



PROTECTION REVIEW

REPORT

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TABLE OF CONTENTS

	Page No.
Executive Summary	4
Introduction	7
Review of Present Legislation	10
Summary of Submissions	15
- Reservists or former Reservists	15
- Navy	18
- Army	18
- Air Force	22
- The Australian Federal Police	22
- Tasmanian Department of Police and Emergency Management	23
- Queensland Government Departments and Agencies	25
- NT Police	26
- The Australian Industry Group	27
- Victorian Farmers Federation	30
- The Australian Council of Trade Unions	32
- The Defence Reserves Association	34
- Mitsubishi Motors Australia Ltd	36
Issues Raised in the Issues Paper	37
Protection Issues	40
- Results of Consultations and Review of Submissions	40
- Scope of Parts 5, 6 and 7	40
- Removal of the Distinction between Protected and Unprotected Continuous Full Time Service	41
- Content of Education Protection	41
- Scope of Parts 8, 9 and 10	41
- Greater Use of Plain English	41
- Modification of Existing Protections	42
- Clarification of the Act and Regulations	42
Employer Support Issues	43

	Page No.
- DRSC Role and Function	43
- Need for Policy	43
Employer Support Policy	44
Implementation	45
Conclusion	46
Recommendations	47
 Annexures	 50
A - Extract of Terms of Reference for Protection Review	
B - Visits and Consultations	
C - Issues Paper prepared by ORSP	
D - Current DI(G) Pers 05-33- Engagement of Members of the ADF Reserves to Render Continuous Full Time Service	
E - Covering Minute and Guidelines for Commanders, Commanding Officers and Career Management Agencies entitle Employment of Reservists dated July 2005	
F - Proposed Draft DI(G) - Engagement and Support of Members of the Australian Defence Force Reserves When Rendering Continuous Full Time Service or Periods of Continuous Defence Service exceeding 28 days	
G - Implementation Duties and Communication Responsibilities	
 Enclosure	
1. Copy of written submissions	

EXECUTIVE SUMMARY

1. Over the seven years of its operation, the *Defence Reserves Service (Protection) Act 2001 (Act)* has significantly enhanced the availability and thereby the capability of the ADF Reserves. It has made an important contribution to the sustainability of ADF capability.
2. Within the ADF, the Act is seen as working well and as achieving its objectives. Nonetheless, a number of enhancements are desirable and are recommended by the panel.
3. Externally to the ADF, there is widespread recognition of the important role of reservists within the ADF and general acceptance of the need for the Act. However, employers consider that this should be balanced against the need to avoid imposing unnecessary additional costs or inhibiting business efficiency. Simplification of the Act and the ongoing need to inform and educate employers about its provisions are important. Maintenance of employer goodwill continues to be of pivotal significance. Reasonable advance notice to employers (wherever possible) of the likely absence of the reservist from the civil workplace and feedback to employers during absence on deployment are important requirements if goodwill is to be maintained in the future particularly given the current level of utilisation of reservists. ADF policy should give guidance as to how these functions are to be performed.
4. The panel recommends that the Government direct that a Bill to amend the Act be prepared for passage by Parliament to make the following enhancements to the Act.
 - a. removal of the current distinction between 'protected' and 'unprotected' continuous full time service with the result that all types of reserve service will receive employment protection;
 - b. extension of the current scope of education protection to apply to all types of reserve service instead of only call out and protected continuous full time service as now;
 - c. expansion of the current scope of education protection to include (in addition to re-enrolment following completion of defence service as at present):
 - reimbursement or deferment of fees and charges paid by a reservist to an education institution lost or thrown away as a result of absence on defence service;
 - non-recording of a failure by the education institution in the reservist's student record in the event that a course of study or subject is not completed by a reservist as a result of absence on defence service; and
 - continuing recognition of examinations, assessments and practical work when a course of study or subject is resumed by a reservist following absence on defence service;

- d. extension of financial liability protection to apply to reservists serving on continuous full time service or continuous defence service of an operational nature as well as service following call out as now;
- e. introduction of a new provision directed at objectionable behaviour or conduct adverse to a reservist in or concerning the reservist's workplace including bullying, abuse or harassment directed at a reservist relating to the reservist's status or service as a reservist; and
- f. introduction of a number of consequential amendments to provide clarification or simplify the language or operation of the Act.

5. The panel recommends that the Regulations be subject to minor amendment as set out in the report to clarify the function of ORSP and to enhance the mediation process. The regulations will also need consequential changes following the amendment of the Act.

6. Defence Instruction (General) Pers 05-33 concerns the engagement of members of the Australian Defence Forces Reserves to render continuous full-time service. The Instruction can be significantly simplified following the passage through Parliament of the recommended amendments to the Act. The instruction should include policy as to feedback to employers and partners where reservists are absent from the civil workplace for significant periods.

7. A minimum period (wherever possible) of four weeks notice of the absence of a reservist from a civil workplace is considered essential if adverse impacts on business operations and efficiency and business costs are to be minimised. The revised DI(G) Pers 5-33 should include policy providing for a minimum of four weeks notice to be given by reservists to employers and partners as a standard practice. The Instruction should also provide for periodic feedback during deployment or absence on continuous full time service and the provision of a statement of attainment on completion. Employers should have the capacity to access a senior service officer or authority should they seek to do so.

8. The new policy will not affect High Readiness Reserve service where employer consent to short notice deployment has previously been given as a condition of the service. Nor will it affect reservists who do not have a civil employer or business partner.

9. The policy of ORSP to mediate and conciliate with employers when enforcement issues arise is strongly endorsed by reservists and employers alike. It should continue in the future with the issue of legal proceedings to be considered as a last resort.

10. The activities undertaken by Reserve and Employer Support Division such as Exercise BOSSLIFT and EXECUTIVE STRETCH and the work of the Office of Reserve Service Protection in informing third parties such as employers and partners of the provisions of the Act and in assisting in dispute resolution are important and effective and should be continued and strengthened.

11. Apart from the cost of a Communications Strategy to inform reservists, employers, departments, education institutions and the community generally of the changes recommended in this report estimated at \$100,000 there are not expected to be any additional costs to Defence.

INTRODUCTION

Background

1. The *Defence Reserves Service (Protection) Act 2001* (Act No. 11 of 2001) (**Act**) came into force on 19 April 2001. The Act received bipartisan support in its passage through the Parliament.
2. The long title of the Act stated its purpose as -
“to protect members of the Reserves in their employment and education, to facilitate their return to civilian life, and for related purposes.”
3. The *Defence Reserve Service (Protection) Regulations 2001* (Statutory Rule 2001 No 325) (**Regulations**) were promulgated on 6 December 2001. The Regulations established the Office of Reserve Service Protection (ORSP) headed by a Director and a Deputy Director. ORSP is responsible for investigating possible contraventions of the Act and complaints made under the Act. It also has the function of making recommendations to the Minister for enhancing the protection provided by the Act, and for improving and distributing information about the Act and the Regulations.

The Reserves

4. The Australian Defence Force (ADF) has three services Navy, Army and Air Force. Each service is divided into Permanent Forces or Regulars and Reserves. The Reserves form an integral component of the Australian Defence Force.
5. Since the Act was passed in March 2001, there have been significant changes to the Reserves. Army and Air Force have introduced a new category of reserves known as high readiness reserves on short readiness and with enhanced conditions of service. Army has raised a reserve response force in response to the threat of terrorism in Australia. Reservists routinely serve on operations and overseas on continuous full time service with all three services. An army reserve company is presently serving in the Solomon Islands. No call out of reservists has occurred since the legislative changes of 2001 and, given that call out has never been ordered, the provisions of the Act relating to call out protection have not had application.
6. The panel has been advised that as at March 2008, the Active Reserves had a strength of 24,581 being 4,036 active naval reservists, 15,466 active army reservists, and 2,401 active air force reservists. There were 428 high readiness army reservists, and 659 high readiness air force reservists. Army and Air Force plan to grow the strengths of their high readiness reserves. During FY 2007/8, an additional 1,591 reservists were serving on full time service.
7. The extent of operation of the Act is highlighted by the most recent survey of the Australian Defence Force Reserves published in February 2005 by the Directorate of Strategic Personnel Planning and Research. This survey disclosed at page 24 that

72.9% of naval reservists, 83.0% of army reservists and 76.7% of air force reservists had a civilian job at the time of the survey. The government or public service employed one third of reservists with the balance working in a wide variety of industries in the private sector. Naval and air force reservists (16.3% and 13.6% respectively) were more likely than army reservists (10.5%) to be self-employed.

8. The report found that 40.7% of reservists work in their civilian employment between 40-49 hours per week, 22.7% between 30-39 hours per week and 14.4% between 50-59 hours per week.

9. The report found that most civil employers were aware of their employee's service in the Reserves. 86.6% of reservists recorded that their employers were aware of their reserve service whilst an additional 9.2% were self-employed. Only 2.6% of reservists stated that their employers were unaware of their reserve service whilst 1.7% did not know.

10. In giving reserve service, the survey found that over a period of one year 27.2% of reservists relied on paid military leave, 17.7% utilised recreation annual or holiday leave, 15.8% unpaid leave, 6.4% unpaid military leave, 1.6% long service leave whilst 4.4% relied on other leave entitlements. 10.2% of reservists were self-employed.

Terms of Reference

11. The principal task of the panel as set out in the Terms of Reference is to review the Act and Regulations and advise the Parliamentary Secretary for Defence on:

- the effectiveness of the Act and Regulations in achieving their stated aims;
- perceptions of Reservists, Employers, and other relevant stakeholders regarding the obligations and protections provided for under the Act;
- ADF perceptions of the success of the Act and Regulations in ensuring the availability of Reservists to contribute to Defence capability;
- current administration of the Act;
- any areas for possible improvement; and
- recommendations relating to ORSP and the way ahead.

12. The Terms of Reference state:

“The Review will examine whether the provisions and application of the Act deliver efficient, comprehensive and workable protections for Reservists and whether these provide the necessary support to the maintenance of ADF capability or whether alternative arrangements to the existing approach would facilitate improved outcomes.” and

“The Review Panel’s report will provide advice and recommendations to assist Government in determining the form and content of any proposed changes to the Act together with any enhanced processes for administration of the Act to more effectively meet its stated objectives.”

13. A copy of the Terms of Reference is set out as Annex A.

Panel Composition

14. The panel consists of the following members

Major General Greg Garde - AO RFD QC	-	former Head Reserve Policy
Leigh Purnell	-	Executive Director- International of the Australian Industry Group
Phil Johnston	-	Director Office of Reserve Service Protection
Steve Williams RFD	-	Director Employer and Industry Engagement within Reserve and Employer Support Division

15. The panel was assisted by Lieutenant Colonel Chris Grigsby RFD who acted as secretary of the panel, and by Chief Petty Officer Gary Walters who acted as Administrative Officer of the panel until recommencing full time service in January 2008.

Visits and Consultation

16. The panel undertook an extensive program of visits and consultations. Details of the visits and consultations are provided as Annex B.

Advertising and Website

17. An extensive program of advertising of the terms of reference of the panel was undertaken. In addition, the panel established a website -

http://www.defencereserves.com/asp/have_your_say.aspx

Issues Paper

18. During the review, an Issues Paper was prepared by ORSP to assist in the identification of issues. A copy of the Issues Paper is set out as Annex C.

Submissions

19. The panel received 45 written submissions. Submissions were received from -

- employers and employer groups;
- police and emergency services;
- Navy, Army and Air Force;
- the ACTU;
- the Defence Reserves Association;
- reservists and ex-reservists;
- members of the public; and
- reservists and employers who have experienced the protection system.

20. A copy of the written submissions received by the panel is Enclosure 1.

REVIEW OF PRESENT LEGISLATION

21. The Act contains twelve Parts. Part 1 is the Introduction. Section 3 is an overview. Section 4 provides that the Act binds the Crown in each of its capacities. Section 5 makes the *Criminal Code* applicable to all offences against the Act. Section 6 extends the operation of the Act to every external Territory.

22. Part 2 is concerned with Interpretation. Section 7 is the definitions section and contains a number of important definitions. It defines '*defence service*' to mean service including training in a part of the Reserves. It contains a wide definition of '*employment*' including employment by the Commonwealth, a State or Territory, a local government body, an apprenticeship, and a trainee arrangement. It extends to full-time, part-time and casual work. A '*member*' is defined to mean a person who is, or has been, a member of a part of the Reserves i.e. a reservist, but does not include a person called upon to serve in the Defence Force under section 60 of the *Defence Act 1903*.

23. Section 8 defines '*absent on defence service*' to include not only the period whilst a reservist is rendering defence service, but also any period during which the reservist is travelling from his or her residence to report for defence service. It also includes the period (if any) after which the reservist has ceased to render that service until he or she resumes work, or is reinstated in civil employment for the purposes of Part 5.

24. Part 3 is a helpful overview setting out in tabular form the protections and benefits that apply to different types of defence service. Protection against discrimination applies

to all types of defence service. Employment protection (Part 5), partnership protection (Part 6), and education protection (Part 7) apply during all types of defence service except for unprotected continuous full time service as set out in section 12. Financial liability protection (Part 8), bankruptcy protection (Part 9), and entitlement to loans and guarantees (Part 10) are available only in the event of continuous full time service following a call out.

25. Parts 5 – 7 of the Act do not apply to continuous full time service by a reservist unless the reservist is serving on call out service or protected continuous full time service. Protected continuous full time service is service where a service chief or delegate requests a reservist to give an undertaking to render voluntary continuous full time service on the basis that Parts 5 – 7 will apply to the service.

26. In deciding whether or not to request a reservist to undertake protected continuous full time service, a service chief or delegate is required to have regard to –

- the nature of the service to be rendered;
- the reservist's military skills and capabilities;
- the current need of the Defence Force for the reservist's skills and capabilities;
- the effect that rendering the service might have on the reservist's employment and education (including the effect that it might have on third parties such as employers); and
- any other relevant matter.

27. A principal concern of many of the submitters was that the present system of protected and unprotected continuous full time service was confusing, complex and administratively cumbersome to implement.

28. Part 4 of the Act protects reservists from discrimination because of their defence service. The Part makes it unlawful to refuse to give work to a person on the ground that the person is rendering, has rendered, or might in the future render, defence service. Section 15 provides that a person must not refuse or fail to employ another person for the reasons or for reasons that include the reason that the other person may volunteer defence service, is rendering defence service, is or may become liable to render defence service, or has previously rendered defence service. These reasons are described as prohibited reasons.

29. Subsequent sections widen the protection given to employees. Section 16 provides that an employer may not change the terms and conditions of a reservist's employment to his or her prejudice, or discriminate against an employee in his or her terms and conditions of employment or dismiss an employee for a prohibited reason.

30. Section 17 provides that an employer must not hinder or prevent a person in the employer's employment from volunteering to render defence service or from rendering defence service.

31. Sections 18 and 19 provide protections to partners similar to those provided for employees. Sections 20 and 21 extend these protections to commission agents whilst sections 22 and 23 protect contractors from discrimination as a result of their defence service.
32. Part 5 provides various protections to both employers and reservists. It applies to all types of defence service by reservists except for unprotected voluntary continuous full-time service.
33. Section 25 prohibits employers from requiring their employees to take leave whether paid or unpaid concurrently with all or part of that absence. The section does not preclude reservists from using part or all of their civil leave entitlements for defence service should they agree to do so.
34. Section 26 provides that civil contracts of employment are suspended whilst members are absent on defence service. Employment cannot be terminated for non-performance of duties whilst employees are absent on defence service.
35. The procedure for resumption of employment following defence service is set out in sections 27 and 28. In substance, a reservist must apply in writing to the employer to resume employment within 30 days after ceasing to render defence service. The employer is obliged to reinstate the reservist on terms and conditions including remuneration at least as favourable as those that would have applied to the reservist but for the service. In the event of changed circumstances, an employer is not obliged to reinstate a reservist if it was not within the employer's power to allow the resumption or reinstatement, or if the employer offered to reinstate the reservist in a capacity, and under terms and conditions, that were the most favourable that it was reasonable or practicable to offer the reservist.
36. Division 4 of Part 5 protects the position of reservists in relation to their leave entitlements by providing that the entitlements in relation to the reservist's employment must be no less beneficial to the reservist than they would have been if the reservist had been absent on leave without pay from the employment during that period. Those entitlements include annual leave and leave loadings, personal or carer's leave such as sick leave, parental leave such as maternity leave, and long service leave. In addition, the continuity of a reservist's employment is taken not to have been broken by his or her absence on defence service.
37. Section 33 provides significant protection for employers. It provides that the Act does not oblige an employer to pay remuneration, grant entitlements, pay workers compensation premiums or contributions, or make superannuation guarantee payments in respect of periods when a reservist has been on defence service.
38. Part 6 provides protection to reservists who are partners of firms by prohibiting the dissolution of the partnership or the expulsion of the reservist as a partner, or other detriment to the reservist whilst the reservist is undertaking defence service.

39. Part 7 provides education protection to reservists who are enrolled in courses at Australian education institutions during part or all of the period that they are rendering defence service. This protection is at present available in relation to full time continuous service, but not for unprotected continuous full time service. Education institutions are obliged to allow reservists to re-enrol (if necessary) in the course, and to resume the course at a point that the institution considers appropriate. They are also obliged to ensure that any conditions of re-enrolment and resumption are the same as those that would have applied to a person who is not a member.

40. In the event of a change in the nature of the courses offered by the institution since the reservist's previous enrolment, so that it is not reasonable or practicable to allow the reservist to re-enrol or resume the course in which he or she was enrolled; the institution is required to offer the reservist enrolment in another course that most closely corresponds to the course in which the reservist was previously enrolled on conditions that were the most favourable that it was reasonable or practicable to offer the reservist.

41. Part 8 provides financial liability protection and applies only in the event of call out of reservists for continuous full time service. As since 2001 reservists have deployed overseas on voluntary continuous full time service and there has been no call out of reservists in Australia since the Act came into force, Part 8 has had has not had practical effect. Part 8 recognises the fact that on call out reservists are likely to have existing credit arrangements and financial commitments. Financial liabilities may be of a personal, family or business nature. Because military salaries may be significantly less than the salaries or business income of reservists, financial liability protection is essential if reservists are to avoid financial embarrassment or even bankruptcy, in the event of call out service.

42. Sections 41 to 43 make Part 8 applicable to a wide range of liabilities including secured and unsecured loans, hire purchase agreements, agreements to buy or lease including in relation to land, guarantees, and rates. Sections 49 to 54 permit payments to be postponed or rescheduled, and provide for interest at the lower rather than the higher rate to be payable on liabilities. Section 55 stays proceedings and remedies whilst payments in respect of a liability are postponed.

43. Part 9 also applies only to continuous full time service following a call out and provides bankruptcy protection. Leave of the Court is required before bankruptcy notices or petitions can be issued against a reservist following call out. Again since 2001, reservists have been deployed overseas on voluntary continuous full time service rather than call out service with the result that Part 9 is yet to have practical operation.

44. Part 10 facilitates access by reservists to loans and guarantees. It provides for reservists returning from call out to be supported in resuming civilian life by access to finance at interest rates and on terms and conditions prescribed by the regulations. Again as there has been no call out since the Act commenced, Part 10 has not had practical operation. Nonetheless, regulations have been made under the Act in implementation of Part 10. Regulations 8 and 9 fix the maximum amount of a loan at \$500,000 but indexed in accordance with the All Groups Consumer Price Index

maintained by the Australian Statistician from 1 October 2001. Regulation 10 sets the rate of interest on a loan at 2% below the Residential-secured Term Lending rate for Small Businesses published by the Reserve Bank in the month prior to the month in which the loan is made. Regulation 12 permits loan applications to be made up to 12 months after the reservist stops rendering continuous full time service.

45. Part 11 provides for the civil enforcement of the Act. Section 73 provides for persons who have suffered loss or damage as a result of a contravention of the Act to recover the amount of loss and damage even if no offence against the Act exists or is shown. Such actions may only be begun within 3 years after the day on which the cause of action arose. Section 75 permits a court of competent jurisdiction to grant an injunction to restrain offences or contraventions of the Act.

46. Part 12 grants jurisdiction under the Act to all State and Territory courts including courts of summary jurisdiction. Jurisdiction excepting criminal jurisdiction is also conferred on the Federal Court of Australia. No jurisdiction under the Act has as yet been conferred on the Federal Magistrates Court of Australia.

47. Section 79 gives the service chiefs power to delegate their functions and powers under the Act. Each of the service chiefs has executed delegations under the Act.

48. Section 81 permits the Governor-General to make regulations prescribing matters which are required or permitted by the Act to be prescribed or which are necessary or convenient for carrying out or giving effect to the Act.

49. The Regulations came into force on gazettal on 6 December 2001. These regulations establish ORSP and the office of the Director of ORSP. Appointment of the Director and the Deputy Director is made by the Assistant Chief of the Defence Force (Reserves).

50. Regulation 24 states the functions of the Director as follows-

- responding to inquiries about the Act or Regulations;
- monitoring compliance with the Act and Regulations;
- conducting training about the provisions of the Act and Regulations;
- preparing and distributing information about the Act and Regulations to members, employers and other members of the public;
- making recommendations for enhancing the protection provided by the Act and for improving the Act or Regulations in other respects to the Minister; and
- giving financial or other support to members applying to a court under section 73, 75 or 76 of the Act for a remedy.

51. Regulations 13 to 23 set out the procedure for the investigation of complaints under the Act. Complaints are made in writing and may be investigated by ORSP unless considered frivolous, vexatious or not made in good faith. Following investigation, a notice summarising the results of the investigation is given to the complainant and to the person alleged to be responsible for the complaint. ORSP may

also investigate possible contraventions in the absence of a complaint. Regulation 18 gives the Director the power to obtain information and documents where the Director reasonably believes that a person is capable of providing information or documents relevant to an investigation being conducted under the regulations. Regulation 22 empowers ORSP to operate a mediation service. A mediation conference must be conducted as a structured process in which the mediator assists the parties to a dispute by encouraging and facilitating discussion between the parties so that they communicate effectively with each other about the dispute and devise strategies for resolving the dispute.

SUMMARY OF SUBMISSIONS

General

52. Submitters unanimously supported the need for a system of protection of reservists in connection with their defence service. No submitter advocated a return to the arrangements that prevailed prior to 2001. However, many submitters saw the need for enhancement or refinement of the Act, for the strengthening of protections and civil employer support arrangements and for better communication and advance notice to civil employers of defence service requirements.

Reservists or former Reservists

53. Reservists and former reservists strongly supported of the need for protection concerning their civil employment. Whilst supporting the Act, they identified a number of ways in which they considered that existing protections needed to be strengthened.

54. Many reservists considered that the financial protections available to them on operational service were inadequate. Financial protection, bankruptcy protection and access to loans and guarantees did not apply to operational deployments. There was a need for 'make-up' or 'catch-up' pay to address the shortfall between the wages available for reservists on full time service and those payable in civil employment. A number of submitters referred to the United Kingdom model as permitting reservists to volunteer for operational deployment knowing that they and their partners or families would not be financially penalised for serving their country. It was pointed out that some reservists (particularly but not solely professionals and tradesmen) suffered financial losses of some magnitude as a consequence of volunteering for deployment. One submitter stated that even after exploring options eg selling one car or cashing in long service leave, it was still not possible to deploy without diminution of the family's standard of living both during and for some time after deployment. Another said that she would love to serve overseas but not if she could not pay her mortgage or would not have a job on return. Reservists should not as a matter of principle suffer financial burdens or be worse off as a result of volunteering for operational deployment.

55. Because the financial protections contained in the Act arise only after call out, they do not assist reservists to volunteer for operational deployments. Many reservists have volunteered for operational service over recent years and no need for call out has

arisen. As a result, no reservist has benefited as yet from the financial protection placed in the Act in 2001.

56. *The panel considers that the protections available under Part 8 (financial liability protection), Part 9 (bankruptcy protection), and Part 10 (loans and guarantees to returned members) should be available to reservists serving on operational service as well as following a call out. As reservists are routinely deployed in support of domestic security and on border security operations, the panel recommends that 'operational service' be defined as 'service on operations conducted overseas, or within Australia, or waters contiguous to Australia' or words to that effect. Financial liability protection will permit repayments of loans, payments under hire purchase agreements, and various other liabilities to be postponed whilst reservists are undertaking operational service. Lenders and financiers are protected as interest at the ordinary rate continues to accrue during operational service and payments must be resumed in accordance with the terms of the obligation upon cessation of operational service. Bankruptcy notices and petitions will not be able to be issued whilst the reservist is on operational service without obtaining the leave of the Court.*

57. *The effect of the extension of the applicability of Parts 8, 9 and 10 to operational service will be to increase the attractiveness of operational service to reservists. In so doing, the changes are likely to increase the number of reservists available for service and the contribution to capability made by the reserve component of the ADF.*

58. *The panel considers that when conditions of service of reservists are next reviewed consideration should be given to the need for a system of make-up pay by Government in circumstances where the civil earnings of the reservist from personal exertion exceed the salary and benefits available to the reservist from operational service. In particular, the United Kingdom model where make-up pay is provided by Government should be reviewed to see whether it should be adopted in the same or a modified form in Australia.*

59. One reservist complained that when he deployed his private health insurer refused to suspend his membership, despite the fact that the Commonwealth was responsible for his full medical support whilst he was deployed on continuous full time service. He was advised (correctly) that the Act did not protect him from having to make health insurance contributions during deployment. Following a complaint made to the Health Fund Ombudsman, the health fund relented with the result that the reservist was not required to continue to pay health insurance contributions during his deployment. He requested that health fund membership be brought within the financial protections provided to reservists by the Act.

60. *The panel is aware that private health insurance is available to reservists from health funds which will suspend the payment of health insurance contributions whilst reservists are deployed including from Defence Health, a fund under the control of the Chief of Army and the Chief of Air Force, and from Navy Health, a fund under the control of the Chief of Navy. This is likely to be the case for the foreseeable future.*

Given the availability of health insurance policies that protect reservists during deployment, the panel does not see the need for legislation to address this topic.

61. A number of reservists acknowledged the benefits of the Act in giving them protection in their employment and support from higher management, but were concerned about pressure at the supervisor level not to deploy. One reservist who was a policeman said "without a doubt, if there was not the protection given to reservists by the Act, his service would certainly be restricted." Another reservist stated that he did not tell his supervisors of his reserve service, as he believed that disclosure would work against him in his civilian career. He saw his reserve service over 24 years as resulting in the early plateauing of his civilian career.

62. Government departments including the Department of Defence were mentioned by submitters as workplaces where there was pressure at supervisor level not to take leave for defence service. It would appear that the attitude persists in some quarters of the public service that reservists should be employed in their principal occupation and not seek leave to render defence service in a reserve capacity.

63. The panel acknowledges that some reservists do experience direct or indirect pressure in the workplace not to deploy. The panel believes that to an extent this results from the pressure of rosters and work place shortages particularly of skilled personnel. There are also pervasive attitudes in a small minority of workplaces hostile to perceived dual loyalties or to reserve service generally. Nonetheless the Act and the protection system in Australia bring valuable results. There is and will continue to be a continuing role for education and information in the workplace about the requirements of reserve service and strong national and community support. The Public Sector Leave Policy adopted by Government requires continuing promotion, as does the Private Sector Leave Policy supported by many industries and employers. DRSC programs and activities and unit employer nights continue to be important in strengthening support within the workplace and at management level.

64. One reservist who was on 24 hours notice to move and was often on very short notice for operational deployment (hours or days) pointed out the impracticability of the current protected/unprotected continuous full time service system. There was simply not the time to go through the process of applying for approval of protected service before he went. It inevitably followed that his short notice service was unprotected.

65. The panel recognises the legitimacy of this concern and considers that all reserve service including all voluntary continuous full time service should be recognised as protected for the purposes of employment, partnership, and education protection. Implementation of this change will significantly simplify the existing system for volunteering for continuous full time service and reduce administration. There would be no need for a reservist to apply for protected voluntary continuous full time service.

66. A number of reservists considered that the current system of protected and unprotected service was not understood and was too administratively complex and cumbersome to be practical. As a result, unprotected continuous full time service has

tended to be universal, because it is too hard, or takes too long, to follow the steps necessary to make the service protected.

67. *The panel accepts that the current system should be simplified and 'red tape' reduced and recommends that the Act be amended so that employment, partnership and education protection (Parts 5 to 7 of the Act) apply to all types of reserve service. In making this recommendation, the panel is of the view that consideration should continue to be given to the criteria contained in section 12(2) of the Act when reservists are asked to go on continuous full time service. These criteria should include the effect that rendering the service might have on the member's employment and education, and the effect that rendering the service might have on the member's employer or partners.*

68. One reservist expressed concern at a situation where leave was granted by an employer for defence service but the reservist was not panelled for the training course for which leave was granted. The reservist was panelled for the subsequent course, which he attended. Unfortunately, however, his position was made redundant shortly after his return without apparent reference to his reserve service.

69. The employer support payment scheme was universally viewed as important in obtaining the release of reservists by employers for defence service. Some submissions suggested that this scheme should be expanded so as to apply to the first two weeks of continuous service each year or to apply to circumstances where reservists were on call at short notice to perform frequent duties for short periods, for example, to perform security duties at a RAAF Base.

70. *The panel considers that the possible extension of the employer support payment scheme should be considered when the scheme is next reviewed. There is no doubt that the extension of the scheme would further enhance the availability of reservists for defence service. The cost effectiveness of the extension of the scheme to one or both of the first two weeks of reserve service each year or to reservists who perform frequent duties for short periods should be considered when the scheme is next reviewed.*

Navy

71. The Chief of Navy advised that the current provisions of the Act had proven adequate for Navy. The legislation in its present form facilitated the availability of reservists to meet capability, specifically as it did not differentiate on skill sets and therefore was applicable across the board. Availability was always the key consideration and this was driven by the employer's ability to cover military leave. Legislation to protect the reservist's job was only part of the equation - the other was incentives for employers to release staff for military leave. More attention should be paid to the impact on larger corporations/businesses where release of reservists for military leave among a larger workforce may be easier to manage. Navy was reliant on reserve support and was grateful for the legislative cover provided by the Act. It worked well and no major change was needed from Navy's view.

72. *The panel notes Navy's support for the Act and for the capability generated for Navy by the Act. The panel also notes Navy's suggestion that more focus be given to*

reservists employed by larger corporations and businesses where release of reservists for defence service may be easier to manage.

Army

73. The Acting Chief of Army commented that the Army Reserve was making an increasingly important contribution to sustainability of army's operational capability at a time of high tempo and expanded commitment. Reservists were serving in a number of operational areas, both as individuals and formed subunits. The Act plays an important role in the availability of these reservists. The review of the effective operation of the Act was supported.

74. In general, Army had no major issues with the principles of the current Act. However, the complexity of the legal style of the provisions highlighted the difficulty which this causes in the workplace for discussions between the employer and the reservist. The meaning of the provisions was not clear to many average readers and any revision of the Act should seek to clearly present its provisions in plain English, possibly also including relevant workplace examples in the supporting material to the Act.

75. The Acting Chief supported any initiative to increase the level of education about the Act. This was particularly relevant in the small business sector, where there was less capacity to absorb the costs and consequences of an absent employee. On-line submissions tended to support anecdotal evidence that at least some Commonwealth departments had been less responsive to the Act than other large employers.

76. There was a need for a clearer definition of the circumstances where protected and unprotected service are to apply. Arguably all operational service should automatically be protected service. The need for this provision increases with the potential short notice use of Reserve personnel on voluntary continuous full time service and operations.

77. The capacity of the army reserves to deliver operational capability will be enhanced if all operational service is protected. This involves an assessment that the contribution these reservists make to defence is of greater national importance than avoiding the disruption it might cause to their employers. In the context of an operational deployment, this is not an unreasonable judgment.

78. Army highlighted the need to balance the requirements of the ADF with retaining the goodwill of employers. It was important that the obligations of each party are clearly articulated and understood and that reasonable notice is provided to employers wherever possible.

79. Whilst the Act was generally achieving its objectives and provided a satisfactory framework for the protection of reserve service, simplification and education as to its operation would be welcomed by employers and reservists alike. The adoption of a plain English approach in any revision of the Act was strongly supported, together with

the provision of supporting material amplifying the provisions with explanation and examples.

80. *The panel notes Army's submission that the Act plays an important role in securing the availability of reservists for operational deployment and that there are in general no major issues with the principles of the current Act. The panel agrees that many of the current provisions have a strong legal style and that the Act would benefit by the use of plain English as much as possible in its provisions. As much clarity as possible should be achieved in the expression of what the employer is and is not required to do. Workplace examples in the supporting material would also assist in understanding the effect of the Act.*

81. *The panel also agrees as to the ongoing need for education about the Act particularly in the small business sector but also more widely. The panel has also encountered anecdotal evidence that some Commonwealth departments are less responsive to the Act than other large employers including those in the private sector. There is an ongoing need for widespread information concerning the agreed public sector leave policy and the operation of the Act within the public sector generally.*

82. *The panel notes the concern for a clearer definition of the circumstances where protected and unprotected service apply. Part-time and call out service are already protected. The panel accepts that reservists on operational service including training for operations and backfilling for operations should also have employment protection with the result that there would only be a small residual category of reserve service that might be left unprotected. The panel believes that any benefit from the point of view of employers of the continuing existence of this category is outweighed by the ongoing complexity of administration and difficulty of understanding and the residual doubt as to obligations of employers. As was pointed out to the panel, the reality would be (and may be now) that employers would treat all reserve service as protected by employment protection having neither the inclination nor the time to understand the finer points or exceptions relating to the operation of the Act.*

83. *The panel has come to the view that all reserve service should be protected by discrimination, employment, partnership and education protection so establishing the simple and readily understood principle that "reserve service is protected" and leading to a significant simplification in the current structure of the Act and reduction in administration. However, the panel also considers, given the burdens that the Act imposes on employers, that the obligations of employers and of reservists to employers should be clearly articulated and most importantly, that reasonable notice be given to employers of defence service requirements wherever possible.*

84. *If all reserve service is protected in these four ways, the question then becomes what should be the content of these protections? There may be different impacts on the reservist and his or her partner or family depending on whether the service is part time or voluntary continuous full time service or whether the service is compulsory and full time as a result of call out. From the point of view of the employer, the greatest impact is experienced in the case of continuous full time service particularly if that service is of*

long duration or on short notice. Consideration should continue to be given to the use of criteria such as those presently contained in section 12(2) of the Act when reservists are asked to go on continuous full time service. These criteria include the effect that rendering the service might have on the member's employment and education, and the effect that rendering the service might have on the member's employer and other parties.

85. *The panel believes that if all reserve service is protected that it is just and appropriate for employers to be given reasonable notice of defence service commitments and for them to receive periodic feedback relating to the defence service of their employee. The panel also believes that employers should be entitled to receive a statement of service or attainment following the completion of defence service by the employee particularly operational service, full time continuous service or service which has brought new skills or qualifications to the employee.*

86. Commander 2 Division considered that there was a strong case for extending employment, education and partnership protection to all operational deployments. Given that the Reserves were employed in support of domestic security and border security operations, operational deployments could and did occur within Australia and contiguous waters as well as overseas. To avoid ending up in protracted litigation, Commander 2 Division did not support building an appeal process into the Act.

87. Commander 2 Division commented that education protection should be more widely available. In June 2007, the Vice Chancellor's Committee endorsed the model of support to the Reserves adopted by Southern Cross University in New South Wales. This model includes provision for HECS reimbursement for absence on defence service, recognition of assessments completed, non-recording of failure to complete a course of study, and reinstatement at the level achieved prior to undertaking defence study.

88. *The panel agrees that education protection should be extended to apply to all types of reserve service. In terms of the content of education protection, the panel notes that at present the education institution is required to allow the reservist to re-enrol in the course (if necessary), to resume the course at a point that the body considers appropriate, and to ensure that the conditions (if any) of the re-enrolment and resumption are the same that would have applied to a person who was not a member. The panel considers that this protection should be expanded to include reimbursement of fees and charges including HECS where a reservist cannot complete a course or program of study because of defence service, non-recording of failure on the record of the reservist as a student where a course or program of study cannot be completed because of defence service, and continuing recognition of practical experience and assessments completed in a course or program of study prior to undertaking defence service.*

89. *The panel acknowledges the outstanding support given to the Reserves Universities Australia and by the Vice Chancellors Committee and by universities and TAFEs generally. However, the extension of education protection should apply to*

education institutions of all types including both public and private sector providers. Legislation of these protections will give greater and more comprehensive coverage than has previously been achieved and so enhance the contribution to capability made by student reservists.

90. *The panel undertook consultation with Universities Australia concerning the extension of educational protection. Universities Australia was established on 22 May 2007 and is the industry peak body representing Australia's 38 universities which constitute the university sector. The consultation was undertaken through Mr Kean Selway, CEO Deakin Prime, Deakin University who represents Universities Australia on the National Council of the DRSC.*

91. *On 9 April 2008 Mr Selway advised that following discussion with Ms Angela Magarry, Director of Policy and Analysis, Universities Australia, agreement of the four principles identified by the panel had been achieved.*

Air Force

92. The Chief of Air Force advised that the Air Force was increasingly reliant on the contribution of its reservists for supplementation of peacetime tasking and the generation of surge capacity. The current RAAF Reserve restructure was changing the nature of reserve service from one based on undefined support to one where continual input is required to help sustain and expand extant capability for current and future operations. It was most important that the Air Force can rely upon reservists being able to accept reserve employment, and the Act provided a significant level of assurance that the Air Force can secure the services of reservists across a broad range of service employment.

93. The Chief of Air Force advised that the Act met current RAAF needs for the protection of service, but there is an unnecessary and ambiguous complication in the division of protection into 'protected' and 'unprotected' service, which needed to be clarified. The role of the employer was central to the ability of reservists to provide their services, and a balance must be struck between protecting the employment of reservists and the needs of the employer in supporting that reserve service.

94. As a result, Air Force sought changes to the Act, its supporting regulations and Departmental Instructions that provides an equitable system of protection that facilitates and promotes reserve employment (of any type) with:

- a clearer and less ambiguous definition of protected service
- employers being provided with a fair and reasonable appeal process; and
- the giving of reasonable notice to the employer for pending reserve service.

95. *The panel agrees with the removal of the current provisions relating to unprotected service with the result that employment, partnership and education protection will be available for all types of all reserve service. This will lead to significant simplification of the Act and of the supporting regulations and instructions. The panel considers that*

employers should have a clear line of communication to a senior service officer or authority to raise and resolve issues. The panel does not consider that a formal appeals process should be introduced as such a process will inevitably be complicated and expensive for employers and reservists alike and occasion significant public expense. The panel agrees that employers must be given reasonable notice of pending reserve service wherever possible.

The Australian Federal Police

96. The Australian Federal Police (AFP) stated in its submission that it did not want to interfere with or dilute the general thrust and operation of the Act but raised a number of specific concerns.

- the need for minimum notification periods prior to an employee committing to defence service - this would assist in ameliorating disputes that can arise regarding the release of employees at short notice;
- the impact of defence service by AFP employees on the AFP's capacity to respond to whole-of-government capacity building and peacekeeping initiatives;
- related leave management implications - for example, payment of AFP allowances for what are essentially the same whole-of-government commitments;
- clarification of the mandatory requirements for defence service release especially in cases of voluntary service;
- the impact of defence service on the status and obligations of AFP employees, and especially as regards any conflicts that might arise between defence service and the statutory obligations of sworn members; and
- the possibility of establishing a memorandum of understanding between the AFP and the Department of Defence to deal in a practical way with the resolution of these issues.

97. *The panel agrees with the AFP that notification periods need to be established. Whilst short notice commitments do arise requiring the deployment of reservists, these are in the minority rather than the majority. There is no reason why for training and for most commitments reasonable notice of defence service requirements cannot be given to employers such as AFP. The panel notes that under section 33 of the Act, AFP is under no obligation to pay remuneration in respect of the reservist's AFP employment, or to pay or grant entitlements, or make superannuation contributions, whilst the reservist is on defence service. Equally, the panel is unaware of any conflict between the duties of federal police officers and members of the ADF. Both are required to comply with the law and with executive orders. Executive orders must be given in accordance with law.*

98. *The panel encourages the establishment of memoranda of understanding with employers such as AFP. The issues raised by AFP as to availability of AFP members, leave management arrangements, issues of status, and payment of allowances can all be considered for possible inclusion in a memorandum of understanding. When the memorandum of understanding is agreed, the panel recommends that consideration be*

given to the benefits and allowances available to AFP employees in their respective capacities as civilians and as reservists on operational service.

The Tasmanian Department of Police and Emergency Management

99. The Tasmanian Department of Police and Emergency Management (DPEM) consists of a number of constituent organizations and has in excess of 2,500 employees. The constituent organisations are the Tasmanian Police Service, the State Emergency Service, Tasmania Fire Service and Forensic Science Service Tasmania. DPEM includes within its ranks both present and former reservists as well as former permanent members of the Defence Force.

100. Principal concerns of DPEM were:

- the need for specific formal information from the service chief as to the service conditions under which the member is being employed;
- the lack of formal or reasonable notice from Defence to employers concerning deployments of reserve members;
- the failure of Defence to provide employers with reasonable information concerning workers compensation and medical information in relation to employees who have been on active duty;
- formal communication and risk issues concerning reservists working considerable hours for Defence as well as working in high stress and hazardous employments in their primary employment; and
- which agency has the priority call upon reserve members, where internal security or emergency matters require the call out of the defence reserve and a response by police, fire, health and other critical agencies.

101. *The panel notes the difficulty experienced by DPEM in discerning the conditions of service on which a reservist is being deployed. In large part, this is due to the existing system of protected and unprotected service. If the distinction between protected and unprotected service is removed from the Act, much of the existing difficulty experienced by DPEM will be removed. The panel agrees that the terms and conditions on which reservists are serving or are being deployed should be made available to their employer. A convenient way to notify conditions of service is by publishing appropriate information on the web. The panel also agrees that at least four weeks notice should be given to employers of a pending deployment by a reservist except in an emergency.*

102. *The panel notes that employers may need information concerning an injury or medical condition suffered by a reservist during a defence service and the manner or extent of rehabilitation. One barrier that arises is the privacy and confidentiality of medical information concerning a reservist or defence member. Clearly, on return to civil employment, there may be a need for the member to inform the employer of the nature and extent of any injury or illness and of any associated course of treatment. In addition, information should be clearly available to employers, for example, on the Defence Reserves website of the assistance and rehabilitation services available to members who have suffered injury or illness. This should include contact arrangements so that an employer can be informed of the support available to a reservist at*

Commonwealth expense and not be called on to incur expense in the treatment of an injury or illness attributable to defence service.

103. *The panel agrees with DPEM as to the undesirability of reservists working long hours for Defence and then attempting to undertake demanding civil employment duties for DPEM. Where such a problem is seen as arising, the appropriate officer of DPEM should contact the Commanding Officer or Officer Commanding of the member's unit and resolve the arrangements and work hours. The panel sees this concern as primarily a management issue to be resolved on a local level rather than to be made the subject of a specific provision in the Act. If there is a problem in any given case, it should be settled at the operational level between the member's Commanding Officer or Officer Commanding and the appropriate senior DPEM representative.*

104. *The final issue raised by DPEM relates to the employment priority where internal security or emergency matters require the call out of reserves as well as a response by police, fire, health or other critical agencies. In the view of the panel, this is a management and operational matter to be addressed following a call out and will depend on the needs and circumstances that have led to the internal security or emergency incident. There is a need in these circumstances for the senior DPEM representative to discuss the situation with the reservist's Commanding Officer or Officer Commanding to determine the best outcome.*

105. *Subsequent to the first submission, the panel was advised by Commissioner J. Johnston, APM, Commissioner of Police and Secretary, Department of Police and Emergency Management that Defence had sought, once again, the release of a member of DPEM for overseas deployment at very short notice. This was contrary to recent assurances by representatives of Defence that there would be consultation and reasonable notice when requesting members of DPEM to be released.*

Queensland Government Departments and Agencies

106. The panel received a number of comments from Queensland Government Departments and Agencies. These were collated and sent to the panel by Mr. Rob Gillespie, Principal Industrial and Employee Relations Officer Public Sector Industrial and Employee Relations, Department of Employment and Industrial Relations.

107. These comments are summarised as follows.

- Employers should receive the employer support payment without the need for an application.
- Notice should be provided 3 months prior to leave and be forwarded to the employee and the agency.
- A letter of confirmation should be sent to the agency as well as the employee to confirm attendance at training.
- As much notice as possible should be provided prior to commencement of reserve service periods.
- One employee provided 3 weeks notice for a twelve month reserve service period as a Welfare Officer at Enoggera.

- If short notice is provided, or no other employee is available, the Department incurs high overtime costs to backfill the absent employee.
- The ADF should specify the actual training period based on calendar days, not on a period based on actual rostered days in the workplace.
- Provision of unit training plans would be welcome to assist in the preparation of rosters.
- Consideration should be given to making the employer support payment available without the qualifying period or without the need for absences to be of 5 days or more.
- There is a need for consultation before offers of continuous service are made to reservists. There have been occasions when such an offer has had a substantial effect on the agency's ability to provide the required level of service. In the majority of cases, the offer of service is made direct to the individual who then presents it as a non-negotiable issue with short timeframes. In a number of instances, negotiations have occurred with the relevant decision-maker to reach a mutually convenient amended time frame for the offer of service, accommodating the operational requirements of both parties. This process mainly takes place after the offer has been made to the individual.

108. *The ADF Employer Support Payment Scheme has a minimum number of administrative requirements. These include completion of an application from to establish eligibility for payments to be made under the scheme. Given the obligation to comply with prudential and accountability standards, the panel does not consider that the need for an application can be dispensed with.*

109. *Most of the concerns of the Queensland Departments and Agencies relate to the need for earlier notice to be provided, for better consultation to be effected, for feedback to be provided to employers and for a letter confirming attendance at training. The panel agrees with the importance of working co-operatively with employers to achieve the best possible solution to meet the needs of the employer and the needs of the ADF. The panel also agrees that a better structured system for communicating with employers is necessary including at least 28 days of notice of absence for training or deployment wherever possible, routine feedback to employers in relation to deployed members, and provision of a statement of attainment upon completion of deployment or service. Adoption of such a process will resolve most of the issues identified by the Queensland Government Departments and Agencies.*

NT Police

110. The panel was provided with a copy of a letter dated 20 May 2008 written by Commissioner Paul White, Commissioner of Police of the Northern Territory Police. The letter was as follows

“Thank you for your recent letter and the opportunity to provide advice on implications for NT Police should a decision be taken to provide for a minimum period of four weeks’ notice before any defence commitment for defence reservists who are employed by the agency.

A minimum of four weeks' notification for members to be released for a defence commitment is not a realistic option for the Northern Territory Police Force for a range of reasons including:

- *Operational commitments of individual members;*
- *Environmental factors that impact on the capacity of the Northern Territory Police Force to provide its core policing functions; and*
- *Industrial arrangements relating to the deployment of staff.*

As you will appreciate the Northern Territory Police Force is facing not only an unprecedented demand for services but also the need to grow the organisation to meet these demands, including those arising from the Commonwealth intervention.

Although it is acknowledged that where these circumstances have occurred in the past, a cooperative working relationship between the Northern Territory Police Force and the Australian Defence Force has often brought about positive outcomes, the only realistic time frame from my perspective is in the region of six weeks.”

111. *The panel acknowledges the unprecedented demand for services and special circumstances of the Northern Territory Police Force set out in the letter not least having regard to Commonwealth intervention. Nonetheless the panel notes that there is at present no minimum period of notification of employers and believes that the adoption of a four week period is a significant step in the right direction. The panel also notes that it may be possible through the means of a memorandum of understanding to make special arrangements concerning the Northern Territory Police Force.*

The Australian Industry Group

112. The Australian Industry Group (Ai Group) is one of the largest national bodies in Australia, representing employers in the manufacturing, construction, food, automotive, transport, information technology, telecommunications, labour hire and related service industries. Ai Group recognises the critical role carried out by reservists and advanced the view that employees who render defence service should have appropriate support and protection. However, this needs to be balanced against a range of competing and public interests, including the need to avoid imposing unnecessary additional costs on business and inhibiting business efficiency. An unnecessary regulatory burden should not be imposed upon employers.

113. Initiatives aimed at educating employers about the benefits of supporting reservists, together with the ADF and ORSP continuing to work co-operatively with employers, are likely to be far more effective than heavy-handed commitments. Ai Group considers that the term 'unprotected service' was a misnomer because the substantial protection under Part 4 already applied to such service. Both 'protected' and 'unprotected service' were voluntary. In the event that the distinction between 'protected' and 'unprotected' service was removed, service chiefs should continue to apply the criteria set out in section 12(2) of the Act to all requests for reservists to render continuous full-time service. More recognition should be given to the importance

of considering the impact upon the employer when a request for continuous service was made.

114. There is currently no obligation upon the ADF or a reservist to provide an employer with a set period of notice when defence service is to be rendered. The Act should require that employers be given at least four weeks' notice of any defence service, other than in emergency circumstances or where the employer agrees to a shorter period of notice. This is reasonable and would enable businesses to plan and arrange for an absent employee, without unduly burdening the ADF or impacting upon its resources during times of emergency.

115. Ai Group considered that there is merit in considering the replacement of criminal liability in the Act with a civil penalty scheme as applies in other employment-related legislation (eg the Workplace Relations Act 1996). Any change to the existing onus of proof was opposed. The onus should be on the person bringing the complaint to prove their complaint. The Ai Group opposed the introduction of specific provisions into the Act that would make employers vicariously liable for acts done by employees. Likewise, the introduction of specific provisions preventing victimisation was unnecessary. Legislative change was not necessary to specifically outlaw bullying of reservists.

116. Amending the focus to dilute the emphasis on mediation as a means of resolving disputes would be a retrograde step. Mediation provides a neutral forum in which all parties can air grievances and potentially resolve any misunderstandings.

117. Ai Group submitted that a statement of attainment should be provided to the employee at the end of a period of service in the Reserves. This would be beneficial for all parties. Such documentation would reinforce the valuable role of defence service within the community and would enable employers to better understand and recognise reservists' competencies of relevance in the workplace (eg. leadership and technical skills). A further valuable step would be to achieve formal recognition of relevant defence training and competencies. There should be a right of appeal where employers are required to release an employee for an extended period of time, other than in emergency circumstances. The appeal process should initially involve review by a more senior member of the ADF than the person who made the original decision. In the event of continuing dispute, the employer should have the right to appeal the decision to an independent tribunal.

118. The panel agrees with the importance of informing and educating employers and of the importance of working co-operatively with employers. Maintenance of employer goodwill continues to be of pivotal significance if reservists are to be properly supported. The panel also agrees that Part 4 of the current Act is applicable regardless of whether the full-time continuous service is 'protected' or 'unprotected' and accepts that the distinction should not continue when the Act is amended. The panel also accepts that there should be a prescribed minimum period of notice to be given to an employer other than in emergency circumstances or to meet a short notice contingency. The period of four weeks suggested by Ai Group is a reasonable minimum period

reflecting as it does the time frame used in many businesses and industry for the preparation of workplace rosters.

119. *The panel does not propose any change to the onus of proof. In general, the onus of proof rests on the person alleging a contravention to prove the contravention except in circumstances where a defendant wishes to take advantage of an exemption or affirmative defence where the onus of proof will rest on the defendant on the balance of probabilities. Nor does the panel see the need to introduce any additional provision dealing with vicarious liability.*

120. *Under section 16 of the Act, an employer must not for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to -*

- *change the terms and conditions of employment of an employee to his or her prejudice;*
- *discriminate against an employee in his or her terms and conditions of employment; or*
- *dismiss an employee.*

121. *Section 16 does not apply to the situation where the reservist suffers bullying, abuse or harassment because he or she is a reservist or because he or she intends to or has undertaken defence service. The panel considers that behaviour of this nature is unacceptable and should be addressed by an amendment to the Act.*

122. *In order to address the situation where there is objectionable behaviour or conduct adverse to a reservist in or concerning the reservist's civil workplace but falling outside the present section 16, the panel considers that a new provision should be introduced in to the Act to address objectionable behaviour such as bullying, abuse or harassment. The new provision should extend to any person (whether or not the employer) who treats the reservist less favourably for a prohibited reason than they would treat or propose to treat a person in the position of the reservist to whom the prohibited reason did not apply. Those persons may be associated with an employer such as a supervisor or work colleague or they may be independent of the employer eg a partner, agent or contractor. The panel considers that the employer should not be held responsible for the objectionable behaviour where the objectionable behaviour is in breach of the employer's policy and is not sanctioned by the employer. Where an employer has such a policy in place and has taken all reasonable steps to discourage the objectionable behaviour, the panel considers that any penalty should fall on the person responsible for the objectionable behaviour alone and not on the employer.*

123. *In addition, the panel considers it unacceptable for a reservist who seeks to rely on a protection to be subjected to adverse or objectionable behaviour by another person for reasons which include the reason that a complaint has been made by the reservist, or a dispute exists under the Act between the reservist and the person.*

124. *The panel notes that such provisions are often a feature of legislative schemes where there is an ongoing relationship between the parties to the dispute during and*

after the disputed conduct. Even if the basis for a complaint is not ultimately made out, conduct that seeks to victimise a person for having made a complaint is actionable. The policy purpose behind such provisions is clear - they contribute to future compliance and ensure that persons subject to unlawful conduct are not dissuaded from raising complaints in good faith. They also assist in maintaining the status quo pending the determination of a complaint.

125. The panel strongly supports the importance of mediation that has led to the resolution of most disputes that have arisen under the Act without resort to legal proceedings. The panel believes that the emphasis given to mediation by ORSP is well justified and should continue in the future.

126. The panel agrees that a statement of attainment should be provided to reservists at the end of a period of service in the Reserves. It also accepts that employers should have access to a more senior member of the ADF should there be problems or difficulties about the release of a reservist for defence service. The panel does not favour the introduction of a system of appeals before a court or tribunal that might involve employers and reservists in lengthy and expensive legal proceedings.

Victorian Farmers' Federation

127. In its submission, the Victorian Farmers' Federation (VFF) drew attention to the difficulty of replacing workers in country Victoria. If a reservist is away, it can be difficult to attract alternative labour. In recent years, drought and the change in seasons can alter labour requirements. While a job may be left open, other factors such as weather can jeopardise the continuation of the employment relationship. The VFF supported the retention of sections 32(3) and 32(4) in the Act. [Section 32(3) provides that the obligation of reinstatement does not apply if because of changed circumstances it was not within the employer's power to reinstate an employee.] However, VFF considered that it might not be until a Court hearing that hardship could be addressed. The employer would then be faced with court costs in meeting such a claim.

128. VFF also made a number of specific submissions about the provisions of the Act.
- There should be a limitation on the maximum number of penalty units that can be imposed for contraventions of Division 2-5 of Part 4 of the Act to 30 penalty units.
 - Sections 25(3) and 26(4) should be retained in the Act.
 - Sections 31(2)(a) and 31(3)(a) and (b) are a concern. VFF contests that employers become liable for annual and personal leave accrual whilst a reservist is on defence leave.
 - Sections 32(3) and (4) of the Act should be retained to balance the needs of employers. Section 32(3) should be extended to section 32(2)(b) as the legislation allows the employer only one choice. It does not allow the employer to reduce other employment terms such as changing employment status from full-time to part-time.
 - Section 33 of the Act is supported and should be retained.
 - Civil enforcement within a period of 3 years is too long, and contrasts with the 21 days from the date of termination to apply to the Australian Industrial Relations

Commission for relief in respect of termination of employment under section 643 of the *Workplace Relations Act 1996 (Cth)*.

- There is the possibility of 'double dipping' if section 73(4) of the Act allows a reservist to seek remedy for unfair dismissal under the *Workplace Relations Act 1996 (Cth)* where the employee has already benefited from compensation for termination pursuant to section 32 of the Act.
- In relation to section 74 of the Act, a maximum monetary penalty system should apply especially considering the potential broad scope of section 32(2)(b).
- Sections 75(3)(c) and (d) provide strong legislative access for seeking mandatory injunctions regardless of whether or not it appears to the Court the person is going to do "the act".
- Changes to section 81(2) would be opposed.
- Regulation 7(1) provides broad powers to an authorised person and appears to reverse the onus of proof seemingly lying with the employer to disprove the evidence of the authorised person.
- Regulations 14, 15 and 16 are supported as they promote quick settlement of disputes without creating unnecessary stress and financial hardship on employers. Such form of dispute resolution appears to be discretionary.
- Changes to regulation 19(1) regarding maximum penalty units would be opposed. Amendments requiring the Director to provide the employer with information concerning potential consequences of giving false or misleading information and/or not complying with the notice.
- Where a person waives his or her rights to provide a document in accordance with regulation 20(1), the waiver should be in writing to avoid any confusion regarding verbal agreement between the parties.
- There is a concern that employers, especially small employers, can be burdened with significant costs of defending Court action under the Act.

129. *It is the policy of ORSP to undertake mediation in relation to disputes that arise under the Act. As a result, if reinstatement by an employer is not possible because of hardship or changed circumstances, the employer has every opportunity to identify the situation at or before the mediation and is at liberty to suggest other solutions. As a result, the panel does not agree that the first opportunity that an employer has to raise hardship or changed circumstances is in Court proceedings. The panel does not propose any diminution of the position of the employer under sections changes to sections 32(3) or 32(4) of the Act.*

130. *The panel's response to the specific submissions is as follows.*

- *The maximum number of penalty units that may be imposed under Division 2-5 of Part 4 of the Act is thirty penalty units. The panel does not see the need for any change to the maximum penalty.*
- *The panel proposes that sections 25(3) and 26(4) be retained in their current form.*
- *The panel agrees that the period of absence on resumption of work for the old employer under section 31(2)(a), the period of absence should not be taken to have been paid service in the employment. However, there is a continuing need for section 31(2)(b) which provides that on resumption of work for the old*

employer, the continuity of the member's employment is taken not to have been broken by his or her absence on defence service. The retention of section 31(2)(b) will ensure that the reservist is not disadvantaged by a break in service for long service leave, pension, superannuation or other purposes.

- *The panel does not propose that sections 32 and 33 be amended adversely to the interests of employers. Section 32(3) protects the position of the employer if because of changed circumstances it was not possible to retain the member in employment. It would not be appropriate to make this provision applicable to circumstances where the member was actually retained in employment or in the circumstances described in section 32(2)(b).*
- *The panel does not agree that there is any benefit in reducing the period for the issue of civil proceedings. ORSP policy is to engage in mediation before considering the issue of proceedings. The panel supports this policy. If mediation fails, the practice of ORSP is to consider and obtain advice as to the appropriateness of legal proceedings. Reduction of the period in which proceedings must be issued is only likely to promote the earlier issue of legal proceedings. The position is dissimilar to that which prevails under section 643 of the Workplace Relations Act (Cth) where the issue of proceedings is encouraged is soon as possible. In addition, there is little if any history of reservists bringing late complaints against employers. As a result, the panel does not recommend that there be any change to the present limitation of three years which is a period commonly found in other Commonwealth*
- *There has been no case of 'double dipping' in the history of the Act. Moreover, any assessment of loss and damage under section 73 of the Act must take into account any benefits received by the reservist in connection with his or her employment including any benefits received as a result of any proceeding under the Workplace Relations Act 1996 (Cth). In the view of the panel, there is no prospect of 'double dipping'.*
- *Section 74 of the Act is a provision which authorises a court to order compensation in the event that a person is found guilty of an offence against the Act. The maximum monetary penalty applies to the penalty that may be imposed by the court. The compensation payable is in addition to the penalty imposed.*
- *The panel does not see any need for any changes to sections 75(3)(c) and (d) and does not propose any changes to section 81(2).*
- *Regulation 7(1) is a provision which presumes true a statement in a certificate signed by an authorised person. There is no history of any problem or difficulty concerning this provision. The panel does not recommend that there be any change to this regulation.*
- *The panel supports the policy of mediation and agrees that speedy resolution of disputes is highly desirable. The experience of dispute resolution under the Act is that it is very effective in resolving the vast majority of disputes under the Act. The panel supports this policy as most likely to minimise the burden and cost of compliance with the Act.*
- *The panel does not propose any changes to regulations 19(1) or 20(1).*

The Australian Council of Trade Unions

131. The ACTU submission recognised that the passage of the Act in 2001 was a major legislative advance in the administration of the Reserves. However, there remain areas of disadvantage for reservists when faced with circumstances that may impede or prevent the continuance of that service. The ACTU submission provided a range of instances where it was considered that administrative failure in the ADF had resulted in adverse consequences to reservists. Those circumstances included non-payment for reserve service, a lack of entitlement to time off in lieu by comparison to the entitlements available to members of the regular component. Another incident involved a reservist who took a lengthy absence from his civilian employment for deployment overseas but was instead employed in duties at a reserve establishment within his state of residence.

132. The ACTU submission highlighted the need for a preliminary attempt at alternative resolution of the dispute before placing the matter before a prosecutor. Historically, disputes as to the civilian employment relationship have been resolved by the agreement of the parties to a hearing in a neutral forum such as the Australian Industrial Relations Commission. Legal aid should also be available to assist a reservist to take proceedings. The ACTU supports the introduction of indirect discrimination provisions into the Act such as those in the Anti-Discrimination Act 1991 (Qld). The ACTU holds a strong view that if a respondent wishes to rely on an exemption, the respondent must raise the issue and prove on the balance of probabilities that it applies. The ACTU shared the concerns expressed in the Issues Paper as to harassment and bullying in the context of a reservist's civilian employment. There was a need to strengthen administration and administrative knowledge relating to the Reserves. An ethos of cooperation and flexibility was needed at all levels of command.

133. There was a need to strengthen the seamless transition to and from full-time and part-time service. The means for implementing that smooth transition should be given a high priority by the ADF.

134. The panel agrees that the administration of reservists on deployment in the context of their civil employers needs review and that there are instances where the management of reservists in the context of their civil employment has been deficient. The ADF is yet to develop a code of practice or protocol for employer support and communications. The panel considers that this is a first priority if administration of reservists in the context of their civil employers is to be enhanced.

135. The panel fully supports the mediation of disputes between reservists and their civil employers and notes that under regulation 22(2) all mediations of disputes are conducted by qualified mediators. The panel is unaware of any suggestion that the mediation service conducted by ORSP is other than an impartial and professional service or that any better outcome would be achieved were the mediation conducted by another body. An important advantage of the conduct of mediations using the service provided by ORSP is that mediators are familiar with the Act and the Regulations.

136. Proceedings under the Act need not be taken by individual reservists. Under section 76 of the Act, any interested person including the DORSP and the

Commonwealth can undertake proceedings. On a number of occasions, DORSP has intervened to offer financial and legal assistance to assist individual reservists where satisfied that it is appropriate to do so. It is authorised to provide financial support to persons applying to a court under regulation 24(2).

137. In circumstances, where there is objectionable behaviour or conduct adverse to a reservist in or concerning the reservist's civil workplace, the panel considers that a new provision should be introduced in to the Act to address objectionable behaviour such as bullying, abuse or harassment. The new provision would also extend to any person (whether or not the employer) who treats the reservist less favourably for a prohibited reason than they would treat or propose to treat a person in the position of the reservist to whom the prohibited reason did not apply. Those persons may be associated with an employer such as a supervisor or work colleague or they may be independent of the employer eg a partner, agent or contractor. The panel considers that the employer should not be held responsible for the objectionable behaviour where the objectionable behaviour is in breach of the employer's policy and is not sanctioned by the employer. Where an employer has such a policy in place and has taken all reasonable steps to discourage the objectionable behaviour, the panel considers that any penalty should fall on the person responsible for the objectionable behaviour alone and not on the employer.

138. The panel considers it unacceptable for a reservist who seeks to rely on a protection to be subjected to adverse or objectionable behaviour by another person for reasons which include the reason that a complaint has been made by the reservist, or a dispute exists under the Act between the reservist and the person.

The Defence Reserves Association

139. The Defence Reserves Association (DRA) made a submission to the panel, as did its Victorian branch. From a national perspective, the DRA found that the Act has generally speaking been serving its purpose. Simplistically, the Act works very well but appears rather punitive for the employer and not user friendly enough. The small employer needs to be encouraged and protected from the irresponsible reservist whilst the self-employed need to understand their twin obligations. The Act, like most Acts, is not user friendly, so the Defence Reserves Employer Handbook needs to be expanded to provide a plain English interpretation of the Act.

140. The DRA submitted that the need to warn employers did not always cascade down to the appropriate officer or manager. Cancellation or withdrawal from courses was a major issue and the most reported complaint. On the other hand, there were reservists who did not co-operate with their employers and especially those who believe that they have inalienable rights under the Act and need not exercise appropriate personal responsibility. The key issues were identified as follows.

- The importance of protection legislation to give security of employment to reservists whilst undertaking defence service.
- The employer support payment (ESP) scheme is supported and should be extended to give greater support to engineering, specialist, and trade capabilities.

- The present approach of mediation and conciliation with employers is supported rather than an enforcement/prosecution policy which should be the last resort.
- The current system of protected and unprotected full time service is complex and bureaucratic. Employers do not understand the difference. All defence service should be protected. There should be safeguards however when the service is not reasonable, eg treating the service as a second job.
- The Services must ensure that reservists are given reasonable notice of their training obligations. There are too many examples of last minute selection and notification or even worse last minute cancellations of courses or removal from the course panel. This is unfair on employers as well as the reservists. There should be a code of conduct to which ADF staffs adhere.
- The failure by a reservist to give reasonable notice to an employer of a service obligation may expose that employer to penalties under the Act. This lack of responsibility by the reservist should attract disciplinary action.
- At present protection for students only applies if the reservist is undertaking protected service or call out service. It should be widened and applied to all defence service by reservists who are students.
- The difficulty of freeing reservists from civil employment, despite payment of ESP is acknowledged, however, the benefit to the employer for that no cost training is not well understood. The benefits of reserve service for employers should be given more publicity and where possible written into Human Resources (HR) policies.
- Make up of civil pay, allowances/bonuses should be considered for critical trades and overcoming manning shortfalls.
- The importance of compensation for the reservist whilst undertaking defence service does not appear to be adequately covered in the Act. Separate legislation deals with this; however the obligation by the Commonwealth to a reservist's civilian employer should be covered as a circumstance requiring protection of the reservist.

141. The Victorian Branch of the DRA considered that the Act had worked well with increasing effectiveness during the six years since it was introduced. In conjunction with the Employer Support Payment Scheme, it had enhanced the acceptance of reserve defence service particularly amongst employers and more generally in the Australian community. The distinction between "protected" and "unprotected" service was no longer required and movement toward all defence service being protected would enhance community acceptance of the need and simplify the legislation.

142. DRA Victoria submitted that the requirement for timely and adequate notice for reservists to render defence service was not fully appreciated throughout the ADF. This need should be addressed in legislation. The aspect of timely notice must also apply if training for which reservists have been accepted is cancelled. Late notice in these circumstances can lead to significant difficulties for both reservists and employers and

can adversely affect reservists' employment circumstances. Individual reservists should bear responsibility in the provision of adequate notice of service obligations to employers. The privacy rights of reservists must be respected and direct notification of defence service obligations to employers without the express permission of the reservist employee must not be permitted. The co-operation of employers is essential in the task of bringing about the necessary expansion of reserve numbers. The role of employers would be greatly facilitated by tax incentives related to the percentage of their workforce who render effective service.

143. Students represent a high proportion of the potential pool of reservists and their position warrants special attention. Protection of their need for training course timing, education course reinstatement, academic/trade achievement recognition requires better attention in protection legislation.

144. *The panel accepts the need for the Act to be recast in plain English to the extent possible consistently with the object of the Act and to use terms that appear more employer friendly. The panel recognises the importance of the Employer Support Payment Scheme in enhancing the availability of reservists for defence service. All submitters supported the desirability of mediation and consultation with employers rather than enforcement or prosecution which should be a last resort. The panel accepts the need to simplify the Act so as to remove the concept of 'unprotected service'. The panel also accepts the need for reservists wherever possible to give employers reasonable notice of the expected absences from the workplace due to defence service and that ADF policy should be embodied in an authoritative instrument such as a Defence Instruction. The panel agrees that education protection should apply to all types of reserve service and that the content of education protection should be widened. Initiatives promoting the benefits of Reserve service such as those undertaken by the DRSC should continue and be expanded wherever possible. The issues of make-up pay, additional allowances and bonuses should be considered when Reserve conditions of service are next reviewed. The panel acknowledges that there has been uncertainty as to the respective obligations of the Commonwealth and the employer for compensation in respect of injury or illness that has been occasioned to a reservist. Full information as to the respective obligations of the Commonwealth and the employer should be available on the Defence Reserves website together with contact details if an employer needs clarification.*

Mitsubishi Motors Australia Ltd

145. The panel received a submission from Mr. Richard Collett, Manager Corporate Employee Relations, Mitsubishi Motors Australia Ltd. Main points made in this submission were:

- the need for clarification of the types of reserve service and the conditions surrounding those types of service including obligations on Defence, obligations on the reservist, and obligations on the employer of the reservist;
- the need for the services to use different descriptions for leave on notices some of which require interpretation or legal advice to clarify obligations;
- notice periods for reserve service to meet a minimum time frame standard; and

- possible restructure of the Act to retain definitive requirements but remove operational aspects.

146. *The panel agrees with the desirability for the services as much as possible to use similar terminology and for the obligations imposed on Defence, the reservist, and the employer to be clearly set out desirably on the Defence Reserves website as well as in publications. The panel also agrees that a minimum notice period should be established and recommends that a period of four weeks be adopted wherever possible. Having regard to the submissions generally, the panel does not see the need to recast the Act so as to remove provisions considered to be of an operational nature. Most of the provisions of the Act describe the rights and obligations of reservists and the protections available to them. The panel considers that these protections should continue to be described in the Act.*

Issues Raised in Issues Paper

147. The issues raised in the Issues Paper together with the panel's responses are as follows.

- Clarification of the definition of 'defence service' contained in section 7 to make it clear that defence service with a unit of the Permanent Navy, Regular Army, or Permanent Air Force is covered.

The panel considers that this should be done in the amendment to the Act to remove any doubt that may exist.

- Definition of 'hinder' contained in section 17 of the Act.

The panel considers that if new provisions are introduced as recommended above there will be no need to define the term 'hinder' as used in section 17. This view can be confirmed with the Parliamentary Counsel during drafting of the bill to amend the Act.

- **Protections for students.**

Further protections for students are recommended as set out above.

- **Global application of Part 4.**

Given the recommendation to remove 'unprotected service' from the Act, the panel does not consider that any change should be made to the present operation of Part 4 to all types of reserve service.

- **Contradiction or confusion as to entitlements whilst on defence service**

Section 33 makes it clear that there is no obligation on the employer of a member to pay remuneration, entitlements, workers compensation premiums, or make superannuation guarantee contributions in relation to the reservist's absence. Section 26(2) provides that an employment agreement is suspended whilst the

reservist is absent on defence service. Section 31(2)(a) provides that on resumption of work for the old employer, the period of the absence is taken to have been paid service in the employment. The panel considers that the period of absence should not be taken to have been paid service in the employment. However, there continues to be a need for section 31(2)(b) which provides that on resumption of work for the old employer, the continuity of the member's employment is taken not to have been broken by his or her absence on defence service. The retention of section 31(2)(b) will ensure that the reservist is not disadvantaged by a break in service for long service leave, pension, superannuation or other purposes.

- **Contradiction/confusion between suspension of employment and termination of employment**

The panel understands the present position to be complex and as follows. If a employment agreement ends on a fixed date, suspension of the agreement for a period of time within the term of the agreement will not affect the end date. If the employment agreement is for a period of time such as a term of years, the period of suspension will not count in reduction of the period. When the agreement is resumed, the agreement will continue for the balance of the period of the agreement. Where an agreement is made for a term of years but also refers to a specific end date, the position is doubtful. The effect of suspension may differ depending on the way the agreement is expressed and the interpretation of the agreement. If the agreement is indefinite as to time, it will resume following suspension on an indefinite basis.

The panel considers that the best solution is to amend the Act to clarify the effect of a suspension on an employment agreement made between an employer and a reservist. It considers that the best approach is to treat the suspension as extending the term or period of the agreement where the defence service is voluntary continuous full time service or continuous full time service following call out but not otherwise. Such an outcome makes provision for the extension of the civil employment of reservists where work is resumed with the original employer following periods of full time service but does not alter the present practice where periods of short defence service such as non-continuous service or absences not exceeding two weeks in duration are not taken as affecting the term of employment agreements. It also avoids the administrative complexity that would follow if all defence service were to be taken into account in extending the term or period of employment agreements.

- **Must ORSP mediate before charging a respondent?**

The legal advice given to the panel was in the following terms.

Regulation 22 provides that:

"The office may operate a mediation service to which it may refer parties to a dispute arising between persons who are affected by the Act or ... Regulations."

A note to regulation 22 provides that:

"If mediation fails to resolve a dispute, the matter may be resolved in any of the following ways...[the note continues on to describe referral of a complaint to civilian police, an action for compensation (section 73), an application for an interim injunction (section 75) or other order of a court (section 76)]."

The note does not in its terms require ORSP to require that mediation occur - rather it provides guidance as to the options available to the complainant under the Act following the conduct of a mediation. Section 13 of the Acts Interpretation Act provides that a marginal note is not part of an Act. The note to regulation 22 might be considered an example and it cannot in any event override the terms of the principal provision (section 15AD). The plain meaning of regulation 22 is no more than to empower ORSP to operate a mediation service to which it "may" refer the parties to a dispute. Further express words would be necessary before it could be contended that mediation is a jurisdictional prerequisite to further action.

In any event, it is the view of the panel's legal adviser that the opportunity should be taken when the regulations are amended to add to the note words to the effect that to avoid doubt, there is no requirement for mediation to occur prior to a complainant or prescribed person taking enforcement action.

The panel agrees with this advice.

- **No mention of harassment, bullying. Cannot discriminate but can persecute. Harassment by co-workers.**

The panel recommends that the Act be amended to address this concern.

148. A further issue that arose during the panel proceedings related to the question of jurisdiction of courts. Under section 77 of the Act, jurisdiction is conferred on all State and Territory courts (including courts of summary jurisdiction) and the Federal Court of Australia. The issue arose as to whether jurisdiction should also be given to the Federal Magistrates Court.

149. The panel took the advice of the Civil Justice and Federal Courts Branch of the Attorney-General's Department concerning the issue. In its response, the panel was advised as follows -

"I note that the Attorney-General has recently asked the Department to review the optimal structure for the Family Court and Federal Magistrates Court. One option that will be considered by the review is a two-tier model for the federal

courts in which family law magistrates become a tier of the Family Court and federal law magistrates become a tier of the Federal Court. The Review is expected to report by 31 May 2008.

Pending the outcome of the Review, conferral of jurisdiction on the Federal Magistrates Court is generally appropriate where matters are relatively simple and can be dealt with quickly. The types of matters that the Act gives rise to include actions for loss or damage caused by a person's contravention of the Act (for example, for refusing to employ a person because that person is, or may become, liable to render defence service) and applications for injunctions for contraventions of the Act. We consider these types of actions would be suitable for the Federal Magistrates Court, being shorter, less complex matters, and would be consistent with the unlawful discrimination jurisdiction the Court already has.

The information you provide indicates that only a very small number of cases arise under the Act. Therefore it is unlikely that the Federal Magistrates Court would require additional resources.

If, following recommendation of the Panel, a decision is made that the Federal Magistrates Court should be given jurisdiction in matters arising under the DRSP Act, the Minister for Defence would need to write to the Attorney-General requesting policy approval for the jurisdiction to be conferred.

Whatever the outcome of the Review, the Government is committed to ensuring that there remains cost-effective, quick and efficient procedures for shorter and simpler matters. Any recommendation of the Panel with respect to providing a quicker, cost-effective forum for matters under the DRSP Act would be able to be accommodated."

150. The panel recommends that section 77 of the Act be amended to give jurisdiction in disputes not involving criminal jurisdiction which arise under the Act to the Federal Magistrates Court.

PROTECTION ISSUES

Results of Consultations and Review of Submissions

151. Following the conduct of consultations and the careful consideration of submissions, the panel has identified the need to make a number of changes to the Act.

Scope of Parts 5, 6 and 7

152. The panel considers that the scope of employment protection, partnership protection and education protection should be extended so that they apply to all types of reserve service. In the panel's view, the present position where employment protection and partnership protection do not apply to one type of reserve service viz

unprotected voluntary continuous full time service is anomalous. At the same time, because of the complicated and technical nature of this exception and the continuing operation of Part 4 of the Act, employers do not obtain any real benefit from the exception.

153. Education protection is currently only applicable under the Act in the event of call out service. Many submitters pointed out that it should be applicable to all types of reserve service. The panel agrees with these submissions. In addition, the Southern Cross University has introduced a voluntary code applicable to all types of reserve service. The panel understands that this code has been approved by the Vice Chancellors Committee and believes that it offers an acceptable model of the education protection that should be available for reserve service across the education sector as a whole.

154. The effect of the extension of employment protection, partnership protection and education will be to enhance the availability of reservists for defence service and so to strengthen capability.

Removal of the Distinction between Protected and Unprotected Continuous Full Time Service

155. If the Act is amended so that employment protection is available for all types of reserve service there will be no need for any distinction between protected and unprotected continuous full time service. This distinction can then be removed from the Act. The result will be a major reduction in complexity and a significant saving in reserve administration. There will be no need in any circumstances for a service chief or delegate to invite a reservist to undertake protected voluntary continuous full time service and no need for a reservist to seek such status. However, consideration should continue to be given to criteria similar to those contained in section 12(2) of the Act when reservists are asked to go on continuous full time service. These criteria should include the effect that rendering the service might have on the member's employment and education, and the effect that rendering the service might have on the member's employer and other parties.

Content of Education Protection

156. The panel recommends that the present content of education protection be expanded so that in addition to the present protections it include-

- reimbursement of fees and charges paid by a reservist to an education institution lost or thrown away as a result of absence on defence service;
- non-recording of a failure in the event that a course of study or subject is not completed by a reservist as a result of absence on defence service; and
- continuing recognition of examinations, assessments and practical work in the event that a course of study or subject is resumed by a reservist following absence on defence service.

Scope of Parts 8,9 and 10

157. The panel recommends that the scope of Parts 8,9 and 10 of the Act be extended so as to apply to reservists serving on continuous full time service which is also

operational service as well as to reservists serving following a call out. The effect of this extension would be to give reservists financial liability and bankruptcy protection whilst on operational or call out service and access to loans and guarantees following operational or call out service. 'Operational service' should be defined to include service on operations conducted overseas, within Australia or in waters contiguous to Australia.

Greater Use of Plain English

158. The panel recommends that plain English be used and the legal terminology be avoided wherever possible when the amending legislation is drafted. Greater prominence should be given to the protections and exemptions given by the Act to employers such as the important protections and exemptions contained in section 33. The panel also agrees with the suggestion that workplace examples be provided where appropriate.

Modification of Existing Protections

159. The panel believes that the existing protections should be strengthened in two ways. In addition to the existing protections, it should be a contravention of the Act -

- if a reservist is subjected to objectionable behaviour such as bullying, abuse or harassment for a prohibited reason or for reasons which include a prohibited reason; and
- if a reservist is subjected to less favourable treatment or it is proposed to subject the reservist to less favourable treatment for a prohibited reason or for reasons which include a prohibited reason than a person in the position of the reservist would otherwise have been subject to.

160. Prohibited reasons should include the reasons presently set out in sections 16(2) and 18(2) of the Act, and should also include the fact that a complaint has been made by or concerning the reservist under the Act, or a dispute exists under the Act between the reservist and the person.

Clarification of the Act and Regulations

161. The panel considers that a number of specific amendments should be made to the Act to give clarification to the Act or Regulations or for the avoidance of doubt. The specific amendments are as follows-

- Clarification of the definition of 'defence service' to make it clear that defence service with a unit of the Permanent Navy, Regular Army, or Permanent Navy or with overseas forces is covered.
- Section 32(2)(a) be amended so that on resumption of work for the old employer, the period of absence not be taken as being paid service in the civil employment. However, the continuity of defence service should not be broken by reason of the reservist's absence on defence service.
- The effect of suspension of employment agreements be clarified so that when the agreement is resumed following continuous full time service the period of the agreement be extended by the period of the continuous full time service. Employment agreements are not to be extended by non-continuous service or service other than continuous full time service.

- The note to regulation 22 be amended for the avoidance of doubt to make it clear that there is no requirement for mediation to occur prior to a complainant or prescribed person taking enforcement action.
- Section 77 of the Act should be amended so as to give jurisdiction under the Act other than criminal jurisdiction to the Federal Magistrates Court of Australia.
- Regulation 6 of the Regulations be amended to make it clear that there can be more than one Deputy Director whether a member of the ADF or civilian.

EMPLOYER SUPPORT AND ENGAGEMENT ISSUES

RESD Role and Function

162. Reserve and Employer Support Division (RESD) has principal carriage of employer support and engagement functions on behalf of the Australian Defence Force. RESD links the ADF Reserves with key employer and community organizations through the Defence Reserve Support Council (DRSC) which reports to the Parliamentary Secretary for Defence.

Need for Policy

163. As part of the study, the panel sought copies of the current policy relating to employer support. The panel was advised that the policy of the ADF in relation to employer support policy was not as yet embodied in any defence instruction.

164. In July 2005, a Minute was published by (the then) Reserve Policy Division entitled "Guidelines for Commanders, Commanding Officers, and Career Management Agencies". A copy of the minute is enclosed with this report as Annex E.

165. The minute seeks to give guidance to unit commanders handling the issues associated with employing Reservists. The minute stated that consideration of these issues would help alleviate any perception that the power of the Act was being used improperly by Defence and would help ensure the continued effectiveness of the legislation and the ongoing support of employers.

166. The minute drew attention to the burden on employees of multiple consecutive defence service commitments. It stated that there may be cases where it was inappropriate to impose such obligations on employers. Unless the ADF was sensible in how it utilised the power of the Act, it risked provoking a backlash from employers and calls for changes in legislation. This would particularly apply to cases where reservists undertake repeated periods of defence training within a single year or undertake extended periods of CFTS.

167. Guidelines suggested in the minute included -

- reservists should be encouraged to advise their employers of their reserve commitments as early as possible in order to provide maximum notice;

- consideration should be given as to whether the defence service above four weeks a year in the public sector, and two weeks a year in the private sector, is required and as to the impact that the absence of the reservist on defence service might have on the civilian employer;
- where an individual reservist volunteers for repeated period of defence service in a single year, consideration should be given as to the impact of the proposed service on the employer;
- reservists should discuss the business and employment implications of proposed periods of CFTS with their employers, and inform employers of employment protection issues and the availability of the ADF Employer Support Payment Scheme;
- when advised of an employer's concerns, a unit commander should seek to identify the nature of those concerns and whether they can be accommodated;
- many concerns can be resolved through simple mechanisms, such as seeking alternative dates for training;
- where local employers have a large number of reservists in their workforce, unit commanders (particularly in regional areas) should meet with these employers and discuss reserve employment issues;
- where employers have concerns with the release of a reservist for a particular period of service, they may approach the unit POC, the State office of the DRS or ORSP; and
- when approached by an employer with concerns regarding the release of a reservist for a particular period of service, the unit, formation or career management agency should -
 - treat the concern as reasonable and legitimate;
 - respond to and address the concerns in a timely and effective manner;
 - explore and consider simple alternative arrangements, where these exist, to the period in question; and
 - notice the employer when a particular concern cannot be accommodated, and provide contact details for the ORSP.

168. The panel endorses these principles, and suggests that they be considered for adoption in a defence instruction.

EMPLOYER SUPPORT POLICY

169. ADF policy for the engagement and support of members of the ADF reserves to render continuous full time service is contained in Defence Instruction (General) Pers 05-33 approved on 14 March 2003. Assuming the amendments proposed in this report are made to the Act, it will be possible to significantly simplify the existing instruction. With the repeal of the provisions of the Act that relate to protected and unprotected service, a number of the staff procedures described in the instruction will no longer be necessary.

170. In the view of the panel, the time has come for the Secretary and CDF to approve an ADF Employer Support Policy and for this to be embodied in a Defence Instruction. The policy should be responsive to the submissions made to this panel particularly by employers. It should give guidance to Commanders, Commanding Officers and Career Management Agencies as to employer support policies and practices. It should incorporate and supersede the Guidance issued by Reserve Policy Division in July 2005.

171. Achievement of Government approval for the changes to the Act proposed in this report and the preparation of the necessary amending legislation will take a number of months. During this time, revised Defence Instructions should be developed in consultation with key stakeholders including DRSC, the Australian Industry Group, the AFP and State and Territory Police Forces.

172. The panel has prepared a draft amending defence instruction having regard to the changes proposed to the Act and the principal concerns expressed by submitters to the panel. The amending defence instruction is also intended to supersede the Reserve Policy minute of July 2005.

173. There is a need for further consultation with each of the Services, and with key stakeholders so that the final form of the instruction can be determined.

174. When the amending defence instruction is approved, authoritative guidance will be given to the ADF as to employer support policy. The approval and publication of a modern employer support policy will represent a major step forward, and is likely over time to result in significantly improved ADF-employer relationships.

175. The panel recommends that, following consultation, the draft policy be reviewed by the Joint Reserves Working Group.

IMPLEMENTATION

176. Implementation of this report is dependant on Government endorsement of the recommendations contained in this report and willingness to introduce a bill to amend the Act in the Parliament. When this is done, the Regulations can be amended.

177. Following Government approval, drafting of the amending bill is undertaken by Parliamentary Counsel acting on the instructions of Defence Legal.

178. . The revised Defence Instruction should become effective on or shortly after the date on which the amending legislation comes into force.

179. Details as to Implementation Duties, Communication Responsibilities, Training and Resource Implications are set out in Annex G.

180. A budget of \$100,000 for RESD is recommended for the communications strategy and training associated with the introduction of the amendments to the Act and employer support policy. Apart from the cost of the communication strategy, there are not expected to be any additional costs to Defence caused by the legislative changes. Repayment of loans made by banks or financial institutions to reservists returning from callout or operational service is an individual matter for the reservist. It is not anticipated that any guarantees will be given on behalf of the Commonwealth.

CONCLUSION

181. Since its enactment in 2001, the Act has made an important contribution towards the availability and capability generated by the ADF Reserves. It is widely supported inside and outside the ADF.

182. In the panel's view, the time has now come for a further major step forward which will further facilitate availability and ADF Reserve capability particularly that provided by employed persons and students.

183. Implementation of the recommendations contained in this report will strengthen and clarify employment protection, provide an important and comprehensive regime of education protection, and extend the scope of financial liability protection to include operational service as well as call out service.

184. The time has come for the ADF to have a policy directed at ensuring that employers and partners of reservists have wherever possible a reasonable level of notice of service commitments. Whilst as much notice as possible to employers is desirable, the panel supports a minimum period of four weeks notice of continuous full time service or continuous defence service exceeding 28 days unless operational circumstances make this impracticable. The panel also supports periodic feedback to employers and the provision of a statement of attainment on completion. Employers should be able to access a senior Service officer or authority in the event that they desire to do so.

185. The panel supports the empowering of the Federal Magistrates' Court to hear civil disputes arising under the Act.

186. The panel supports the use of Memoranda of Understanding with key employers to regulate and set out the arrangements between the employer and Defence for the release of reservists from, and their return to civil employment.

187. The panel supports the continuing emphasis on mediation and alternative dispute resolution measures to resolve disputes under the Act. The panel also supports RESD activities to inform employers and partners of the provisions of the Act and of ongoing education concerning the provision of the Act. Implementation of a Communications Strategy will be necessary to inform reservists and stakeholders of the enhancements and changes recommended in this report.

RECOMMENDATIONS

LEGISLATIVE CHANGES

Amendment of the Act

188. The panel recommends that the Government direct that a Bill to amend the Act be prepared for passage by Parliament. The Bill would make the following changes to the Act -

- **Protected and Unprotected Service**
The existing distinction between protected and unprotected service would be removed.
- **Employment, Partnership and Education Protection**
These would extend to all types of reserve service.
- **Scope of Education Protection**
This would be widened to include not only the right of re-enrolment following completion of defence service (as it does at present), but also
 - reimbursement or deferment of fees and charges paid by a reservist to an education institution lost or thrown away as a result of absence on defence service;
 - non-recording of failure by the education institution in the reservist's student record in the event that a course of study or subject is not completed by a reservist as a result of absence on defence service; and
 - continuing recognition of examinations, assessments and practical work when a course of study or subject is resumed by a reservist following absence on defence service.
- **Financial Liability Protection**
Financial liability protection should be extended to apply to reservists serving on continuous full time service or continuous defence service of an operational nature.
- **Objectionable Behaviour including Workplace Bullying, Abuse and Harassment**
A new provision should be introduced into the Act protecting reservists against workplace bullying, abuse or harassment.
- **Use of Plain English and Workplace Examples**
The panel recommends that plain English, workplace examples and explanations be used in the amended Act as appropriate.
- **Jurisdiction of Courts**
The panel recommends that civil jurisdiction under section 77 of the Act be conferred on the Federal Magistrates' Court.

- **Consequential amendments**

The panel recommends that a number of consequential amendments to provide clarification or simplify the language or operation of the Act including clarification of the definition of defence service, the repeal of section 31(2)(a) of the Act and clarification of the effect of suspension of a reservist's employment agreement be made as set out in this report. Consequential amendments to the Act will also be necessary to effectuate the recommendations made above.

Amendment of the Regulations

189. The panel recommends that the Regulations be subject to minor amendment as set out in this report to clarify the function of ORSP and to enhance the mediation process. Regulation 6 and the note to regulation 22 should be clarified. Consequential changes to the Regulations will also be necessary to effectuate the changes to the Act.

OTHER RECOMMENDATIONS

Amendment of DI(G) Pers 5-33

190. Given the amendments proposed to the Act, Defence Instruction (General) Pers 5-33 will require amendment. The panel recommends that the proposed amended DI-G (Annex F) contained in this report be reviewed in consultation with key stakeholders.

Notice for CFTS and Continuous Defence Service Exceeding 28 Days

191. The panel recommends that a minimum of 28 days notice be given to employers and partners wherever possible. This recommendation does not affect high readiness reserve service where employers have already given their consent for reduced notice periods.

Periodic Feedback and Statement of Attainment

192. The panel recommends that employers or partners receive periodic feedback during the absence of a reservist on continuous full time service or continuous defence service exceeding 28 days, and that a statement of attainment be provided to employers or partners on completion. The panel supports access by employers to a senior Service officer or authority, if this is requested.

Memoranda of Understanding

193. The panel recommends that Defence consider the use of memoranda of understanding with key employers such as police and emergency services. The memoranda would state the arrangements between the employer and Defence for members to undertake defence service of substantial duration and for the return of reservists to their civil employment. Each memorandum should also consider the benefits and allowances available to reservists in their respective military and civil capabilities.

Mediation

194. The panel supports the use of mediation and other alternative dispute resolution measures by ORSP to assist in the resolution of disputes arising under the Act.

DRSC Activities

195. The panel supports the activities undertaken by RESD such as Exercise BOSSLIFT and EXECUTIVE STRETCH and the work of ORSP to inform employers and partners of the provision of the Act and of employer support policies generally. Ongoing education of stakeholders regarding protection provisions under the Act is essential.

Information as to Health and Rehabilitation Services

196. The panel recommends that additional information be placed on the Defence Reserves website advising employers of the health and rehabilitation services available to reservists who have suffered injury or illness whilst on defence service.

Make Up Pay during Operation Service

197. The panel recommends that the question of make up pay for reservists during operational service be considered when reserve conditions of service are next reviewed. This may be of particular benefit to capability in the area of critical trade skills.

Employer Support Payment Scheme

198. The panel recommends that consideration be given as to the cost effectiveness of the payment of the employer support payment during one or both of the first two weeks of continuous service each year. The panel also recommends that consideration be given as to the eligibility of reservists for the employer support payment where the reservists are on call to perform frequent duties for short periods of service e.g. to perform security duties of a RAAF Base.

Communication Strategy

199. Following passage of legislation amending the Act, and the approval of ADF employer support policy, the panel recommends that a communications strategy be implemented to inform reservists and all interested stakeholders of the enhancements and changes. The communications strategy should inform employers, federal and state departments, education institutions and the community generally of the changes to be implemented.

Annexures:

- A. Extract of Terms of Reference for Protection Review
- B. Visits and Consultations
- C. Issues Paper prepared by ORSP
- D. Current DI(G) Pers 05-33- Engagement of Members of the ADF Reserves to render Continuous Full-Time Service
- E. Covering Minute and Guidelines for Commanders, Commanding Officers and Career Management Agencies entitled Employment of Reservists dated July 2005
- F. Proposed Draft amended Defence Instruction General Engagement and Support of Members of the ADF Reserves when rendering Continuous Full-time Service or Periods of Continuous Defence Service exceeding 28 days
- G. Implementation Duties and Communication Responsibilities.

Enclosures:

- 1. Copy of Written Submissions

EXTRACT OF TERMS OF REFERENCE FOR PROTECTION REVIEW

1. Background

In 2000 the Commonwealth Government introduced a suite of legislative and policy initiatives designed to enhance the role and effectiveness of the Australian Defence Force (ADF) Reserves.

Foremost amongst these was the enactment of the *Defence Reserve Service (Protection) Act 2001* (the Act), legislation drafted to, "... protect members of the Reserves in their employment and education, to facilitate their return to civilian life, and for related purposes".

The Act sets out entitlements and prohibitions that apply in relation to people who are rendering, have rendered, or may render defence service as members of the Reserves.

The *Defence Reserve Service (Protection) Regulations 2001* (the Regulations) were introduced later in the same year to provide a mechanism for the management and administration of the Act. The Regulations establish the Office of Reserve Service Protection (ORSP) and the statutory positions of Director (DORSP) and Deputy Director (DDORSP) of that Office.

The Regulations list under the functions of the ORSP, a responsibility to make, "... recommendations to the Minister for enhancing the protection provided by the Act and for improving the Act or Regulations in other respects."

In order to ensure the veracity, comprehensiveness and value of any such recommendations, a Reserve Service Protection Review Panel will be established during the 2006/2007 financial year. The panel will review the Act and supporting Regulations and provide recommendations to Government on the desirability for amendment of the Act and/or Regulations. The panel will complete its review of the legislation by the end of the 06/07 financial year.

2. Task

The Panel is to review the Act and Regulations and advise the Parliamentary Secretary for Defence on:

- the effectiveness of the Act and Regulations in achieving their stated aims,
- perceptions of Reservists, Employers, and other relevant stakeholders regarding the obligations and protections provided for under the Act

- ADF perceptions of the success of the Act and Regulations in ensuring the availability of Reservists to contribute to Defence capability
- Current administration of the Act and identify any areas for possible improvement
- Recommendations relating to ORSP and the way ahead.

3. Outcomes

The Review will examine whether the provisions and application of the Act deliver efficient, comprehensive and workable protections for Reservists and whether these provide the necessary support to the maintenance of ADF capability or whether alternative arrangements to the existing approach would facilitate improved outcomes.

The Review Panel's report will provide advice and recommendations to assist Government in determining the form and content of any proposed changes to the Act together with any enhanced processes for administration of the Act to more effectively meet its stated objectives.

4. Scope of task

The Review Panel will do (but not be limited by) the following:

- advertise the establishment of the review in the national press and in relevant specialist publications
- invite submissions by advertisement, through the Defence Reserves website and by letter
- consult with stakeholders on key issues through a series of workshops
- consult with individual stakeholders where requested
- examine and identify benefits of existing Reserve service protection legislation in other countries
- consult with relevant agencies in the three ADF services
- seek expert legal opinion with respect to any recommended changes and in matters of legal substance
- prepare a report for consideration by Head Reserve Policy (HRP) and ultimately by the Parliamentary Secretary for Defence

...

5. Deliverables

The Panel will provide a draft report of the review making any recommendation for changes to the Act and/or Regulations based upon and highlighting, lessons learnt over the past five years in the administration of the Act, submissions from stakeholders and the experience of the ADF in maintaining capability through the operation of the Act.

A final report will ultimately be delivered to the Parliamentary Secretary for his consideration.

**ANNEXURE B
TO PROTECTION
REVIEW REPORT
DATED JUNE 2008**

VISITS AND CONSULTATIONS

Location	Date & Time	Venue
Darwin	Thu 14 June 9.30am - 11.00am	Conference Room, Centrepoint Building Smith Street Mall, Darwin
Perth	Thu 21 June 3.00pm - 4.30pm	Defence Force Recruiting Level 7, 66 St Georges Terrace, Perth
Pilbarra Region (Karratha)	Fri 22 June 2.30pm - 4.00pm	Taylor Barracks Orkney Road, Karratha
Canberra	Wed 27 June 9.30am - 11.00am	Reception Room ACT Legislative Assembly
Sydney	Thu 28 June 9.30am - 11.00am	Wesley Conference Centre 220 Pitt Street
Brisbane	Mon 9 July 9.30am - 11.00am	Rendezvous 255 Ann Street near Central Station
Townsville	Tue 10 July 10.00am - 11.00am	Jupiter's Casino
Cairns	Thu 12 July 9.30am - 11.00am	Rydges on the Esplanade
Melbourne	Mon 23 July 9.30am - 11.00am	Melbourne Exhibition Centre
Hobart	Tue 24 July 9.30am - 11.00am	Wrest Point Casino
Adelaide	Wed 25 July 9.30am - 11.00am	Building 34A Auditorium Keswick Barracks

ISSUES PAPER PREPARED BY ORSP

Review of the *Defence Reserve Service (Protection) Act 2001*

Issues Paper

The following issues have been identified from comments made by parties from both within and outside of Defence with respect to its effectiveness, the responsibilities it places on the ADF and the burden it places on employers. There have also been a variety of 'lessons learned' by the ORSP in the administration and application of the Act and its provisions which are also noted. This paper serves to list and explain those issues in no particular order of importance. It is provided merely as a preliminary means to initiate discussion of factors which the Review Panel might choose to consider in greater detail.

1. Definition of "Defence Service"

Under section 7 of the Act '**Definitions**'

"**defence service** means service (including training in a part of the Reserves. "

Does this mean that a Reservist who undertakes defence service as a part of the regular ADF is not protected under the Act as they are NOT "...training IN A PART OF THE RESERVES"? This argument has been advanced by one employer who refused the release of a Reservist requesting leave to participate in an operational deployment with part of an ARA unit in the Middle East.

2. Definition of "hinder"

Section 17 of the Act proscribes as an offence "**Hindering an employee from serving in the Reserves**". Is this too strong? 'Hinder' is not defined under the Act nor within the *Acts Interpretation Act* (Cth) is it too loose a term, should it be defined to identify for employers exactly what kinds of behaviour might constitute an offence or is it better kept ambiguous for judicious application?

3. Protections for students

Protections applying to employees, partners and contractors under the Act are quite strong. Protections applying to students apply only in the case of a student undertaking Continuous Full Time Service. Whilst it is true that students 'often' have greater flexibility in managing conflict between their Reserve and employment (study) commitments there are nevertheless occasions where these will be in conflict and it is not always easy to persuade universities to be more supportive. This may be increasingly problematic upon introduction of the HRR for which University students are being actively targeted. Financial disadvantage is a particular point of issue.

4. Global application of Part 4 – Anti-discrimination provisions

This has been an issue of some contention although there have been no formal complaints made to ORSP or to anyone else other than EODRSC. The issue surrounds the application of 'protection' measures prescribed in Part 4 to "unprotected" voluntary CFTS. And arguments that compulsion makes this too onerous for employers

5. Contradiction/confusion between "entitlements whilst on defence service"

There has been the suggestion made that the provisions of 31(2)(a) (accrual of entitlements whilst on ordinary defence service) and 26(2) ("suspension") are seemingly contradictory. If the employment contract is suspended" how then can it be treated as if it were a period of employment for the company"?

6. Contradiction/confusion between "suspension of contract of employment" and "termination of employment"

This issue has caused some confusion, if the contract is "suspended" what does that mean? Previous interpretation has been that the period of the 'suspension' should be added to the end of the contract (and ORSP has argued successfully for this to happen on a number of occasions) However, a more logical interpretation would be that the contract is suspended (i.e. void) during the period of service and recommences upon the member's return. This may need to be more carefully considered and authoritatively determined.

7. Must ORSP mediate before charging a respondent?

The Regulations state that,

"If mediation fails to resolve a dispute, the matter may be resolved in any of the following ways:

The Office may refer a complaint about an alleged contravention of the Act that involves an offence to a member of:

- (a) the Australian Federal Police; or
- (b) the police force of a State or Territory.”

Does this necessarily mean that mediation **MUST** occur before the matter can be referred to the police.

8. (a) No mention of harassment, bullying, Cannot discriminate but CAN persecute?

The Age, Sex and Disability Discrimination Acts proscribe harassment and bullying as unlawful acts. Should harassment of an employee on the basis of their membership of the Reserves be proscribed under the Protection Act? Clearly it is inappropriate and something that we would wish to protect Reservists from. Can it be linked to “changing their conditions of employment to their detriment” given that conditions of employment are not defined.

8. (b) Harassment by co-workers

Under the above Acts, harassment by other employees is also unlawful. Should/could the provisions of the Act also be extended to incorporate harassing behaviour by colleagues?

CURRENT DI(G) PERS 05-33- ENGAGEMENT OF MEMBERS OF THE ADF RESERVES TO RENDER CONTINUOUS FULL-TIME SERVICE

INTRODUCTION

1. The Australian Defence Force (ADF) needs, from time to time, to engage Reserve members of the ADF to render continuous full-time service (CFTS) to satisfy the requirements of the individual Services. Under subsection 50D(1) of the *Defence Act 1903* the Governor-General may call-out all or part of the ADF Reserves for CFTS. Service Chiefs may authorise a Reserve member to undertake voluntary CFTS under subsection 32A(3) of the *Naval Defence Act 1910*, subsection 50(3) of the *Defence Act 1903* or subsection 4J(3) of the *Air Force Act 1923*.

2. The *Defence Reserve Service (Protection) Act 2001* provides various protections for Reserve members rendering Defence service.

AIM

3. The aim of this instruction is to provide policy for the engagement of Reserve members who undertake to render CFTS.

DEFINITIONS

4. The definitions that are applicable to this instruction are:

- a. **Defence service.** Defence service means service, including training, by a Reserve member in a part of the Defence Force.
- b. **CFTS.** CFTS is Defence service rendered by Reserve members of a continuous nature whilst remaining members of the ADF Reserves. The member is entitled to the same remuneration and conditions of service, and subject to the same service obligations, laws, regulations and procedures as a Permanent Force member. CFTS may be compulsory, following a call-out of a part of the ADF to which the member belongs, or voluntary following the giving of an undertaking to render CFTS by the member and its acceptance by the Service Chief of the member. Voluntary CFTS is normally limited by time and relates to the fulfilment of a specific Service need in keeping with the Reserve member's skills, capabilities and qualifications.
- c. **Prohibited reason.** In relation to discrimination, a prohibited reason means a decision on the grounds that a person is rendering, has rendered or might in the future render Defence service.
- d. **Protected CFTS.** All CFTS following a call-out is protected Defence service. Voluntary CFTS is protected Defence service if the relevant Service Chief has requested the Reserve member to undertake voluntary CFTS as protected service, under the provisions of the *Defence Reserve Service (Protection) Act 2001*, section 12 and the Reserve member has undertaken to render the voluntary CFTS on a protected basis. A Reserve

member undertaking protected CFTS receives employment, partnership and education protection under the provisions of the *Defence Reserve Service (Protection) Act 2001*. Additional protections, detailed in annex A, apply to CFTS following a call-out.

- e. **Unprotected CFTS.** Voluntary CFTS is unprotected Defence service if the relevant Service Chief has not designated the service as protected service under the provisions of section 12 of the *Defence Reserve Service (Protection) Act 2001*. A Reserve member undertaking unprotected CFTS does not receive employment, partnership or education protection under the provisions of the *Defence Reserve Service (Protection) Act 2001*.
- f. **Service Chief.** Service Chief means the Chief of Navy, the Chief of Army, the Chief of Air Force or an officer (within the meaning of the *Defence Act 1903*) to whom a Service Chief has delegated, in writing, his or her powers and functions under the *Defence Reserve Service (Protection) Act 2001*.
- g. **Third parties.** Third parties includes a Reserve member's civilian employer, business partner(s) or Australian educational institution in which a Reserve member is enrolled.

ENGAGEMENT TO RENDER CONTINUOUS FULL-TIME SERVICE

5. Reserve members engaged to render CFTS are required to fulfil the standards for readiness and deploy ability applicable to the rank, trade and/or specialisation for which they are to be engaged.

6. The type and priority of engagement of Reserve members rendering CFTS is to be determined by the relevant Service Chief, as necessary and in accordance with Service requirements.

7. A Reserve member engaged to render CFTS (protected or unprotected) is subject to the same eligibility requirements for conditions of service and associated benefits as a Permanent or regular member for the period of the CFTS.

8. **Income tax.** In accordance with the *Income Tax Assessment Act 1997*, the salary (pay and salary related allowances) received by a Reserve member undertaking CFTS is subject to taxation as income.

9. **Transfer to the Permanent Forces.** If a Reserve member transfers to the Permanent component, that member is no longer entitled to the protections and benefits associated with protected CFTS as the member is no longer a Reserve member. In addition, the member's civil employer will cease to have any protection obligations and will not be entitled to any further payments under the ADF Reserves Employer Support Payment (ESP) Scheme.

10. **CFTS following receipt of a Special Benefit.** Personnel who have received a Special Benefit payment under the provisions of *Pay and Conditions Manual (PACMAN)*, chapter 10, part 2, as a result of being declared redundant; and who subsequently commence a further period of CFTS within one year of ceasing to be a member of the Permanent Forces, must repay the amount of the Special Benefit. The requirement to repay the Special Benefit may be waived if the period of CFTS is approved by the Minister.

CONTINUOUS FULL-TIME SERVICE FOLLOWING A CALL-OUT

11. In accordance with section 50D of the *Defence Act 1903* the Governor-General may, by publishing a written order in the *Commonwealth of Australia Gazette*, call-out for CFTS:

- a. the Reserves, or
- b. one or more of the following:
 - (1) a specified part or parts of the Reserves,

- (2) a specified class or classes of members in the Reserves,
- (3) a specified member or members of the Reserves.

12. CFTS following a call-out is compulsory for the part of the ADF Reserves to which the call-out order applies and is subject to the protections available under the *Defence Reserve Service (Protection) Act 2001*, which are summarised in annex A. The ESP is not paid to employers of members subject to a call-out order unless the Minister determines otherwise.

13. A member of the Reserves who is covered by a call-out order under section 50D is bound to render the period of CFTS that the Chief of the Defence Force (CDF) or relevant Service Chief directs in relation to the member.

14. The procedure for bringing a member of the ADF Reserves onto CFTS following a call-out order is as follows:

- a. the call-out order is issued by the Governor-General;
- b. the CDF or relevant Service Chief identifies the period of CFTS to be rendered by the Reserve member(s);
- c. the Service Chief notifies the relevant member(s) of the call-out, utilising the most appropriate and effective method of communication; and
- d. the Service Chief notifies any affected third party of the call-out order and the protections and obligations that apply, utilising the most appropriate and effective method of communication.

VOLUNTARY CONTINUOUS FULL-TIME SERVICE

15. Voluntary CFTS is unprotected Defence service unless designated otherwise by the relevant Service Chief. A flow diagram setting out the procedure to be followed for a Reserve member to undertake voluntary CFTS is provided in annex B. A number of CFTS example scenarios are detailed in annex C to provide guidance for the Service Chiefs when considering the protection status of a member for a period of proposed voluntary CFTS.

16. Voluntary CFTS can be initiated in one of two ways:

- a. a Service Chief may request a Reserve member to undertake voluntary CFTS either on a protected or unprotected basis for a period specified by the Service Chief; or
- b. a Reserve member may seek to undertake voluntary CFTS, on a protected or unprotected basis, for a period specified by the Reserve member.

17. Reserve members should discuss their intention to undertake CFTS with interested parties such as employers, business partners or educational institutions, at the earliest opportunity. Early discussions with third parties can simplify administration and minimise the likelihood of conflict between the Service, the Reserve member and third parties later in the process.

18. Once a member has given an undertaking to render voluntary CFTS and the undertaking has been accepted on behalf of the Service Chief, it is binding in the following ways:

- a. the Service is bound to engage the member in accordance with the undertaking given by the member and accepted by the Service; and
- b. the member is bound to render the service in accordance with the undertaking given by the member and accepted by the Service.

19. It must be recorded in writing whether the CFTS is offered on a protected or unprotected basis. There are significant consequences for members, employers, business partners, educational institutions and families, and for the respective Services.

Protected voluntary continuous full-time service

20. Service Chiefs are required by law to consider all of the factors set out in section 12(2) of the *Defence Reserve Service (Protection) Act 2001* in order to decide whether to request a Reserve member to undertake to render a period of voluntary CFTS on a protected basis. These factors are:

- a. The nature of the service to be rendered.
- b. The member's military and civil skills and capabilities.
- c. The current need of the Defence Force for the member's skills and capabilities.
- d. The effect that rendering the service might have on the member's employment and education (including the effect that it might have on third parties such as employers).
- e. Any other relevant matter.

21. When the voluntary CFTS is offered on a protected basis and the undertaking is given, the civilian employer or business partner(s) of the Reserve member or Australian educational institution in which the Reserve member is enrolled must provide the protections and benefits set out in the *Defence Reserve Service (Protection) Act 2001*. The protections and benefits associated with protected CFTS are in annex A.

Unprotected voluntary continuous full-time service

22. Should a Service Chief decide, based on the nature of the service to be rendered and the member's military and civil skills and capabilities, that there is no basis for the service to be protected, then the member may be requested to undertake to render voluntary CFTS on an unprotected basis. In these circumstances, there is no requirement to provide third parties with the opportunity to make a submission.

Formal request

23. Unless the Service Chief has determined that the service will be requested on an unprotected basis or urgency precludes doing so, the making of a formal request by a Service Chief for a Reserve member to render voluntary CFTS should only occur once the administrative process has been completed and all relevant factors, including third party objections, have been considered. Until a formal request by a Service Chief for a Reserve member to render voluntary CFTS is made, it should be made clear to all parties that the proposal to undertake to render voluntary CFTS is only tentative and is not binding. Reserve members should be advised to discuss any proposed period of voluntary CFTS with their employer, business partner or educational institution prior to giving any undertaking.

Third parties

24. Unless the Service Chief has determined that the service will be requested on an unprotected basis, third parties are to be given the opportunity to make a submission or raise objections to the Service Chief, whenever the Service need allows, prior to the authorising of voluntary CFTS.

25. In exceptional circumstances the urgency of the Service need may not permit time for the third parties to raise objections. These circumstances are most likely to involve high readiness Reserve members. Units are to ensure that employers of high readiness Reserve members are aware in advance that their Reserve employees may be required to deploy at short notice. Even if no opportunity can be given to the third party to raise objections, the third party is nonetheless to be informed of a decision to accept an undertaking to render CFTS.

26.If the Service Chief has determined that the service will be requested on an unprotected basis without requiring third party submissions or objections, the third party should, if appropriate, be informed of a decision to accept an undertaking to render CFTS.

27.Third party objections. In the event of an objection being raised by a third party to a Reserve member undertaking to render CFTS, the Service Chief must consider the objection in deciding whether or not to proceed to engage the member onto CFTS. In the event of no objection being raised or following consideration of any objection that has been raised, the Service Chief is to advise the third party that:

- a. the Service is proceeding with the engagement of the member to render CFTS and that the decision will be legally binding;
 - b. whether the service is to be undertaken on a protected or unprotected basis;
 - c. if the service is undertaken on a protected basis, the protections that must be afforded to the Reserve member by the third party;
 - d. if the third party is an employer or business partner, the employer or firm should consider making an application for financial support under the ADF Reserves ESP Scheme (if applicable);
 - e. the employer has the opportunity of making a representation to the Office of Reserve Service Protection or the Defence Ombudsman; and
- or**
- f. the Service is not proceeding with the engagement of the member to render CFTS.

28.CFTS does not proceed. Prior to the acceptance of an undertaking by the Service Chief, if a decision is made by the Service Chief not to proceed with a proposed period of engagement to render voluntary CFTS, the Reserve member and any relevant third party are to be advised of the outcome. Should the Reserve member subsequently decline the formal offer of engagement to render CFTS, the Service Chief is also to inform the third party of this outcome.

29.Problems with third parties. Under the *Defence Reserve Service (Protection) Act 2001*, it is unlawful for an employer or business partner to hinder an employee in their employment or fellow partner from rendering Defence service. Should an employer or third party refuse to release or otherwise seek to prevent a Reserve member from undertaking to render CFTS, the Reserve member should, in the first instance, advise the Service unit at which the Reserve member is to render CFTS or the relevant career management agency. The Service unit or career management agency is to attempt to resolve any differences with the employer. Should the unit or career management agency not be able to resolve the situation, further assistance is to be sought from the State Committee of the Defence Reserves Support Council (DRSC). DRSC State Committees can be contacted on telephone number 1800 803 485.

30.Issues that can not be resolved by the DRSC State Committee are to be passed to the Office of Reserve Service Protection (ORSP), within the Office of Head Reserve Policy. Regardless of the outcome, details of the issue are to be advised to the ORSP by the member's unit and the DRSC State Committee for recording purposes.

31.Form letters. To assist with notification, form letters to third parties are contained in the annexes to this instruction. The form letters contain the minimum information that should be provided to a third party. Where applicable, units or mounting headquarters should customise the standard letter to suit the particular circumstance. For example, a mounting headquarters seeking a large number of Reserve members for an overseas deployment might include additional information on the proposed deployment and the vital contribution that the Reserve members, through involvement in the deployment, will make to the national interest.

32.The form letters in annexes D to G respectively, are as follows:

- a. form letter to a third party advising of the intention to engage a Reserve member to render CFTS,
- b. form letter to a third party advising of the decision to engage a Reserve member to render CFTS without providing an opportunity for the third party to raise objections,
- c. form letter to a third party advising of a final decision to engage a Reserve member to render CFTS, and
- d. form letter to a third party advising of a final decision not to proceed with a proposed engagement of a Reserve member to render a period of CFTS.

Early termination

33. As detailed in paragraph 18, once an undertaking to render CFTS has been accepted it is binding on both the Service and the Reserve member. However, under certain circumstances, the engagement to render a period of CFTS may be terminated early.

34. **Service initiated.** A Service Chief may terminate a Reserve member's engagement to render on CFTS prior to the end of the agreed period of service under the following conditions:

- a. **Disciplinary.** A Reserve member's period of engagement to render CFTS will cease if the Reserve member is discharged for disciplinary reasons under the *Defence Force Discipline Act 1982*. If the CFTS was protected Defence service, the former Reserve member will still be entitled to employment, partnership and education protection covering the period of Defence service in accordance with the provisions of the *Defence Reserve Service (Protection) Act 2001*. Third parties with obligations under the Act should be informed of any early termination of CFTS due to disciplinary reasons.
- b. **Administrative.** A Reserve member's period of engagement to render CFTS will cease if the Reserve member is discharged for administrative reasons in accordance with single Service policy for administrative warnings and discharge. If the CFTS was protected Defence service, the former Reserve member will still be entitled to employment, partnership and education protection covering the period of Defence service in accordance with the provisions of the *Defence Reserve Service (Protection) Act 2001*. Third parties with obligations under the *Defence Reserve Service (Protection) Act 2001* should be informed of any early termination of CFTS due to administrative reasons.
- c. **Medical.** A Reserve member's period of engagement to render CFTS may be ceased if the Reserve member is determined to be medically unfit for further service in the ADF. If the CFTS was protected Defence service, the former Reserve member will still be entitled to employment, partnership and education protection covering the period of Defence service in accordance with the provisions of the *Defence Reserve Service (Protection) Act 2001*. Third parties with obligations under the *Defence Reserve Service (Protection) Act 2001* should be informed of any early termination of CFTS due to medical reasons. This does not affect any entitlement the member may have to compensation and rehabilitation under the *Safety, Rehabilitation and Compensation Act 1988* or the *Veteran's Entitlements Act 1986*.
- d. **Service reasons.** Should the Service wish to terminate a Reserve member's period of engagement to render CFTS early for any other reason, prior consent of the Reserve member and any third party who is subject to obligations under the *Defence Reserve Service (Protection) Act 2001* must be obtained.

35. **Member initiated.** A Reserve member may request early termination of an agreed period of engagement to render CFTS. The relevant Service Chief may accept or reject the request. Where there is a third party who is subject to obligations under the *Defence Reserve Service (Protection) Act 2001*, the prior consent of the third party must also be obtained.

36. Prior to undertaking any engagement to render CFTS the Reserve member is to be made aware of the nature of CFTS including the fact that they will be subject to the same disciplinary and administrative provisions as Permanent members. They are also to be advised of the circumstances under which early termination of CFTS may occur.

Administration

37. The administrative arrangements and Service specific requirements relating to the engagement to render CFTS are to be promulgated in separate Service instructions. The flow diagram in [annex B](#) provides the outline for administrative procedures.

38. **Delegation.** Service Chiefs may delegate any or all of the powers associated with the engagement of Reserve members to render a period of voluntary CFTS to any officer (within the meaning of the *Defence Act 1903*) within that Service by written instrument of delegation.

39. **Monitoring.** Service Chiefs are to put in place the necessary provisions to enable the accurate recording of the numbers of Reserve members within the respective Service that are engaged in CFTS, and whether that CFTS is protected or unprotected.

Annexes:

- A. Protections available in relation to Australian Defence Force Reserves
- B. Flow diagram for voluntary continuous full-time service applications
- C. Voluntary continuous full-time service examples
- D. Form letter to third parties advising of intention to engage member to render continuous full-time service
- E. Form letter to third parties advising of intention to engage member to render continuous full-time service without providing an opportunity for a third party to raise objections
- F. Form letter to third parties advising of final decision to engage member to render continuous full-time service
- G. Form letter to third parties advising of final decision not to engage member to render continuous full-time service

Sponsor: HRP

[Note: Annexes B to G have not been included]

DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

14 March 2003

Defence Instruction (General) Pers 05–33 is issued pursuant to section 9A of the *Defence Act 1903*.

R.C. SMITH, AO
Secretary

P.J. COSGROVE, AC, MC
General
Chief of the Defence Force

LIST B—ISSUE NO PERS B/3/2003

New instruction

PERS 05–33 *Engagement of members of the Australian Defence Force Reserves to render continuous full-time service*

Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 66–12
2. ARMY PERS 217–5
3. AIR FORCE PERS 24–20

PROTECTIONS AVAILABLE IN RELATION TO AUSTRALIAN DEFENCE FORCE RESERVES

PROTECTION

1. The *Defence Reserve Service (Protection) Act 2001* provides a range of protections to Reservists to ensure the re-entry of a Reservist into civilian employment, partnership or course of education following a period of protected service.

2. Table 1 outlines the various types of protection and benefits available and the corresponding type of service for which they apply.

Type of protection and benefits	Types of service for which respective protection or benefit applies
Employer Support Payment (ESP)	Following a qualifying period, for continuous Defence service in excess of five days (except for unprotected voluntary continuous full-time service (CFTS) ^(a) and CFTS following a call-out ^(b)).
Protection against discrimination	All kinds of Defence service.
Employment protection	All kinds of Defence service except for unprotected voluntary CFTS.
Partnership protection	All kinds of Defence service except for unprotected voluntary CFTS.
Education protection	Protected voluntary CFTS and CFTS following a call-out.
Financial liability protection	CFTS following a call-out.
Bankruptcy protection	CFTS following a call-out.
Loans and guarantees	CFTS following a call-out.

2. Notes

- (a) Voluntary CFTS that does not meet the guidelines for protected voluntary CFTS will be eligible for the ESP if the Reservist's employer enters into an undertaking to comply with the *Defence Reserve Service (Protection) Act 2001* as if the service rendered were protected.
- (b) The ESP may be paid in respect of CFTS following a call-out only if the Minister determines that it is to be paid.

3. Discrimination. Discrimination relates to employment, partnerships, commission agents, contractors and includes:

- a. The refusal to give work to a person for any prohibited reason or for reasons that include a prohibited reason.
- b. The dismissal of an employee, the changing of the terms and conditions of employment for an employee or the discrimination in the terms and conditions of employment for an employee for any prohibited reason or for reasons that include a prohibited reason.
- c. The refusal to offer, form or invite a partnership for a prohibited reason or for reasons that include a prohibited reason.

**COVERING MINUTE AND GUIDELINES FOR COMMANDERS,
COMMANDING OFFICERS AND CAREER MANAGEMENT AGENCIES
ENTITLED EMPLOYMENT OF RESERVISTS DATED JULY 2005**

Background

1. The *Defence Reserve Service (Protection) Act 2001* came into effect in April 2001. The purpose of the Act is "...to protect members of the Reserves in their employment and education, to facilitate their return to civilian life and for related purposes."
2. The Act includes anti-discrimination measures (Part 4), which apply to all kinds of Reserve service, that provide protection for Reservists from dismissal in employment or discrimination in the terms and conditions of that employment. The anti-discrimination measures also make it unlawful for an employer to "hinder or prevent a person [...] from rendering defence service."
3. The Office of Reserve Service Protection, within Reserve Policy Division, was established under the *Defence Reserve Service (Protection) Regulations 2001* to manage the provisions of the Protection Act. It has the responsibility to investigate and resolve complaints made under the Act, to monitor compliance with the Act and to make recommendations to the Minister for improving the Act.
4. The Protection Act has proven to be a highly effective tool for ensuring the release of Reservists for Defence service and for protecting the member's civilian employment and the terms and conditions of that employment.

Aim

5. This instruction aims to provide guidance to unit commanders on handling the issues associated with employing Reservists.
6. Consideration of these issues will help alleviate any perception that the power of the Protection Act is being used improperly by Defence and will help ensure the continued effectiveness of the legislation and the ongoing support of employers. It is not intended that consideration of these issues have any adverse effect on operational capability.

Civilian Employment

7. The majority of Reservists have civilian jobs that provide the main source of income to the member and his or her family.
8. Employers are obliged under the Act to release Reservists for all Defence service. However, it is also reasonable for them to expect their employees to be available to undertake the work for which they have been employed. In some cases, the absence of the Reservist

employee may have significant health and safety or other consequences. For example, the employer may have statutory responsibilities that are performed by the Reservist (eg if the Reservist is the only health inspector employed by a local council).

9. Most employers are favourably disposed to providing what they accept as the 'traditional' level of support to Reservists (generally about four weeks leave each year in the public sector and about two weeks each year in the private sector). With the increased use of Reservists by the ADF in recent years, employers are being required to release Reservists more often and for longer periods.

10. In some employment situations, it is difficult to release employees at specific times of the year (eg teachers) but varying the dates of the required service may make a significant difference. This is not the case in all employment situations. Generally, the longer the notice that is given, the greater the ability of the employer to make alternative arrangements to cover the Reservist's absence and to lessen the disruption in the workplace.

Reserve employment issues

11. With the increased use of Reservists by the ADF over recent years, some Reservists are volunteering for periods of Reserve service that if accepted by the Service may, on occasions, impose unreasonable demands on employers. Whilst an extended absence from a workplace to undertake an operational deployment, training course or Rifle Company Butterworth rotation is completely justifiable, it is more difficult to justify the requirement to an employer that they must release a Reservist employee (and protect his or her job and terms and conditions of employment) when:

- a. the Reservist has just completed a period of voluntary Continuous Full Time Service (CFTS) in the Q staff of one unit and then, within one month, volunteers for a further two years CFTS with a different unit;
- b. the Reservist has just completed a six week training course and volunteers for another training course immediately on completion of the first course;
- c. the Reservist has volunteered for inter-service sports (which is laudable but may cause the employer serious workplace difficulties);
- d. the Reservist wishes to undertake regular short periods of service in their Reserve posting (eg undertaking Reserve service for one day each week or fortnight).

12. There are circumstances where the requirement for such Reserve service may be justified. However, there are also cases where it would arguably be inappropriate to impose such an obligation on an employer. Unless the ADF is sensible in how it utilises the power of the Protection Act, Defence risks provoking a backlash from employers and calls for changes to the legislation. This applies particularly to cases where Reservists undertake repeated periods of Defence training within a single year or undertake extended periods of voluntary CFTS.

13. Operational deployments, exercises, essential training and promotion courses, and employment on CFTS to meet important Defence requirements are all reasonable uses of Reservists. However, unit commanders need to be mindful of the potential impact of the Reservist's absence on the civilian employer when requesting the Reservist undertake an extended period of Reserve duty, especially if this involves multiple periods of duty within a limited time period.

14. The Employer Support Payment (ESP) Scheme is a highly effective mechanism in reducing the impact of a Reservist's absence from a business. However, the impact is not always a matter of money. Sometimes problems arise through the loss of key personnel or through reduced manning at peak periods. The ESP is also not always payable (for example, continued absences that are each less than five days in duration).

Guidelines

15. Reservists should be encouraged to advise their employers of their Reserve commitments as early as possible, in order to provide maximum notice. Unit commanders should seek to ensure that, whenever possible, Reservists are themselves given maximum warning time. Defence has previously undertaken, whenever possible, to provide to an employer, through the Reservist, at least three months notice in writing of a requirement for a Reservist to undertake Defence service.

16. Any decision to employ a Reservist above the 'traditional' level of support (generally about four weeks each year in the public sector and about two weeks in the private sector) should prompt consideration:

- a. as to whether the service is required (in many cases, such as operational deployments, exercises and training/promotion courses, the requirement may be clearly evident); and
- b. as to what impact the absence of the Reservist on Reserve duty might have on the civilian employer.

17. Where an individual Reservist volunteers for repeated periods of service/training in a single year, it would be appropriate that the Reservist be required to consider the impact of the proposed service on their civilian employer. The member should be required to speak with their employer and negotiate an arrangement to reduce the impact of their anticipated absence. Unfortunately this does not always occur.

18. A Reservist should discuss the business and employment implications of any proposed period of CFTS with their civilian employer, before signing an agreement with Defence to undertake such service. The Reservist may be asked to confirm that they have discussed the decision with their employer and that the employer is fully aware of all the relevant implications of the period of service including employment protection issues and availability of Employer Support Payments.

19. Should a unit commander become aware of an employer's concerns, the unit commander should seek to identify the nature of those concerns and whether they can be accommodated. Many concerns can be resolved through simple mechanisms, such as seeking alternative dates for training. Providing alternative dates often alleviates the employer's major concerns, whilst having no impact on Defence or unit capability.

For example, Basic Recruit Training for ARES members can be a particularly onerous burden on employers as the employee is generally released for a continuous period of six weeks. Defence Recruiting and units have confirmed that there is generally no significant impact whether a recruit completes the training immediately or up to four to six weeks later. Rescheduling can often have a significant impact on the operations of a business, especially if the business is temporarily short staffed or during peak business periods.

20. Where local employers have a large number of Reservists in their workforce, unit commanders (particularly in regional areas) are encouraged to meet with these employers and discuss Reserve employment issues. This would provide the unit commander with a better insight into the concerns of the employer and, in turn, provide an opportunity to highlight the benefits of supporting the Reserves.

21. Unit commanders might consider these factors when allocating training days to Reservists within their unit. Failure to provide due consideration to such factors might lend weight to any complaint by an employer regarding the release of their Reservist employee. Legitimate consideration of such issues by the unit would significantly counter any such complaint.

22. Where an employer has concerns with the release of a Reservist for a particular period of service they may initially approach the unit POC if they have one, or else they may contact either their state office of the Defence Reserve Support Council (DRSC) or the ORSP directly.

23. When approached by an employer with concerns regarding the release of a Reservist for a particular period of service, the unit, formation or career management agency should:

- i. Treat the concern as reasonable and legitimate;
- ii. Respond to and address the concerns in a timely and effective manner;
- iii. Explore and consider simple alternative arrangements, where these exist, to the period in question;
- iv. Notify the employer when a particular concern cannot be accommodated, and provide contact details for the ORSP;

Conclusion

24. This guidance is not intended to hinder unit commanders from employing Reservists to maintain operational capability and the effectiveness and efficiency of their units.

25. It is intended to show that the ADF is conscious of the impact that Reserve service has on employers and thus ensure the ongoing effectiveness of the *Defence Reserve Service (Protection) Act 2001* and the continuing support of employers.

**ANNEXURE F
TO PROTECTION
REVIEW REPORT
DATED JUNE 2008**

**PROPOSED DRAFT DEFENCE INSTRUCTION GENERAL ENTITLED
ENGAGEMENT AND SUPPORT OF MEMBERS OF THE AUSTRALIAN
DEFENCE FORCE RESERVES WHEN RENDERING CONTINUOUS FULL-TIME
SERVICE OR PERIODS OF CONTINUOUS DEFENCE SERVICE EXCEEDING 28
DAYS**

INTRODUCTION

1. The Australian Defence Force (ADF) routinely engages reservists to render continuous full-time service (CFTS)¹ to satisfy the requirements of the individual Services. This can be done in a number of ways, namely through call-out², through call-for³, or Service Chiefs may authorise a reservist to undertake CFTS⁴ on a voluntary basis. The ADF also employs reservists on periods of continuous defence service. Continuous defence service may on occasions exceed 28 days and may on occasion be of substantial duration.
2. To assist reservists in rendering Defence service, including CFTS, the Defence Reserve Service (Protection) Act 2001 (the Act) came into effect in April 2001 "...to protect members of the Reserves in their employment and education, to facilitate their return to civilian life and for related purposes."
3. While the Act has proven to be a highly effective in ensuring the release of reservists for Defence service, and for protecting the terms and conditions of the reservist's civil employment, supportive employers, partners and educational institutions are vital to maintaining an effective and available Reserve. If a reservist is to be considered or selected for CFTS or for periods of continuous defence service exceeding 28 days, it is essential that the process of notification and feedback set out in this instruction is followed.
4. The Act gives extensive protection to reservists and renders employers and others liable for significant penalties if the provisions of the Act are not complied with. Adoption of the correct procedures will alleviate any perception that the authority of the Act is being used excessively by Defence and will help in ensuring the ongoing support of employers. Adoption of proper procedures will not have any adverse effect on operational capability.

¹ CFTS is Defence service rendered by Reserve members of a continuous nature whilst remaining members of the ADF Reserve. The member is entitled to the same conditions of service, and subject to the same service obligations, laws, regulations and procedures as Permanent Force members. Continuous defence service, other than CFTS, is rendered pursuant to the conditions of service of the Reserve member.

² Under subsection 50D(1) of the *Defence Act 1903* the Governor General may call out all or part of the ADF Reserves for CFTS.

³ Under provisions still to be determined.

⁴ Under subsection 32A(3) of the *Naval Defence Act 1910*, subsection 50(3) of the *Defence Act 1903* or subsection 4J(3) of the *Air Force Act 1923*.

AIM

5. The aim of this instruction is to provide policy guidance on the engagement and support of reservists when undertaking CFTS or continuous defence service exceeding 28 days.

ISSUES RELATING TO UNDERTAKING CONTINUOUS FULL–TIME SERVICE OR CONTINUOUS DEFENCE SERVICE EXCEEDING 28 DAYS

6. Employers are obliged under the Act to release reservists for all Defence service. However, it is also reasonable for them to expect their employees to be available to undertake the work for which they have been employed and to expect reasonable notice when their employees will not be available for their civil employment because of defence service. Employers have businesses and workplaces to conduct and need to know well in advance whether and when their employees will be available to undertake their civil employment duties. Most employers are favourably disposed to the provision of what they perceive as the 'traditional' level of support to reservists, generally about four weeks leave each year in the public sector and about two weeks each year in the private sector. However, with the increased use of reservists in recent years, employers are now being required to release reservists more often and for longer periods.

7. The decision to engage a reservist on CFTS or for periods of continuous defence service exceeding 28 days is to be determined by the relevant Service Chief or delegate, as necessary and in accordance with Service requirements and administrative procedures.⁵

8. **Protection of Service.** All Reserve service, including CFTS, is protected service under the provisions of the Act. However, if a reservist transfers to the Permanent component, the reservist ceases to be entitled to the protections found in the Act, as they are only available to Reserve members.

9. **Access to the Employer Support Payment Scheme.** When reservist undertakes CFTS or periods of continuous defence service exceeding 10 days in any one year, the reservist's employer, or the reservist if self-employed, will be eligible to apply for payments under the ADF Employer Support Payment Scheme, or ESP⁶. If a reservist transfers to the Permanent component, the reservist's employer (or the reservist if self-employed) will no longer be eligible for payment of the ESP as the ESP is only available to the employers of Reserve members or to reservists, if self-employed.

⁵ Detailed administrative guidance for undertaking CFTS can be found in DI(A) PERS***, DI(N) PERS ** and DI(AF) PERS **.

⁶ Detailed guidance on the ESP can be found at DI(G) PERS **.

PREPARING FOR CFTS OR CONTINUOUS DEFENCE SERVICE

10. **Period of Notification.** Reservists should receive as much notice as possible of the opportunity to undertake CFTS or Continuous Defence Service exceeding 28 days. The length of notice that can be given will vary with the situation. In some cases, members may have up to 12 months notice while others will have only 24 hours or less. Where reservists have employers or partners or are students, notice of the date of commencement and period of prospective continuous defence service exceeding 28 days should be given to the reservist so as to permit a minimum of four weeks notice to be given by the reservist to the employer or partner or to the educational institution. In the case of members of the high readiness reserves, employers may have agreed to a shorter minimum period of notice before CFTS or continuous defence service exceeding 28 days is commenced. Nonetheless, it is desirable, if the circumstances permit, for as much notice as possible to be given to employers.

11. **Notification to Employers, Partners or Educational Institutions.** It is essential that employers, partners and educational institutions (*third parties*) have as much notice as possible of a period of continuous defence service, or the potential for a period of CFTS or continuous defence service exceeding 28 days. If CFTS or continuous defence service exceeding 28 days is a possibility and even if it has not been decided whether the service will be offered to the reservist, the reservist must/should where possible give at least four weeks notice to the third party that CFTS or continuous defence service is a possibility.

12. Whilst a reservist may not have a specific date for deployment or commencement of a period of CFTS or continuous defence service, the reservist should inform the third party of the possibility of undertaking CFTS or continuous defence service. Such information simplifies administration and minimise the possibility of conflict between the Service, the Reserve member and the third party. Importantly, it permits the third party to make other arrangements to cover the absence of the reservist. There is nothing more likely to adversely affect the goodwill of an employer towards the ADF than short notice of the pending absence of a key employee from the workplace particularly if the short notice was avoidable.

13. A notice period of four weeks will usually allow a third party to make other arrangements to cover the member's absence. However, wherever possible, three months or more notice should be given by the reservist to the third party.

14. **Member responsibilities.** Members of the Reserve who have employers, partners or who attend an educational institution should, as a matter of course, discuss their Reserve commitments with the affected third parties, so as to ensure that the third parties understand their obligations to the reservist and the support available from Defence for all forms of Defence service, including CFTS and continuous defence service. Employers should be made aware of their right to seek payment of the ADF Employer Support Payment upon completion by the reservist of the annual qualifying period of service.

15. **Service responsibilities.** Service Chiefs and their delegates are required by law to consider the factors set out in the Protection Act before deciding to request a Reserve

member to undertake to render a period of voluntary CFTS or continuous defence service exceeding 28 days. These factors are:

- a. The nature of the service to be rendered.
- b. The member's military and civil skills and capabilities.
- c. The current need of the Defence Force for the member's skills and capabilities.
- d. The effect that rendering the service might have on the member's employment and education (including the effect that it might have on third parties such as employers).
- e. Any other relevant matter.

16. **Responsibilities of Employers, Partners or Educational Institutions.** When reserve service is undertaken (and whether or not the service is CFTS), the employer or partner of the reservist or educational institution in which the reservist is enrolled, must provide the protections set out in the Protection Act. These protections are summarised at Annex A.

17. **Formal request.** Unless urgency precludes the Service Chief or delegate from doing so, the giving of an undertaking by a reservist to render CFTS or a decision to require a reservist to render continuous defence service exceeding 28 days should only occur once the administrative process has been completed, including consideration of any third party objection.

18. Until an undertaking has been given by a reservist to render CFTS or a decision made to require a reservist to render continuous defence service exceeding 28 days, it should be made clear to all concerned that the proposal is only preliminary and is not binding. Reservists should be advised to discuss any proposed period of CFTS or continuous defence service with their employer, business partner or educational institution prior to giving any undertaking.

19. **Submission by Third Parties.** Third parties are to be given the opportunity to make a submission or to raise objections to the Service Chief or delegate, whenever the Service need allows, prior to the authorising of CFTS or continuous defence service exceeding 28 days.

20. In exceptional circumstances the urgency of the Service need may not permit time for the third parties to raise objections. These circumstances are most likely to involve High Readiness Reserve (HRR) members. Therefore, units are to ensure that employers of HRR members are informed in advance that their Reserve employees may be required to deploy at short notice. Even if no opportunity can be given to the third party to raise an objection, the third party is nonetheless to be informed as early as possible of a decision to accept an undertaking to render CFTS or to require continuous defence service exceeding 28 days.

21. **Third party objections.** In the event of an objection being raised by a third party to a Reserve member undertaking CFTS or rendering continuous defence service exceeding 28

days, the Service Chief or delegate must consider the objection in deciding whether or not to proceed to engage the member onto CFTS or to require the member to render continuous defence service exceeding 28 days.

22. Following Consideration of Objections. In the event that no objection is raised or following consideration of any objection that has been raised, the Service Chief or delegate is to advise the third party that:

- a. the Service is proceeding with the engagement of the member to render CFTS and that the decision will be legally binding; or that the member has been required to render continuous defence service exceeding 28 days;
- c. there are protections that must be afforded to the reservist by the third party;
- d. if the third party is an employer or business partner, the employer or firm should consider making an application for financial support under the ADF Reserves ESP Scheme (as applicable); or
- e. the Service is not proceeding with the engagement of the member to render CFTS or to require the member to render continuous defence service exceeding 28 days.

23. CFTS or Continuous Defence Service exceeding 28 days does not proceed.

Prior to the acceptance of an undertaking by the Service Chief or delegate, if a decision is made by the Service Chief not to proceed with a proposed period of engagement to render CFTS or if the member is not to be required to render continuous defence service exceeding 28 days, the reservist and any relevant third party are to be advised of the outcome. Should the reservist subsequently decline the formal offer of engagement to render CFTS or a decision be made not to require the reservist to render continuous defence service exceeding 29 days, the Service Chief is also to inform the third party of this outcome.

24. Problems with third parties. Under the Act, it is unlawful for an employer or business partner to hinder an employee in their employment or fellow partner from rendering Defence service. Should an employer or third party refuse to release or otherwise seek to prevent reservist from undertaking to render Defence service, the reservist has the right to make a formal complaint to the Director of the Office of Reserve Service Protection (DORSP). However, before taking this action the member is required to follow a stepped approach to resolving the situation.

25. At all times DORSP is to be kept informed of the situation and of its status. However, DORSP may decide to dispense with some or all of the steps. In these cases DORSP will instruct the appropriate Defence Reserves Support (DRS) Office of the steps to be followed. Assistance from the State Committee of the Defence Reserves Support Council (DRSC) is only to be sought following agreement by DORSP. DRS State or regional offices can be contacted on 1800 803 485.

26. **Notification to Third Parties.** To assist with third party notification, standard form letters are contained in the annexes to this instruction. These letters contain the minimum information that should be provided to a third party. Where applicable, units or mounting headquarters should customise the standard letter to suit the particular circumstance. For example, a mounting headquarters seeking a large number of Reserve members for an overseas deployment would ordinarily include additional information on the proposed deployment and the vital contribution that reservists, through involvement in the deployment, will make to the national interest.

27. The standard form letters in Annexes B to E respectively, are as follows:

- a. a letter to a third party advising of the intention to engage a reservist to render CFTS, or continuous defence service exceeding 28 days;
- b. a letter to a third party advising of the decision to engage a reservist to render CFTS or continuous defence service exceeding 28 days without providing an opportunity for the third party to raise objections,
- c. a letter to a third party advising of a final decision to engage a reservist to render CFTS or continuous defence service exceeding 28 days; and
- d. a letter to a third party advising of a final decision not to proceed with a proposed engagement of a reservist to render a period of CFTS or continuous defence service exceeding 28 days.

28. **Feedback and Communication with Third Parties.** During CFTS or continuous defence service exceeding 28 days, particularly service which extends over a period of 3 months, it is essential that there be planned and regular feedback to third parties. This can be accomplished by newsletters, email updates, web-based publication, periodic briefings or personal contact. At the conclusion of CFTS or continuous defence service, a statement of service and attainment should be provided to the third party advising of the nature of service completed and the attainments of the reservist. Third parties need a clear line of communication to a senior service authority during the CFTS or continuous defence service exceeding 28 days, so that if any issues can be clarified as early as possible. Third parties should be advised of the support available from DRSC regional offices and provided with the brochures relating to employer support published by the DRSC. Third parties should be encouraged to visit deployed reservists whenever possible through programs such as BOSSLIFT. Visits by employers to defence facilities and activities and participation in programs such as EXECUTIVE STRETCH are also to be encouraged. Recognition of supportive employers can do much to enhance employer goodwill and strengthen support of reservists.

29. **Guidance to Commanders, Commanding Officers and Career Management Agencies.** The following guidance is given to Commanders, Commanding Officers and Career Management Agencies in dealing with employers.

- reservists should be encouraged to advise their employers of their reserve commitments as early as possible in order to provide maximum notice;
- consideration should be given as to whether the defence service above four weeks a year in the public sector, and two weeks a year in the private sector, is required and as to the impact that the absence of the reservist on defence service might have on the civilian employer;
- where an individual reservist volunteers for repeated period of defence service in a single year, consideration should be given as to the impact of the proposed service on the employer;
- reservists should discuss the business and employment implications of proposed periods of CFTS with their employers, and inform employers of employment protection issues and the availability of the ADF Employer Support Payment Scheme;
- when advised of an employer's concerns, a unit commander should seek to identify the nature of those concerns and whether they can be accommodated;
- many concerns can be resolved through simple mechanisms, such as seeking alternative dates for training;
- where local employers have a large number of reservists in their workforce, unit commanders (particularly in regional areas) should meet with these employers and discuss reserve employment issues;
- where employers have concerns with the release of a reservist for a particular period of service, they may approach the unit POC, the State office of the DRSC or ORSP.

30. When approached by a third party with concerns about the release of a reservist for a period of service, the unit, formation or higher commander or career management agency should -

- a. treat the concern as reasonable and legitimate;
- b. respond to and address the concerns in a timely and effective manner;
- c. explore and consider simple alternatives arrangements, where they exist, to the period in question;
- d. notify the third party when a particular concern cannot be accommodated; and
- e. seek assistance from DRSC regional officers and ORSP if it appears that the third party's concerns cannot be accommodated.

31. **Early termination.** Once an undertaking to render CFTS has been accepted it is binding on both the Service and the reservist. However, under certain circumstances, an engagement to render a period of CFTS may be terminated early. A Service Chief may terminate a reservist's engagement to render on CFTS prior to the end of the agreed period of service for disciplinary, administrative, medical, Service or member initiated reasons. In addition, a reservist's period of engagement to render CFTS may be ceased if the reservist is determined to be medically unfit for further service in the ADF.

32. A former reservist will still be entitled to employment, partnership and education protection covering the period of Defence service in accordance with the provisions of the Act. Third parties with obligations under the Act should be informed as early as possible of

any early termination of CFTS due to medical reasons. This does not affect any entitlement the member may have to compensation and rehabilitation under the *Safety, Rehabilitation and Compensation Act 1988* or the *Veteran's Entitlements Act 1986*.

Administration

33. The administrative arrangements and Service specific requirements relating to an engagement to render CFTS and to continuous defence service exceeding 28 days are promulgated in separate Service instructions and should be read in conjunction with this instruction.

IMPLEMENTATION DUTIES AND COMMUNICATION RESPONSIBILITIES

Implementation Responsibilities

1. The following personnel within the Reserve and Employer Support Division will have carriage of the implementation of the amendments to the Defence Reserve Service (Protection) Act 2001 and protection enhancement

- Head, Reserve and Employer Support Division – Overall responsibility for the implementation of the amendments following enactment and for the protection enhancements.
- Chief of Staff – Allocation of tasks and practical supervision concerning the introduction of the amendments and protection enhancements.
- Executive Director, Plans and Policy – Develop plan and coordinate implementation
- Director, ORSP – Implementation of communications strategy in conjunction with Director of Communications
- Deputy Director, ORSP – Support Director with implementation of communications strategy
- Assistant Director, ORSP – Develop and implement a training plan and materials for State Liaison Officers, update all relevant written ORSP material and the RESD Website and administratively support the communications strategy
- Director, Reserve Support – Co-ordinate DRS offices/DRSC to effectively engage with employer groups as per communications strategy

Communication Requirements

2. This Communication Strategy outlines the campaign and information dissemination process to inform all reservists, employers of reservists, ADO, business associations, industry, union bodies, community and other stakeholders of the outcomes and recommendations once the Review Report has been endorsed by Government.

Objectives

The communication objectives will inform, establish and generate or strengthen knowledge of the changes to the amended *Defence Reserves Service (Protection) Act* and the *Defence Reserve Service (Protection) Regulations* and protection enhancements.

This Communication Strategy will also complement the current Reserve and Employer Support Division (RESD) Communication Plan and where applicable, current RESD media stories and campaign advertising should include mention of the outcomes and recommendations of the Review. This will assist in reinforcing current RESD key messages of:

The benefits of employing a Reservist;

- Perceptions about the roles that Reservists play in the Defence Force;
- Encourage employers and Reservists to utilise the services that Reserve Policy has available;
- Improve employers' awareness that they may be entitled to ESP payments in respect of their employees' absences on Defence service;
- Inform employers, Reservists and the general community, about their obligations in relation to the Defence Reserve Service (Protection) Act 2001; and
- Increase employer involvement in key RESD programs, including BOSSLIFT and Exercise EXECUTIVE STRETCH.

Target Audiences

To ensure the widest possible dissemination of the amendments to the Act and protection enhancements, communications will target the following audiences, but will not be limited to these groups or individuals.

- Employers of Reservists (public and private sector)
- Reservists (including self-employed)
- Uniform and civilian members of the Department of Defence (all ADO)
- Employers of potential Reservists
- Business organisations, peak bodies, industry, unions and community groups
- DRS State Offices
- Defence Force Recruiting
- Defence associations including the Returned Services League and Defence Reserves Associations
- Overseas Defence partners
- Families of Reservists and potential Reservists
- The general community
- Intermediaries - individuals or organisations that can influence the target audiences
- Ministers, particularly the Parliamentary Secretary
- Chief and Vice Chief of the Defence Force
- Chiefs of Navy, Army and Air Force
- Head and Deputy Head of Reserve Policy
- Directors-General and Directors Reserve of Navy, Army and Air Force
- Defence Reserves Support Council (National Council and state committees)
- The media

Key Messages

The following key messages will form the talking points for forums/focus groups/media/Q & A sheets and other communication announcements:

[the key messages will be formulated following the passage of amendments to the Protection Act and approval of protection enhancements]

Communication Mix

The suggested communication mix will inform all Reservists, Employers of Reservists, ADO, business associations, industry, union bodies, community and other interested parties of the amendments to the Protection Act and protection enhancements once endorsed by Government.

Website. The key tool will be a web page within the Defence Reserves website. The website must be updated and contain all the relevant information as all other forms of communication will have a link back to this website for further information. This web page or pages will contain a background of the Review, outcomes and Government recommendations, media releases (including a story in RESD E-News with a link back to ORSP page), Q and As, updated ORSP brochure (downloadable), updated information in Employer Handbook (also downloadable), a PDF of the final new ACT and Regulations and contact/further information details (email only – specific email box created).

Defgram. Released by Head Reserve and Employer Support Division, MAJGEN Greg Melick, announcing the final Government decision and outcomes. Will have a link for further information and details back to our website.

Media articles should be developed for:

- three Service Papers
- specifically identified newspapers (including community) particularly where consultation has occurred with the Review Panel
- industry magazines (in line with RESD advertising campaign eg HR Monthly and other Defence magazines – Defence Journal, Defence Magazine, The Australian Reservist etc), and business, union and consulted industry newsletters.

Individual letters to Reservists, Reservist employers, DRSC and Reserve organisations, community groups and international audience/partners originally consulted in USA, Canada and UK.

Face to face meetings/road show to same towns/places around Australia where original consultation was held and with same groups. A presentation needs to be developed for this and produced on CD for dissemination at all venues for interested parties to take away. This CD presentation should be sent to overseas international partners. Ads and posters will need to be developed with stories in the three Services papers, prior to events. Groups originally included, but were not limited to, Reservists, Reservist employers and prospective employers of Reservists, Defence Force Recruiting (DFR), DRSC, industry, business organisations and employers groups (AIG, AIM, Farmers Federation, AFP, State and Territory Police and Emergency Services etc), Defence organisations (RSL, Units, ADI, ADO etc), the three Services, community groups, and universities and student groups. (Also look at what upcoming conferences we are associated with or could be beneficial for a representative to present at (eg Australian Defence Industry Conference).

Talking points and issues management protocols will be developed to enable the Parliamentary Secretary to the Minister for Defence and nominated Defence spokespeople to

respond to inquiries related to media releases/alerts. Spokespeople will be identified and if necessary given media training.

RESD Communication team will liaise with Executive Officer, Plans and Policy to identify key milestones, determinate changes and other opportunities to promote the outcomes and Government recommendations.

Information will be provided to Parliamentary Secretary's staff to enable them to draw on that information during media and public engagements.

Project Management

RESD Communications Team will manage this communication strategy in conjunction with DORSP and with support of the Defence Public Affairs where necessary.

Training Implications

3. ORSP staff will need to prepare training material and implement a training program primarily for DRS Liaison Officers. These Liaison Officers will then be the main conduit for further dissemination of the Amendment to the employers groups and the Reserve in their State.

Resource Implications

4. Budget - It is estimated that the RESD will need to budget a sum of \$100,000* for the communications strategy and training associated with the implementation of the Amendment. This will include any additional Reserve salaries, travel and accommodation, hospitality and venue hire for road show, design and printing of information brochures, web design and training material.