



Defence Youth Safety Fact Sheet

ADF Cadets and Volunteer Status

Introduction

While Defence has always considered Officers of Cadets (OOC) and Instructors of Cadets (IOC) to be volunteers, the historical use of terminology such as 'staff' and 'appointments', as well as the financial benefits afforded to OOC and IOC, may be perceived by some as being an indication of, or otherwise giving rise to, an employment arrangement with the Crown or the Commonwealth. Recent amendments to the *Defence Act 1903* (Defence Act), which took effect on 1 July 2016, have eliminated any ambiguity regarding the volunteer status of OOC and IOC.

Volunteer status

Any doubt concerning the volunteer status of OOC and IOC has been removed through a number of new provisions in the amended Defence Act, including:

- section 62, which states that the Australian Navy/Army/Air Force Cadets comprise persons who have **volunteered** and been accepted by the Chief of the Defence Force (CDF) as officers, instructors or cadets;
- section 62C, which states that 'a cadet is not a member of the Defence Force', and 'a person with a role of administering, managing, supervising or training cadets does not become a member of the Defence Force because of that role'; and
- section 62D, which states that 'no civil contract of any kind is created with the Crown or the Commonwealth in connection with the acceptance of a person as an officer, instructor or cadet in the Cadets'.

The new provisions emphasise that OOC and IOC are volunteers who are accepted by Defence to participate in cadet activities. Defence's acceptance of their participation may be cancelled at any time in accordance with Defence Policy. This also means that the parts of the Cadet Forces Regulation 2013 (the Regulation) which deal with the appointment and discharge of OOC and IOC are now inconsistent with the provisions in the Defence Act, and have therefore ceased to have effect. The Regulations are in the process of being repealed.

Payments to volunteers

Previously, OOC and IOC received benefits under section 58B of the Defence Act. Under the new arrangements from 1 July 2016, the CDF, as the administrator of ADF Cadets, makes determinations that provide for the payment of amounts and reimbursement of expenses incurred by OOC and IOC.

It has never been intended that payments to OOC and IOC constitute remuneration in the same way that an employee receives remuneration. Rather, the payments have the following purposes:

- to recognise that the ADF Cadets is a youth development program facilitated by volunteers and funded as a partnership between Defence and the community;





- to provide OOC and IOC with an honorarium for the training, instruction and administration of cadets, as an acknowledgement of the Defence and community partnership;
- to ensure that OOC and IOC are able to seek reimbursement for out of pocket expenses associated with their cadet activities;
- to encourage the OOC and IOC to share their knowledge; and
- to recognise the valuable contribution made by OOC and IOC.

Further, the payments to OOC and IOC cannot be regarded as remuneration because the payments are not made automatically. Individuals must apply for the payments monthly for participation in approved activities up to a maximum of 48 days per annum, except in special circumstances.

Treatment by other legislation

The *Public Governance, Performance and Accountability Act 2013* and associated regulations and rules, do not recognise OOC or IOC as Commonwealth Officials. However:

- OOC and IOC are deemed to be 'workers' for the purposes of the *Work Health and Safety Act 2011* (WHS Act), and Defence is deemed to be the 'employing' authority;
- the *Military Rehabilitation and Compensation Act 2004* (MRC Act) makes provision for the compensation of OOC and IOC for injuries and illnesses incurred in connection with cadet activities even though OOC and IOC are not members of the ADF; and
- payments received by OOC and IOC are regarded as assessable income by the Australian Taxation Office.

Importantly, the different treatment in each of the above legislation does not change the position of OOC and IOC as volunteers under the Defence Act.

Defence, in recognition of its responsibilities to the community, has made the policy decision that OOC and IOC should be declared as 'workers' under the WHS Act, and be provided with compensation under the MRC Act. This ensures that OOC and IOC are protected under these two Acts in relation to their cadet activities. Similarly, the treatment of ADF Cadets payments as assessable income for taxation purposes simply means that payments may be considered as taxable income depending on each individual's specific financial circumstances.

In addition, when applying for working with children checks, OOC and IOC should identify themselves as volunteers on the application form. Some States/Territories may choose to treat OOC and IOC as employees for the purpose of these checks, due to the fact that OOC and IOC receive payments from Defence. Again, this does not indicate that OOC and IOC have an employment relationship with the Crown or the Commonwealth, but rather is used by a particular State or Territory to determine whether individuals should pay for working with children checks in that State or Territory.

Further information

This guidance has been prepared with the assistance of Defence Legal. If you have any further questions, please contact the Youth Directorate: defence.youth@defence.gov.au

