

## Defence Abuse Reparation Payments Discretionary Recommendation Power

The Defence Force Ombudsman (the Ombudsman) can receive and respond to reports of abuse that has occurred in the Australian Defence Force (Defence).

The Ombudsman can recommend Defence make a reparation payment in response to a report of serious abuse:

- for the most serious forms of abuse or acts of indecency. Not all reports of abuse will meet this threshold; and
- the abuse occurred on or before **30 June 2014**.

To be eligible to receive a reparation payment, you must have contacted the Ombudsman's Office by **30 June 2022**

and have either:

- submitted a report of the abuse you experienced in Defence; or
- provided written notification that you intended to submit a report of abuse, which you must have then submitted by 30 June 2023.

It is important to note that:

- If you did not submit your report of abuse or an intention to report abuse **by 30 June 2022**, you cannot receive a reparation payment.
- If you provided written notification of your intention to submit a report of abuse, but did 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 and/or sexual assaults, not all reports of abuse will meet the threshold to receive a payment.

The timeframes are legislated in the *Ombudsman Regulations 2017*. The Ombudsman does not have any discretion to change or provide any exemptions to these timeframes.

### ***Payments to acknowledge abuse***

The Ombudsman may recommend that Defence make 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 conduct which is offensive or objectionable.

The Ombudsman may also recommend an additional payment of \$5,000 if the Ombudsman is satisfied that Defence did not respond appropriately to the incident of abuse. The maximum total payment the Ombudsman can recommend is \$50,000.

***What we take into account when making a recommendation***

The Ombudsman's decision to recommend a payment and the payment amount, is a discretionary decision. This means there is no 'eligibility' criteria which, if satisfied, will determine whether the Ombudsman recommends a particular payment in the same way there is for other government claims. Rather, it is up to the Ombudsman's discretion to decide whether to make the payment based on the circumstances.

The decision to recommend a payment has 2 stages:

1. The Ombudsman will consider all the circumstances of each report and decide whether to recommend to Defence that it make a reparation payment.
2. Defence will then decide whether to accept the recommendation and make the payment.

When considering whether to recommend a reparation payment, the Ombudsman will consider a number of factors, including but not limited to:

- the nature of the abuse
  - whether there was sexual abuse, serious physical abuse or serious bullying and harassment
  - if there was sexual abuse, whether it constituted penetrative abuse, contact abuse or exposure abuse, as these concepts have been defined for the purposes of the National Redress Scheme<sup>1</sup>
  - whether the abuse included other elements contrary to the ordinary community standards of decency
  - if there was serious physical abuse, whether it resulted in physical injuries, and whether the injuries required, or should have required, medical treatment or hospitalisation
- whether the abuse was a single incident, multiple incidents, or was part of an ongoing campaign of abuse
- whether the person who alleges abuse was in a position of particular vulnerability, for example, due to the person's age or background
- whether the alleged abusers were in a position of power or authority over the person
- whether the abuse occurred in the presence of others
- whether the abuse was accompanied by credible threats of further harm.

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<sup>1</sup> The National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 defines these three concepts as follows:

- sexual abuse of a person is **penetrative abuse** if any of that abuse involved penetration of the person (even if the rest of that abuse did not).
- sexual abuse of a person is **contact abuse** if:
  - (a) any of that abuse involved physical contact with the person by someone else or by an object used by someone else (even if the rest of that abuse did not); and
  - (b) none of that abuse involved penetration of the person.
- (c) sexual abuse of a person is **exposure abuse** if none of that abuse involved physical contact with the person (whether involving penetration of the person or not) by someone else or an object used by someone else.

***Payment to acknowledge that Defence failed to respond appropriately***

An additional \$5,000 payment may be recommended in recognition that Defence did not respond appropriately to the abuse. Circumstances in which the Ombudsman may recommend an additional payment 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 that abuse was occurring, or
- respond appropriately where it knew that abuse had occurred as a result of a report, or complaint made, about the abuse, or ought otherwise to have known the abuse had occurred (for example, by observation of unexplained injuries or irregular behaviour).

Without being an exhaustive list, the Ombudsman will have regard to the following factors:

- whether the abuse was reported, or was attempted to be reported
- if the abuse was reported, or attempted to be reported:
  - whether the action taken by Defence was an adequate or appropriate response to the complaint
  - whether the person was appropriately supported after making a report of abuse
  - whether any necessary authorities or other members of a person's chain of command were advised that an allegation of abuse had been made, or
  - whether a person was deterred from making a formal complaint, or withdrawing a complaint, by way of threats, adverse consequences or other coercion or pressure, or was otherwise treated in a trivial or insensitive manner.
- if the abuse was not reported:
  - whether there are any other factors which would indicate Defence knew or could reasonably have known that the abuse was occurring and did not take steps to prevent abuse or respond to it, or
  - whether authority figures in Defence allowed, permitted, aided, encouraged, fostered, rewarded, incited or instructed the alleged abuse.