803 485** or ORSP – **1800 671 998**