

Reporting abuse in Defence – Reparation payment

Frequently Asked Questions

The Office of the Commonwealth Ombudsman (the Office), within its Defence Force Ombudsman jurisdiction, provides an independent, external and impartial mechanism for people to report historical and contemporary serious abuse in the Australian Defence Force (Defence). One of the responses which may, in some circumstances, be available to a reportee is for the Ombudsman to recommend to Defence it make a reparation payment.

Our Frequently Asked Questions aim to assist reportees, or individuals acting on behalf of reportees, to engage with our Office and understand the options available to them. We invite you to email us at defenceforce.ombudsman@ombudsman.gov.au with any questions that are not addressed below.

Overview	3
What is a reparation payment?	3
When may the Ombudsman recommend a reparation payment?	3
What are the ‘most serious forms of abuse’?.....	4
What is an ‘unlawful interference with a person accompanied by an element of indecency’?	4
In what circumstances might the Ombudsman recommend a payment to acknowledge that Defence did not respond appropriately?.....	4
Why are reparation payments only available in relation to abuse which occurred prior to 30 June 2014?	4
What if the abuse I have reported happened on or after 30 June 2014?	5
Applications.....	5
Who can apply for a reparation payment?.....	5
How can I apply for a reparation payment?	5
Can another person apply on my behalf?.....	5
I have already given all my information to my Liaison Officer, do I have to re-write it to complete a statutory declaration?	5
My report of serious abuse has already been accepted by the Ombudsman. Do I need to provide the information again?	5
Is there a cut-off date to apply for a reparation payment?.....	6
Can family members of deceased persons who were allegedly abused in Defence, apply for a reparation payment?	6
Process	6
How long will it take to process my application for a reparation payment?.....	6
Will I have an opportunity to comment before the Ombudsman makes a recommendation?	6
Do I have to provide further information or comment?	6

If I do wish to provide further information or comment, how do I provide it?.....	6
Am I able to appeal or seek review of any final reparation payment recommendation?.....	7
How will a reparation payment be made?	7
Effect of a payment.....	7
How will a reparation payment affect my legal rights?.....	7
I have already received a payment in civil proceedings for abuse I suffered at Defence. Can I still apply for a reparation payment?	7
Will a reparation payment affect my Centrelink or Department of Veterans’ Affairs (DVA) entitlements?.....	7
Will a reparation payment be subject to cost recovery for Government health servicing?	8
Will a reparation payment be tax exempt?	8
Interaction with other similar payment schemes.....	8
I received money from the Defence Abuse Response Taskforce (DART). Can I receive another payment from the Ombudsman?	8
If I receive a reparation payment from Defence as a result of a recommendation from the Defence Force Ombudsman, how would this affect the outcomes I could access from the National Redress Scheme arising from the Royal Commission into Institutional Responses to Child Sexual Abuse? .	10
How might payments I have received through any other schemes affect a reparation payment? .	10
Need more information?	10

Overview

From 1 December 2016, our Office's role expanded to include an abuse reporting function for serving and former Defence members and civilians deployed on operations. This function provides a confidential mechanism to report sexual abuse, serious physical abuse and serious bullying and harassment within Defence, for those who feel unable to access Defence's internal mechanisms.

On 15 December 2017, the Australian Government announced it had given the Ombudsman the additional function of recommending to Defence it make reparation payments in certain circumstances.

What is a reparation payment?

A reparation payment is a payment to a person, made by Defence on behalf of the Australian Government, in acknowledgement that the most serious forms of abuse and/or sexual assault within Defence is wrong, that it should not have occurred and that Defence, through its actions or inactions, created the circumstances which allowed this abuse to occur.

The purpose of a reparation payment is to:

- acknowledge that abuse can have a lasting and serious impact
- recognise that, in the past, Defence did not respond appropriately in many cases, and
- acknowledge that mismanagement by Defence of verbal/written reports or complaints about abuse is unacceptable.

A reparation payment is not paid as compensation for any physical, psychological, emotional or financial injury, or loss or damage suffered by a person as a result of abuse.

When may the Ombudsman recommend a reparation payment?

The Australian Government has determined when the Ombudsman may recommend a reparation payment. The Ombudsman may recommend to Defence that a reparation payment be made in relation to a report of serious abuse which has been accepted, if:

- the abuse occurred on or before 30 June 2014
- the report of abuse was made to the Ombudsman on or before 30 June 2021, and
- the Ombudsman is satisfied the report involves the most serious forms of abuse and/or sexual assault.

As reparation payments are limited to the most serious forms of abuse and/or sexual assaults, not all reports of abuse will meet this higher threshold.

There are two possible payments which the Ombudsman may recommend:

- a payment of up to \$45,000 to acknowledge the most serious forms of abuse, or
- a payment of up to \$20,000 to acknowledge other abuse involving unlawful interference accompanied by some element of indecency.

If the Ombudsman recommends one of these payments, an additional payment of \$5,000 may also be recommended where the Ombudsman is satisfied that Defence did not respond appropriately to the incident of abuse.

The total payment which the Ombudsman may recommend may not exceed \$50,000.

What are the ‘most serious forms of abuse’?

The Australian Government has established the reparation payment in acknowledgement of the most serious forms of abuse or sexual assault. The ‘most serious forms of abuse’ will ordinarily involve abuse amounting to a campaign of targeted behaviour, by either an individual or multiple perpetrators or by higher ranking members, and/or resulting in serious physical injury.

The most serious forms of abuse may also include a single incident of very serious abuse or sexual assault, or multiple incidents of abuse that, while individually may not meet the threshold, may collectively be assessed as constituting the most serious forms of abuse.

Factors that may influence the assessment of the seriousness of the abuse include the age of the complainant at the time of the abuse, the position held by the alleged abuser, the duration of the alleged abuse and the gravity of the alleged conduct.

What is an ‘unlawful interference with a person accompanied by an element of indecency’?

The Australian Government also acknowledges other sexual or indecent assaults that may not be able to be characterised as the ‘most serious forms of abuse’. This abuse may still involve a campaign of targeted behaviour, or may comprise a single incident of serious abuse with an element of indecency. Again, factors that may influence the assessment of the seriousness of the abuse include the age of the complainant at the time of the abuse, the position held by the alleged abuser, the duration of the alleged abuse and the gravity of the alleged conduct.

In what circumstances might the Ombudsman recommend a payment to acknowledge that Defence did not respond appropriately?

Circumstances in which the Ombudsman may recommend an additional payment could include:

- where Defence failed to take reasonable management action to prevent abuse occurring where it knew or ought reasonably to have known that abuse would occur
- where Defence failed to take reasonable management action to stop abuse at the time it was occurring where it knew or ought reasonably to have known abuse was occurring, or
- where Defence failed to respond appropriately where Defence knew abuse had occurred as a result of a report or complaint made about the abuse, or Defence ought otherwise to have known the abuse had occurred (for example by observation of unexplained injuries or irregular behaviour).

Why are reparation payments only available in relation to abuse which occurred prior to 30 June 2014?

The ‘cut-off’ date for reparation payments was a decision of the Australian Government, acknowledging the implementation of Defence reform activities.

The Australian Government is of the view that 30 June 2014 represents a key date from which time people could have confidence in the advances being made by Defence in reforming its culture and in Defence’s ability to appropriately address complaints of abuse where it occurred.

Defence’s work towards positive changes to the culture within Defence and internal complaint mechanisms began during 2011, but the Government acknowledges that reforms of this magnitude take time to implement. By 30 June 2014, key milestones had been achieved, including the adoption of *Pathway to Change* in March 2012, the introduction in July 2013 and maturing of the Sexual

Misconduct Prevention and Response Office (SeMPRO) and progression of the *Re-thinking Systems of Review and Investigation* initiatives from early 2014.

What if the abuse I have reported happened on or after 30 June 2014?

You may still report serious abuse to the Defence Force Ombudsman for assessment, but a reparation payment is not able to be recommended.

Other available responses for reports of serious abuse include a counselling referral Open Arms - Veterans & Families Counselling (formerly known as the Veterans and Veterans Families Counselling Service) or participation in the Restorative Engagement program.

Applications

Who can apply for a reparation payment?

Anyone who has reported serious abuse or wishes to report serious abuse to the Ombudsman may apply for a reparation payment (on or before 30 June 2021), if the abuse occurred on or before 30 June 2014. A person may only apply for a reparation payment once. There is no requirement to have legal representation to apply for a reparation payment.

How can I apply for a reparation payment?

To apply for a reparation payment, you will need to complete a Reporting Abuse Form, which is in the form of a statutory declaration and is available on our [website](#).

We may contact you in relation to your report and you may also be asked to provide further information or clarification where required.

If you need assistance completing the form, please contact the Ombudsman on **1300 395 776**.

Can another person apply on my behalf?

Yes. You may authorise another person to deal with us on your behalf, by completing our *Permission for another person to act on my behalf* form, which can be accessed on our [website](#).

Please note you will still need to make the statutory declaration yourself.

I have already given all my information to my Liaison Officer, do I have to re-write it to complete a statutory declaration?

No. If you want to apply for a reparation payment you will only need to confirm the information you have previously provided is correct by confirming your report of abuse (a copy will be sent to you) in a statutory declaration which indicates it is true. However, if you prefer, you can complete a new statutory declaration reporting form and provide additional information, which will need to be assessed by the Ombudsman (and possibly also involving us seeking further information from Defence).

My report of serious abuse has already been accepted by the Ombudsman. Do I need to provide the information again?

No. You will only need to confirm the information you have previously provided is correct by confirming your report of abuse in a statutory declaration which indicates it is true. Your Liaison

Officer will be in contact with you to discuss this process, or you can contact your Liaison Officer to discuss this at any time.

Is there a cut-off date to apply for a reparation payment?

Yes. Reports of serious abuse in Defence must be made to the Ombudsman on or before 30 June 2021 in order to be assessed for a reparation payment.

This was a decision of the Australian Government, to bring finality to administration of the reparation payment, constrain the overall costs of the new function and provide a degree of financial certainty to the Commonwealth.

Can family members of deceased persons who were allegedly abused in Defence, apply for a reparation payment?

No. A reparation payment is not payable in relation to deceased persons.

Process

How long will it take to process my application for a reparation payment?

All applications for a reparation payment will be progressed as quickly as possible. The length of time required to process an application will vary depending on the nature and extent of the report, and the information provided. If you have any concerns related to timing, please contact your Liaison Officer.

Will I have an opportunity to comment before the Ombudsman makes a recommendation?

We provide reportees with an opportunity to provide any comments or further information on our preliminary view of a recommendation (unless the preliminary view is to recommend a payment of \$50,000, in which case it is finalised and sent directly to Defence). Any comments or further information should be provided within 28 days.

Do I have to provide further information or comment?

It is not compulsory to provide any comments or further information within the 28 days before a final recommendation is made about a reparation payment. However, any comments or further information you provide will be taken into account by the Ombudsman before a final recommendation is made. If you do not provide any further information, our preliminary assessment will likely become our final recommendation.

If I do wish to provide further information or comment, how do I provide it?

Further information about the abuse experienced can be provided in the form of a completed statutory declaration form, which will be sent to you with the preliminary view from the Ombudsman. This is to ensure that information you have previously provided can be compared with any new information.

Any comments on the preliminary view should be provided in writing, but does not need to take the form of a statutory declaration.

Any further information or comments should be provided within 28 days. If you have any questions about the process or response, please contact your Liaison Officer.

Am I able to appeal or seek review of any final reparation payment recommendation?

You can apply to the Federal Circuit Court or Federal Court for a review of the way in which we made the decision to recommend (or not) that a reparation payment be made.

This is **not** an opportunity for a fresh look at whether a reparation payment should be recommended, and if so, in what amount, but only whether we acted lawfully and with due process in making our recommendation.

How will a reparation payment be made?

The Ombudsman will write to Defence with any final recommendations for a reparation payment.

Once Defence has received a recommendation for a reparation payment, it will check that the payment is complying with the *Public Governance, Performance and Accountability Act 2013* and if so, a payment will be made.

Defence have advised that a reparation payment can only be made to an account in a reportee's name.

Effect of a payment

How will a reparation payment affect my legal rights?

The making of a reparation payment to you does not affect your legal rights, entitlements or benefits.

Any reparation payment you may receive is not paid as compensation for any possible legal liability on the part of the Commonwealth or for any injury, disease or impairment. However, a court or tribunal may, as they see fit, take the making of a reparation payment into account in assessing damages or compensation in the future.

I have already received a payment in civil proceedings for abuse I suffered at Defence. Can I still apply for a reparation payment?

Yes. You may apply for a reparation payment if you have received a payment from civil proceedings for abuse suffered at Defence.

Will a reparation payment affect my Centrelink or Department of Veterans' Affairs (DVA) entitlements?

No. A reparation payment is an 'exempt lump sum' for the purposes of income testing under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*. This means that a reparation payment is not counted as income for the purpose of working out any entitlement to social security benefits, DVA income support, or payments under the ABSTUDY Scheme or Assistance for Isolated Children Scheme.

However, any ongoing income generated by your reparation payment, such as interest, will not be exempt from the income test.

Entitlement to government benefits may be affected by the level of your assets. If a reparation payment is invested, or used to purchase an asset (like a car or an investment property), the

investment or asset may be taken into account as an asset for the purpose of calculating the entitlement. Any impact on an entitlement depends on individual circumstances.

If you have any questions about how a reparation payment could impact any entitlements you are currently receiving, or anticipate applying for, please contact Centrelink on **132 468** (for social security payments) or DVA on **1300 735 464** (for DVA income support payments).

Will a reparation payment be subject to cost recovery for Government health servicing?

No. Reparation payments will not be subject to any cost recovery for government health servicing under Medicare or DVA.

Will a reparation payment be tax exempt?

Yes. This also means that:

- receiving a reparation payment will not impact on your entitlement to family assistance benefits, paid parental leave or the Commonwealth Seniors Health Card
- reparation payments will not be taken into account as income for the purposes of parental means testing or certain payments for young people, including Youth Allowance and ABSTUDY, and
- reparation payments will not be included in Adjusted Taxable Income for child support purposes.

It is important to note that any income generated by your reparation payment, such as interest, will be taxed. If you would like further information or advice, you can contact the Department of Human Services on **131 272** or the Australian Taxation Office on **132 861**.

Interaction with other similar payment schemes

I received money from the Defence Abuse Response Taskforce (DART). Can I receive another payment from the Ombudsman?

The Ombudsman may not consider a report of abuse if it relates to the same, or substantially the same, incident/s as were reported to the DART.

If a **new** incident of abuse is reported to the Ombudsman, we will assess it in accordance with our usual processes. However, the Ombudsman **may not** recommend that a person receive more than \$50,000 combined from both the DART and the Ombudsman. This reflects that the maximum payment a person can receive under either scheme is \$50,000, and a person should not benefit from the interaction of the two schemes.

This means that if a person received \$50,000 from the DART, no payment will be recommended by the Ombudsman. If a person received less than \$50,000, the Ombudsman will apply the following principles:

- Any recommended payment for abuse will be reduced by any payment for abuse received from the DART.
- If this reduction otherwise takes the recommended payment below \$0, no payment will be recommended by the Ombudsman.

- If a person received a mismanagement payment of \$5,000 from the DART, the Ombudsman will not recommend that a person receive another mismanagement payment, even if the further incident was also mismanaged by Defence.

The following examples may assist to illustrate different scenarios.

Example 1

A person reported abuse to the DART and then reports the same abuse to the Ombudsman. The matter is not considered further by the Ombudsman and **no payment is recommended**.

Example 2

A person reported abuse to the DART and received a \$50,000 reparation payment. The person reports a separate incident of abuse to the Ombudsman and the report is assessed as within jurisdiction. **No payment is recommended**.

Example 3

A person reported abuse to the DART and received a reparation payment of \$30,000. The person reports a separate incident of abuse to the Ombudsman and the report is assessed as within jurisdiction.

The Ombudsman's preliminary view is to recommend a payment of \$45,000 in recognition of the most serious form of abuse, and \$5,000 in recognition that the abuse was mismanaged by Defence.

The Ombudsman **recommends a payment of \$20,000** (for the abuse: \$45,000 minus \$30,000 already paid by the DART = \$15,000; plus additional \$5,000 for mismanagement = \$20,000).

Example 4

A person reported abuse to the DART and received a reparation payment of \$20,000, comprised of \$15,000 in recognition of the abuse and \$5,000 in recognition of Defence mismanagement. The person reports a separate incident of abuse to the Ombudsman and the report is assessed as within jurisdiction.

The Ombudsman's preliminary view is to recommend a payment of \$20,000, in recognition of the latter incident as abuse comprising an unlawful interference with the person involving an element of indecency. Although the Ombudsman considers the second incident was also mismanaged by Defence, a second mismanagement payment is not recommended.

The Ombudsman **recommends a payment of \$5,000** (for the abuse: \$20,000 minus \$15,000 already paid by the DART = \$5,000; no separate mismanagement payment as this was paid by the DART).

Example 5

A person reported abuse to the DART and received a reparation payment of \$35,000, comprised of \$30,000 in recognition of the abuse and \$5,000 in recognition of Defence mismanagement. The person reports a separate incident of abuse to the Ombudsman and the report is assessed as within jurisdiction.

The Ombudsman's preliminary view is to recommend a payment of \$20,000, in recognition of the latter incident as abuse comprising an unlawful interference with the person involving an element of indecency. Although the Ombudsman considers the second incident was also mismanaged by Defence, a second mismanagement is not recommended.

The Ombudsman **does not recommend any payment** (for the abuse: \$20,000 minus \$30,000 already paid by the DART = less than \$0; no separate mismanagement payment as this was paid by the DART).

Example 6

A person reported abuse to the DART and received a reparation payment of \$30,000 in recognition of the abuse, without a payment in recognition of Defence mismanagement. The person reports a separate incident of abuse to the Ombudsman and the report is assessed as within jurisdiction.

The Ombudsman’s preliminary view is to recommend a payment of \$20,000, in recognition of the latter incident as abuse comprising an unlawful interference with the person involving an element of indecency, and an additional \$5,000 in recognition the second incident was mismanaged by Defence.

The Ombudsman **recommends a payment of \$5,000** (for the abuse: \$20,000 minus \$30,000 already paid by the DART = less than \$0; plus additional \$5,000 for mismanagement = \$5,000).

If I receive a reparation payment from Defence as a result of a recommendation from the Defence Force Ombudsman, how would this affect the outcomes I could access from the National Redress Scheme arising from the Royal Commission into Institutional Responses to Child Sexual Abuse?

Any monetary payment a person may otherwise receive from the National Redress Scheme will be reduced by any prior monetary payment a person has received in relation to the same abuse.

For further information, please visit the Scheme’s website: <https://www.nationalredress.gov.au/>.

How might payments I have received through any other schemes affect a reparation payment?

You must tell us if you have received any payment (other than DVA benefits) relating to the abuse. How any payments other than those outlined above might affect a reparation payment will be considered on a case-by-case basis.

Need more information?

Fact sheets about Reporting abuse in Defence, the Restorative Engagement program and reparation payments are available on our [website](#).

We invite you to email us at defenceforce.ombudsman@ombudsman.gov.au with any questions you have that are not addressed above.

These FAQs have been prepared by the Office of the Commonwealth Ombudsman for the purpose of disseminating information free of charge for the benefit of the public. While we have taken all reasonable care to ensure the accuracy of the information, we do not guarantee, and accept no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any information provided. The information is not intended to be, nor should it be relied on as a substitute for legal or other professional advice. Readers should obtain appropriate professional advice relevant to their particular circumstances.

If you have any questions or concerns you are encouraged to contact a Liaison Officer during business hours (9am – 5pm AEST) on **1300 395 776** or via email at defenceforce.ombudsman@ombudsman.gov.au.

If you are feeling distressed and need to speak to someone urgently, please call one of the 24-hour support services listed below:

Lifeline: **131 114** | Beyondblue: **1300 224 636** | Veterans and Veterans' Families Counselling Service: **1800 011 046**