

## Defence Abuse Reparation Payments

### Guide to the exercise of our discretionary recommendation power

The Office of the Commonwealth Ombudsman, in its Defence Force Ombudsman jurisdiction, has the function of receiving reports of serious abuse within Defence. The Australian Government has also enabled the Ombudsman to recommend a reparation payment in response to a report of serious abuse in certain circumstances. This is limited to the most serious forms of abuse or acts of indecency. Not all reports of abuse will meet this threshold.

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
- the Ombudsman is satisfied the report involves the most serious forms of abuse or acts of indecency.

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 conduct which is offensive or objectionable.

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 abuse.

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

A payment of \$45,000 may be recommended to acknowledge the most serious forms of individual, or collective abuse, or sexual assault.

A payment of \$20,000 may be recommended to acknowledge individual or collective abuse which, while not the most serious forms of abuse, involves unlawful interference with a person accompanied by some element of indecency.

The decision to recommend a payment or not, and if so, in what amount, is a discretionary decision. It is not a claims process for a payment to which a person is entitled.

There are no 'eligibility' criteria which, if satisfied, dictate the recommendation of a particular payment. There is no entitlement to a payment. Rather, the decision-maker will consider all the circumstances of individual reports and decide accordingly whether to recommend to Defence that it make a reparation payment. Defence will then decide whether to accept the recommendation and make the payment.

In considering whether to recommend that a payment be made, decision-makers, acting as a delegate of the Ombudsman, will have regard to relevant issues, including:

- the nature of the abuse
  - whether there was sexual abuse, serious physical abuse and/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.

This is not an exhaustive list. Any other relevant factors may be considered by the decision-maker.

***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 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).

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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.
- 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.

Without being an exhaustive list, decision-makers will have regard to the following issues:

- 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.