

**DETERMINATION 3.4D:
EMPLOYMENT CONDITIONS – FLEXIBLE LEAVE FOR
EMPLOYEES WITH A DISABILITY RESULTING FROM
WAR SERVICE AND FOR DEFENCE RESERVES**

**Public Sector Act 2009
Date of Issue: 26 July 2012
Date of Operation: 1 August 2012**



Government of South Australia
Commissioner for Public Sector Employment
Office of Public Employment & Review

DETERMINATION OF THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT

<i>Public Sector Act 2009</i>	Determination 3.4D: Employment Conditions – Flexible Leave for Employees with a Disability Resulting from War Service and for Defence Reserves
Date of Operation	1 August 2012
Review Date	1 August 2014

This Determination is made pursuant to a delegation from the Commissioner for Public Sector Employment.

Elbert Brooks
Executive Director
Public Sector Workforce Relations

Who is covered by this Determination?

This Determination applies to:

- Employees in the Public Service (i.e. employed in an administrative unit or attached office, as defined by the *Public Sector Act 2009* (PS Act)); and
- Public sector employees whose employment has been declared by another Act or the *Public Sector Regulations 2010* to be employment to which section 16 of the PS Act applies.

The Human Resource function within your agency can clarify whether this Determination applies to you.

Terminology

In this Determination, a reference to “employee”, “public sector agency”, and “agency” has the same meaning as in s16 (1) of the PS Act.

“Flexible leave” means leave which is taken for special purposes. The term “flexible leave” can be used interchangeably with “special leave” as expressed within industrial instruments and can be taken with or without pay.

Minimum Requirements

Chief executives must ensure compliance with the minimum requirements in this Determination as per the PS Act and applicable industrial instrument(s).

Leave with and without pay entitlements and provisions for PS Act employees are detailed in Schedule 1 Part 1 and Regulation 19 of the PS Act.

Operative Effect

This Determination is made pursuant to, and operates in accordance with, the PS Act and PS Regulations as applicable from time to time.

This Determination has effect on 1 August 2012 and operates in substitution for Clause 5: *Disability Resulting from War Service Leave* and Clause 6: *Defence Reserves Leave* of Commissioner’s Standard 3.4 Attachment D - *Special Leave With and Without Pay*.

Delegation

The Commissioner for Public Sector Employment delegates to chief executives the authority under section 16(2)(b) of the PS Act to determine matters arising from, or in relation to, this Determination, provided that the delegation must be exercised in accordance with the content of this Determination and Commissioner’s Standard 3.2: *Responsive and Safe Employment Conditions - Remuneration*. A chief executive may further delegate this authority in writing to employee/s within the administrative unit or attached office (either by name or by reference to the title of the set of duties being performed (including on an acting or temporary basis)).

CLAUSE 5: DISABILITY RESULTING FROM WAR SERVICE LEAVE

Eligibility

Special leave with pay for war service disability leave may be granted to employees who served with the Australian Defence Forces and who are absent because of a disability accepted by the Department of Veterans Affairs:

- as a war-caused injury or war-caused disease as defined under the *Veterans Entitlement Act 1986* (“the VE Act”); or
- as a service injury or service disease arising from warlike service or non-warlike service as defined under the *Military Rehabilitation and Compensation Act 2004* (“the MCE Act”)

For the purposes of this Determination, peacetime operations as defined under the MCE Act are not recognised as warlike or non-warlike service for the purposes of war service disability leave.

Crediting of Leave

War service disability leave is to be credited to eligible employees on the following basis:

- a special non-accumulative war service disability leave credit equivalent to 9 weeks (to be recorded in hours) upon commencing employment in the Public Service or in a public sector agency to which s16 of the PS Act applies.
- an accumulative credit of the equivalent of three weeks per annum (to be recorded in hours) upon the employee’s annual service anniversary date. This entitlement will accumulate for 3 years (up to a maximum of the equivalent of 45 working days) and re-accumulate if used.
- the maximum credit which may be accumulated in any service year is the equivalent of 45 working days inclusive of the current year’s credit, and this accumulative credit can be used only when the non-accumulative credit has been exhausted.

Granting of leave

An application for war service disability leave must be supported by a medical certificate for the period of absence stating the nature of the disability suffered by the employee.

Leave will be granted upon the submission of evidence that the disability shown on the medical certificate has been accepted by the Department of Veterans’ Affairs as arising from warlike or non-warlike service (excluding peacetime operations).

War service disability leave granted to an employee will be on full pay irrespective of repatriation benefits. The leave available under this arrangement is in addition to the normal sick leave entitlement provided by the PS Act and Regulations.

[Note: this Clause 5 operates in substitution for clause 5 *Disability Resulting from War Service Leave* in Commissioner’s Standard 3.4 Attachment D - *Special Leave With and Without Pay*.]

CLAUSE 6: DEFENCE RESERVES LEAVE

In accordance with the *Defence Reserve Service (Protection) Act 2001*, a chief executive must not hinder or prevent an employee from volunteering to render Defence Service or from rendering Defence Service.

Defence Service means service in a part of the Reserves, including ordinary reserve service (e.g. training) and voluntary continuous full-time service.

The Department for Defence encourages Reservists to provide to their employer as much notice as possible of their Defence Service obligations. In some instances the Reservist may be called upon with little or no notice (see ‘Call Outs’ below) and must be released.

An application for Defence Reserves leave must be accompanied by a Training Notice or other relevant authorisation from the Department of Defence.

Leave with pay

An employee who is a member of the Defence Reserves is entitled to leave with full pay, as follows:

- up to the equivalent of 20 working days paid leave in a twelve month period; and
- up to the equivalent of an additional 10 working days paid leave in the first year of service as a reservist.

Other leave

Any leave required for Defence Reserves in excess of the above would normally be taken as leave without pay. Note that during a period of leave with pay, a reservist employee may be paid by both the public sector agency employing them and the Defence Reserves, but for any period of leave without pay, only by the Defence Reserves.

Call outs

In the event of a 'call out', a reservist employee would normally be granted leave without pay for the whole period they are absent. The amended Defence legislation enables the Governor-General to call out the Reserves for a declared war or other contingencies, such as warlike conflicts, peace enforcement, peacekeeping, humanitarian relief, civil aid and disaster relief operations.

Employer Support Payment Scheme

Public sector agencies are expected to access Employer Support Payment Scheme (ESPS) entitlements from the Department of Defence whenever a reservist employee is on Defence Reserves Service (i.e. for Ordinary Reserve service/training and for voluntary continuous full time service) and the reservist employee has completed an annual qualifying period of 2 weeks of continuous Defence Reserves Service. The qualifying period can be undertaken as a single period or multiple periods of continuous Defence Reserves Service of 5 days or more.

The ESPS is adjusted in line with the Average Weekly Ordinary Time Earnings (AWOTE). The AWOTE for ESPS for the Financial Year 2012/13, relating to periods of continuous Defence Service commenced on or after 1 July 2012, is \$1345.20. This rate will remain in force until 30 June 2013.

For reservist employees in part-time employment, a pro-rata amount of the applicable AWOTE is calculated based on their weekly working hours. Further information about the ESPS provisions is available on the Australian Defence Force Reserves web site: <http://www.defence.gov.au/reserves>.

An agency will not be eligible to access ESPS entitlements if a reservist employee is required to use recreation or long service leave to undertake Defence Reserves commitments.

Employment protection

Pursuant to the Commonwealth *Defence Reserve Service (Protection) Act 2001*, employers including public sector agencies and chief executives must protect the employment status and entitlements of the reservist employee while absent on Defence Reserves Service. The agency must continue to employ the reservist employee on completion of their Defence Reserves Service, i.e. peacetime training, voluntary continuous service and call outs.

Refer also to Commissioner's Standard 3.4 Attachment E *Recognition of Prior Service and Leave Accruals* for information on recognition of military service for the calculation of leave entitlements.

[Note: this Clause 6 operates in substitution for clause 6 *Defence Reserves Leave* in Commissioner's Standard 3.4 Attachment D - *Special Leave With and Without Pay*]