

DEFENCE RESERVE LEAVE

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Authority and Application

Clause 70 of the *Victorian Public Service Enterprise Agreement 2024* (Agreement) applies to the Victorian Public Service (VPS) Departments and Agencies (Employers) 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 70.4 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 Agreement

Clause 70 – 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 clause 70 of the Agreement 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 undertaking Defence Reserve service is entitled to receive a salary from the ADF 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 70.3 of the Agreement.
- 2.2. In calculating an Employee's Defence Reserve service make-up pay, the calculation is based on the Employee's ordinary daily rate of pay for each working day. For example, if an Employee usually works Monday to Friday and the Employee does Defence Reserve service between Tuesday to Saturday in one week, in calculating the Defence Reserve service make-up pay, the Saturday work would be excluded from the calculation.
- 2.3. 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.
- 2.4. 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 clause 70 of the Agreement.

- 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 70.2 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 an application for leave with as much notice as is possible.

4.2. Prior to taking leave

An Employee who is requesting Defence Reserve Leave must provide to the Employer written advice from the ADF or Defence Reserve service confirming:

- 4.2.1. the dates of required attendance; and
- 4.2.2. 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.

4.3. After leave has been taken

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:

- 4.3.1. the dates of attendance on Defence Reserve service; and
- 4.3.2. the base salary, excluding allowances, they received during the period of leave applied for, or as necessary, for the period of leave taken.

- 4.4. It is expected that the written advice to be provided by the Employee is in the approved format set out by the ADF or Defence Reserve service. For the current ADF approved format, Employees should visit <https://www.defencereservessupport.gov.au/forms-resources/forms-publications/> or contact the ADF directly.

- 4.5. Defence Reserve service make-up pay should be paid to the Employee upon their return from Defence Reserve Leave. Other than in exceptional circumstances, the payment should be made in the pay cycle following the Employee's return from Defence Reserve Leave. Should an Employer require additional information before a payment can be made to the Employee, the Employer will request the information and make the payment as soon as is practicable.

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 69.9 of the Agreement will be dependent on the nature of the relationship between the Employee and the Defence Force, 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 35 of the Agreement includes compensation in lieu of Defence Reserve Leave entitlements pursuant to clause 70 of the Agreement.

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

- 8.1. The *Defence Reserve Service (Protection) Act 2001* (Cth) (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 s.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 70 of the Agreement 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

Common Policies

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

All policies can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>.

Authorised by Industrial Relations Victoria:

Key Details	Date
Version	Final as approved
Date	April 2025

If you print and store this document, you may be looking at an obsolete version. Always check the latest version of this document at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>.