

# DEFENCE RESERVE LEAVE

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## Authority and Application

Clause 63 of the *Victorian Public Service Enterprise Agreement 2020* (Agreement) applies to the Departments and Agencies (Employer) and their Employees who are covered by the Agreement.

## Overview

Employees may be granted leave, up to a maximum period of 78 weeks continuous service, to facilitate the Employee's participation in approved Defence Reserve service. Employees undertaking Defence Reserve service must discuss with their Employer as soon as reasonably practicable about their request to take Defence Reserve leave which must be accompanied by evidence supporting the call to duty or reason for the service. Subject to appropriate documentation from the Australian Defence Force (ADF) an Employee on approved Defence Reserve leave may be paid top up pay to the level of their VPS salary.

An Employee who commenced employment with a Victorian Public Service Employer prior to 9 May 2002 and has been continuously employed in the Victorian Public Service may have access to more generous preserved entitlements in accordance with clause 63.4 of the Agreement. An Employee who believes they may have a preserved entitlement must contact their Employer to discuss the arrangements which apply.

## Relevant provisions of the VPS Agreement

### Clause 63 – Defence Reserve Leave

## Supplementary Guidance Information

### 1. Requesting Defence Reserve leave

- 1.1. An Employee required to complete Defence Reserve service may be granted leave up to a maximum period of 78 weeks' continuous service
- 1.2. The Employee must discuss with the Employer regarding the proposed timing of the service. Applications for leave under this clause must be made with as much notice as is possible and be accompanied by evidence supporting the reason for the service. Noting section 8 below, a request for Defence Reserve leave will not be unreasonably refused, considering all relevant circumstances including, but not limited to the Employer's operational requirements.
- 1.3. A casual Employee is not entitled to Defence Reserve leave. A casual Employee may refuse and/or state their unavailability for the duration of time the Employee is required to undertake Defence Reserve service.

### 2. Payment while on Defence Reserve leave

- 2.1. An Employee on Defence Reserve Service is entitled to receive a salary from the Australian Defence Force (ADF) of Defence Reserve during their service. The Employer will (pay make-up pay to the Employee for the period of Defence Reserve service (unless exceptional circumstances arise) where the ADF salary received is below the Employee's VPS base salary (as defined in clause 2 of the Agreement), as required by clause 63.3 of the Agreement.
- 2.2. An Employee is required to notify their Employer as soon as reasonably practical of any change to the pay they receive from the ADF or Defence Reserve service, whilst on Defence Reserve leave. Where the Employer has paid make-up pay, and subsequently the Employee's ADF base salary excluding allowances has increased, the Employee may be required to repay all overpayments to the Employer.
- 2.3. An Employee who is on leave without pay at the time of the commencement of Defence Reserve service will not be entitled to make-up pay for the period of defence reserve service which occurs while the employee is on approved leave without pay.

### 3. Preservation of prior entitlement

- 3.1. An Employee employed by a Victorian Public Service Employer as of the 9 May 2002 has a preserved entitlement provided they have had continuous employment in the Victorian Public Service at the time of applying for leave. Any previous service with a public entity deemed as continuous by the *Public Administration Act 2004* (Vic) would also count towards determining an Employee's eligibility to make a request under this clause.

- 3.2. If this is the case, any more favourable provision relating to their previous entitlement to Defence Reserve leave is maintained. Employees in these circumstances must discuss their request for Defence Reserve leave with their Employer.

#### **4. Notice and evidence requirements**

- 4.1. Consistent with clause 63.2 of the Agreement, an Employee wishing to take leave under this provision, must discuss with the Employer regarding the proposed timing of the service and make application for leave with as much notice as is possible.

##### ***Prior to taking leave***

- 4.1.1. An Employee who is requesting Defence Reserve leave must provide to the Employer written advice from the ADF or Defence Reserve service confirming:
- a. the dates of required attendance; and
  - b. the base salary, excluding allowances, the Employee will be receiving during the period of leave, the commencing date of the payment and the date of any known future pay increases to be paid by the ADF.

##### ***After leave has been taken***

- 4.1.2. After Defence Reserve leave has been taken the Employee is required to provide to the Employer written advice from the ADF or Defence Reserve service confirming:
- a. the dates of attendance on Defence Reserve service; and
  - b. the base salary, excluding allowances, they received during the period of leave applied for, or as necessary, for the period of leave taken.
- 4.2. It is expected that the written advice to be provided by the Employee be in the approved format set out by the ADF or Defence Reserve service. For the current ADF approved format, Employee's should visit <https://www.defencereservessupport.gov.au/forms-resources/forms-publications/> or contact the ADF directly.

#### **5. Leave in excess of defence service leave entitlement**

- 5.1. An Employee who is required to complete Defence Reserve service in excess of the maximum of 78 weeks may request other forms of leave or accrued time in lieu to be used in conjunction with any approved Defence Reserve leave entitlement to cover the required period of absence.
- 5.2. Where an Employee seeks to use other forms of leave or accrued time in lieu in conjunction with a period of Defence Reserve leave, those requests will be managed in accordance with the notice, requests, approval and evidence requirements underpinning those entitlements.

#### **6. Prior recognised service for Long Service Leave purposes – Military Service & Defence Reservists**

- 6.1. Whether defence force reserve service is recognisable service under clause 62.9 of the Agreement, will be dependent on the nature of the relationship between the Employee and the Defence Force, and particularly whether the arrangements could be considered as an employment relationship.
- 6.2. For further information, please consult the Long Service Leave common policy.

#### **7. Casual employees**

- 7.1. The loading payable to casual Employees pursuant to clause 31 of the Agreement includes compensation in lieu of Defence Reserve leave entitlements pursuant to clause 63 of the Agreement.

## 8. The *Defence Reserve Service (Protection) Act 2001*

8.1. The *Defence Reserve Service (Protection) Act 2001* (Cth) (the DRS Act) makes it an offence for an Employer to discriminate against, disadvantage or dismiss an Employee or prospective Employee for rendering ADF Reserve service.

8.2. The DRS Act makes it an offence for an Employer to hinder or prevent an employee from volunteering to render defence service or rendering defence service.

### **Making decisions under this policy**

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

### **Dispute resolution**

An Employee who is directly affected by a decision made or action taken pursuant to clause 63 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

## **Further Information**

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

## **Related policies or documents**

### **VPS Enterprise Agreement Common Policies**

- Annual Leave
- Long Service Leave
- Other Leave
- Time in lieu
- Review of Actions

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

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