

## 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). In some circumstances, the Ombudsman may recommend that Defence pay a reparation payment in response to the report of abuse.

The information below aims to assist people who experienced abuse in Defence, and individuals acting on their behalf, to understand the options available to them and what to expect from the Office. We invite you to email us with any questions not addressed below to [defenceforce.ombudsman@ombudsman.gov.au](mailto:defenceforce.ombudsman@ombudsman.gov.au).

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## Overview

Since 1 December 2016, the Office has been able to accept reports of abuse from serving and former Defence members of Defence, as well as civilians deployed on operations. We provide 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.

The Ombudsman can also recommend that Defence make reparation payments in certain circumstances.

### What is a reparation payment?

A reparation payment is made to a person 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, 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 or 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 Ombudsman can recommend that Defence make a reparation payment in response to a report of serious abuse, if:

- the abuse occurred on or before 30 June 2014
- the Ombudsman is satisfied the report involves the most serious forms of abuse or sexual assault
- the person contacts the Ombudsman's Office **by 30 June 2022** and either:
  - submits a report of abuse they experienced in Defence
  - Provides written notification that they intend to submit a report of abuse, which they must then submit **by 30 June 2023**.

It is important to note that:

- If you do not submit your report of abuse or an intention to report abuse **by 30 June 2022**, you cannot receive a reparation payment.
- If you provide a written notification of your intention to submit a report of abuse, but do not submit your report **by 30 June 2023**, you will not be able to receive a reparation payment.
- As reparation payments are limited to the most serious forms of abuse or sexual assault, not all reports of abuse will meet the threshold to receive a payment.

The Ombudsman may Recommend either:

- 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 maximum total payment the Ombudsman may recommend is \$50,000.

### What are the ‘most serious forms of abuse’?

The Australian Government established the reparation payment to acknowledge 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, 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 includes:

- the age of the complainant at the time of the abuse
- the position held by the alleged abuser
- the duration of the alleged abuse
- 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.

### What are the circumstances where the Ombudsman might recommend a payment to acknowledge Defence did not respond appropriately?

Circumstances where 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
- 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

- 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 Defence's progress with reforming its culture, and in its ability to appropriately address complaints of abuse.

While Defence's work towards positive changes to its culture and internal complaint mechanisms began during 2011, the Government acknowledged 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 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 Ombudsman but the Ombudsman cannot recommend Defence make a reparation payment.

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

## Applications

### Who can apply for a reparation payment?

Former or serving members of the Australian Defence Forces may report serious abuse to the Ombudsman and apply for a reparation payment.

**Remember:** To receive a payment under the Scheme, you must contact the Ombudsman's Office by **30 June 2022** and either:

- Submit your report of abuse you experienced in Defence
- Provide written notification that you intend to submit a report of abuse, which you must then submit by **30 June 2023**.

If you do not submit your report of abuse or an intention to report abuse by 30 June 2022, you cannot receive a reparation payment.

If you provide a written notification that you intend to submit a report of abuse, but do not submit your report by **30 June 2023**, you will not be able to receive a reparation payment.

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).

## Process

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

When you make a report of abuse in Defence, how long the assessment process takes will vary depending on the nature and extent of the report, and the information provided. It may also depend on which era the abuse occurred in, what service it pertains to, and whether external parties were involved.

Each report is assessed, which requires information from Defence. This part of the process usually takes six to eight weeks, but may be longer depending on whether further information needs to be requested. Overall, 80 per cent of assessments are finalised within six months of the report being allocated to the Assessment Team. If the process is expected to take longer than this, your Ombudsman Liaison Officer will let you know.

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

We provide people reporting abuse the 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?

You can provide further information about the abuse you experienced in a completed statutory declaration form, which we will send you with our preliminary view. This is so you can compare information you have given us with any new information you would like to provide.

Any comments on our preliminary view should be provided to us 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 Ombudsman Liaison Officer.

Eighty per cent of review requests should be finalised within 12 weeks of the request for review being received. If the process is expected to take longer than this, you will be updated by your Ombudsman 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.

You should seek advice from a registered legal practitioner such as a solicitor, before deciding to pursue court action.

## 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 complies with the *Public Governance, Performance and Accountability Act 2013* and if so, a payment will be made.

## Effect of a payment

### How will a reparation payment affect my legal rights?

Receiving a reparation payment does not affect your legal rights, entitlements or benefits.

While a reparation payment is not paid as compensation for any possible legal liability on the part of the Commonwealth or for any injury, disease or impairment, a court or tribunal may take any reparation payment you have received 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 for abuse reported to the Ombudsman?

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

## I received a redress payment from the National Redress Scheme. Can I receive another payment from the Ombudsman?

If a person has received a payment from the National Redress Scheme to acknowledge the abuse they experienced as a minor in Defence, this *may* affect any reparation payment considered by the Ombudsman for recommendation to Defence, depending on what incidents have been reported and the age of the person at the time of the abuse.

The Explanatory Statement to the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017* provides for the offsetting of payments from other relevant government schemes, in addition to the DART. The Office will consider the circumstances particular to each report on a case-by-case basis. Factors we will take into consideration include whether the abuse reported to the National Redress Scheme was the same as that reported to the Office, and the amount of money previously received by a person under the National Redress Scheme in recognition of this abuse.

## 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.

## I received a payment for abuse I reported to the Ombudsman. Can I make a new report of abuse to the Ombudsman?

The Ombudsman may **not** consider a report of abuse if it relates to the same incident/s as were previously reported.

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 the Defence Reparation Scheme is \$50,000.

This means that if a person received \$50,000 from abuse reported to the Ombudsman, no payment will be recommended by the Ombudsman for the second report of abuse. 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 already received
- If this reduction otherwise takes the recommended payment below zero, no payment will be recommended by the Ombudsman
- If a person received a mismanagement payment of \$5,000, the Ombudsman will not recommend that a person receive another mismanagement payment, even if the further incident was also mismanaged by Defence.

## 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](mailto:defenceforce.ombudsman@ombudsman.gov.au) with any questions you have that are not addressed above.

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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 an Ombudsman Liaison Officer during business hours (9am – 5pm AEST) on **1300 395 776** or via email at [defenceforce.ombudsman@ombudsman.gov.au](mailto: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** | Open Arms (Veterans and Families Counselling): **1800 011 046**