



Submission by the
Commonwealth Ombudsman

**Inquiry into oversight of the
implementation of redress related
recommendations of the Royal
Commission into Institutional Responses
to Child Sexual Abuse**

Submission by the Commonwealth Ombudsman, Michael Manthorpe PSM

August 2018

Introduction and summary

The Commonwealth Ombudsman welcomes the opportunity to respond to the Joint Select Committee Inquiry into Oversight of the Implementation of Redress Related Recommendations of the Royal Commission. As part of its broad oversight role of Commonwealth government administration, the Office of the Commonwealth Ombudsman (the Office) has oversight responsibility for the Department of Social Services (DSS) and the Department of Human Services (DHS), the two agencies responsible for administration of the Commonwealth Redress Scheme (the Scheme).

The Office has been working closely with DSS and DHS on the proposed implementation of the Scheme. This submission provides a brief explanation of our role as an oversight and complaints agency; reiterates our concerns about specific administrative elements of the Scheme; and explains how we will monitor complaints to identify, investigate and propose solutions to systemic issues associated with the Scheme. It builds on the submission made by the Office in February 2018 responding to the Senate Community Affairs Legislation Committee's *Inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and a related bill*. A copy of our previous submission is at **Appendix A**.

Background

The purpose of the Office of the Commonwealth Ombudsman is to:

- provide assurance that the organisations we oversight act with integrity and treat people fairly, and
- influence systemic improvement in public administration in Australia and the region.

We seek to achieve this purpose through:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action, and
- providing assurance that Commonwealth, State and Territory law enforcement, integrity and regulatory agencies are complying with statutory requirements and have sound administrative practices in relation to certain covert, intrusive and coercive powers.

The Commonwealth Ombudsman's unique position gives us an understanding of the individual experiences of members of the public who are dissatisfied with the way that government has dealt with their issue. Parliament has given the Ombudsman powers to investigate complaints by obtaining information and records that would not ordinarily be available to a person acting on their own behalf. Over time, through investigating complaints about the actions of a particular Commonwealth department or agency, the Office is able to build up a detailed picture of an agency's operations, including information about new complaint trends and systemic issues.

Complaints provide an important opportunity to identify and correct mistakes, and can be an early warning system for systemic or deeper problems. An accessible complaints process is particularly important for vulnerable and/or disadvantaged groups. Fair and transparent government administration depends on the capacity to identify and address complaints from these groups.

The Commonwealth Ombudsman is also the Defence Force Ombudsman, a function to provide assurance of independence and integrity in the management of complaints about matters of administration within the Australian Defence Force (ADF).

From 1 December 2016 the Defence Force Ombudsman was given an additional function to provide an independent mechanism to accept reports of serious abuse within the ADF, defined as sexual abuse, serious physical abuse and/or serious bullying and harassment. The experience of administering and delivering this function has given the Office perspectives that are relevant to this Scheme and serve to directly inform the comments made in this submission.

Comments on the Oversight of the Implementation of Redress Related Recommendations of the Royal Commission

Complaints about the Scheme – role of the Office of the Commonwealth Ombudsman

The Office has jurisdiction to receive complaints about the administration of the Scheme. Consistent with our usual practice, the Office would not generally look into a complaint if the complainant had not yet used the agency's internal review process.

The Office will not conduct a merit review of Scheme decisions, and the focus of any investigation will be on whether DHS and/or DSS has followed the correct process when assessing a person's application under the Scheme. In doing so, the Office will consider whether the Department has taken into account all of the relevant information and whether it has relied on any irrelevant information when reaching its decision.

While the Office does not have the power to overturn a decision, we may recommend the decision be reconsidered if any issues are identified through the complaint investigation.

At the time of writing this submission, the Office has not received any complaints about the Scheme; however, a natural time-lag is to be expected following implementation of the Scheme and to allow complainants to approach the relevant agency to resolve their concerns in the first instance.

Internal Review Process – preliminary assessments

The Office noted in its February 2018 submission that the Scheme precludes new information being presented by an applicant for consideration in the formal review process. This element of the decision-making process has not changed since our previous submission. The view of the Office remains, as informed by our experience of accepting reports of serious abuse within the ADF, that it is difficult for people affected by trauma to tell their story completely in the first instance. This, in turn, may affect the outcome of a person's application under the Scheme.

In a joint briefing from DSS and DHS, we sought to clarify whether a preliminary assessment would be provided to an applicant as a means of prompting additional supporting information, prior to a formal determination being made by DSS.

We were advised there are circumstances where additional information may be sought, such as to address any contradictions with information provided by institutions or to provide information that may be missing from the application. Applicants will also be contacted through a follow-up call after they have made their application, providing an opportunity to check they have provided

all relevant material. Applicants are able to proactively submit additional information up to the point that a determination is made.

These procedural elements to the application process are welcomed and will serve to address the risks associated with applicants not providing all relevant information in the first instance. As a matter of better decision-making practice; however, putting a draft decision to the applicant and then giving them an opportunity to identify and provide any additional information in support of their claim is still our preferred approach. In our view, this would support better decision-making and applicant outcomes while still achieving the Scheme's intentions and objectives.

Collaboration and consultation with administering departments

The Office believes that working cooperatively with government agencies will promote better administrative practices and reduce the risk of high complaint volumes associated with the ineffective delivery of services and programs. Both DSS and DHS have been open to receiving and acting on comments provided by the Office on various elements of the Scheme. This constructive approach will continue to provide administrative benefits for the departments as decisions start being made and the potential of unintended outcomes start being realised in complaints made about the Scheme.

The Office also notes the focus on providing a trauma-informed approach to receiving and assessing applications under the Scheme provides a welcome degree of assurance that the challenges associated with this especially vulnerable applicant cohort will be addressed and managed appropriately. Similarly, the steps taken by the departments to ensuring their staff have the skills, capability and capacity required to administer the Scheme effectively are welcomed and acknowledged.

Monitoring of systemic issues identified in complaints about the National Redress Scheme

The Office closely monitors newly-implemented programs for systemic issues. In consultation with DSS and DHS, the Office will continue to provide an oversight function for the implementation and administration of the Scheme and investigate, as appropriate, any complaints that may indicate a broader or underlying matter of concern.

Appendix A

Submission by the Commonwealth Ombudsman

Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017



**Submission by the
Commonwealth Ombudsman**

Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill

Submission by the Commonwealth Ombudsman, Michael Manthorpe

February 2018

Introduction and summary

The Commonwealth Ombudsman welcomes the opportunity to respond to the Senate Community Affairs Legislation Committee's inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and a related bill.

This submission serves two purposes: first, to provide some comments on the administrative law aspects of the Bills; and second, to provide the Committee with information about our own function of receiving reports of abuse within Defence, and how potential overlap between the reparation payment that can be recommended under this function and the Commonwealth Redress Scheme will be managed.

Background

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Office of the Commonwealth Ombudsman seeks to ensure that administrative action by Australian Government agencies is fair and accountable. It does this by handling complaints, conducting investigations, performing audits and inspections, encouraging good administration, and discharging other specialist oversight tasks. The Commonwealth Ombudsman is guided by the values of independence, integrity, accessibility and professionalism.

The Commonwealth Ombudsman has oversight responsibility for the Department of Human Services (DHS), and the Department of Social Services, the two agencies responsible for administration of the Commonwealth Redress Scheme.

The Commonwealth Ombudsman is also the Defence Force Ombudsman, a function conferred on the Ombudsman in 1983 to provide assurance of independence and integrity in the management of complaints about matters of administration within the Australian Defence Force.

From 1 December 2016 the Defence Force Ombudsman was given an additional function to provide an independent mechanism to accept reports of serious abuse within the Australian Defence Force, which is defined as sexual abuse, serious physical abuse and/or serious bullying and harassment.

My office uses a trauma-informed approach to support those making a report of serious abuse, based on the principle of 'do no further harm'. We assess available options, which can include a referral to counselling, through the Veterans and Veterans Families Counselling Service, or participation in a Restorative Engagement conference which is a facilitated meeting where the

person making the report can meet with a member of Defence to have their report of abuse heard and acknowledged.

Since 15 December 2017, for the most serious forms of abuse and sexual assault which occurred on or before 30 June 2014, my office may also make a recommendation to Defence for a reparation payment of up to \$50,000¹. More detailed information concerning my Defence abuse reporting function is at Appendix A.

Comments on the Bills

Internal review

It is likely that a high level of agency resources will be involved in the processing of applications for the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (the Scheme) and making appropriate and timely decisions.

I note and welcome the internal review process provided in the Bill. However, it appears that this process precludes new information being presented by an applicant. Consideration should be made for applicants to provide further information as part of the original decision making process. In particular, based on our own function of receiving abuse, and the experience of the Defence Abuse Response Taskforce which preceded it, it can often be challenging for people who experienced trauma to tell their story. It is not uncommon for people to initially only convey part of an experience of abuse, especially sexual abuse experienced as a child, with other parts remaining initially too distressing to report.

The Explanatory Memorandum states that *the Scheme is to be supportive, survivor-focussed and non-legalistic and decisions will be made expeditiously*². This approach is commended. However, my office's experience is that accounts of trauma are not always disclosed in a linear manner. Establishing trust and rapport between the person reporting and the person to whom they are recounting their experiences is critical. Providing an opportunity for further disclosures of relevant information and details is an important part of this process.

If initial information is insufficient to qualify for redress, an important step may be that people are informed of this and given the opportunity to provide any additional information.

External review

I am also concerned that there appears to be no recourse to external review for applicants to the scheme. Good administrative practice involves an external review mechanism to promote good decision making.

I acknowledge the desire to keep the Scheme survivor-focussed and non-legalistic, and commend the initial decision-making aspects of the Scheme. However, this should be complemented by at least one avenue of external review, probably judicial review given some of the novel administrative

¹ [Media release: 15 December 2017 - Reparation for survivors of Defence abuse](#)

² Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 - Explanatory Memorandum, [page 7](#)

law concepts (such as the standard of 'reasonable likelihood' that also applies to our decisions) to guard against an incorrect decision being made.

The Ombudsman's reporting of Defence abuse function is not subject to external merits review, but judicial review is available.

Complaints about the Scheme

As the Commonwealth Ombudsman I have jurisdiction to receive complaints about the administration of the Scheme. My office would not generally look into a complaint if the person had not yet utilised the internal review process, consistent with our usual practice. Our oversight is most effective when the Scheme operator is able to address any issues we may identify. It is unclear what options exist within the Scheme for further reconsideration of decisions which may have been made incorrectly.

How potential overlap between the defence abuse reparation payment and the Commonwealth Redress Scheme will be managed

There is a considerable amount of overlap between the Scheme, as it relates to the sexual abuse of people under the age of 18 in the Australian Defence Force, and the Ombudsman's reporting abuse in Defence function. This overlap will be managed in relation to payments through multiple schemes in the following ways.

Any monetary payment a person may otherwise receive as a result of an Ombudsman recommendation will be reduced by any prior monetary payment a person has received in relation to the same abuse. This includes both the Commonwealth Redress Scheme, and other processes such as the Defence Abuse Response Taskforce (DART) or payments from Defence.

My office asks people reporting abuse to us if they have received or applied for any financial payment through another scheme in relation to the same abuse.

As the Ombudsman's reparation payment function is discretionary, if a person has received a payment from the Scheme, the Ombudsman is unlikely to recommend that a further payment be made.

I understand that the Scheme will also take into account any prior payments made, such as those resulting from recommendations made by me as well as those made by the DART.

Appendix A

Additional information relating to the Ombudsman's serious abuse reporting function

I provide the following overview of our function for the Committee's information.

Assessment threshold

The Ombudsman assesses reports of serious abuse to the same threshold of reasonable likelihood as the Scheme.

Available outcomes

If a report of serious abuse in Defence is accepted by the Ombudsman, further appropriate actions may be available. These actions include referrals to counselling, participation in our restorative engagement program, and, in some circumstances, recommending to Defence that it make a reparation payment of up to \$50,000.

Reparation payment framework

On 15 December 2017, the Australian Government 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.

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
- a payment of up to \$20,000 to acknowledge other abuse involving unlawful interference accompanied by some element of indecency.

An additional payment of \$5,000 may also be recommended where the Ombudsman is satisfied that Defence mismanaged the incident of abuse.

Further information about reparation payments can be found in our attached factsheet and frequently asked questions, both of which are available on our website³.

My office is currently working with the Scheme operator to ensure information about earlier payments can be considered by the Scheme operators. This includes both information about reports of abuse made to my office, as well as information about payments made by the DART (whose records are now held by my office).

³ <http://www.ombudsman.gov.au/making-a-complaint/australian-defence-force/reporting-abuse-in-defence>

Reporting abuse in Defence – reparation payments

The Office of the Commonwealth Ombudsman, within its Defence Force Ombudsman jurisdiction, is able to receive reports of serious abuse within the Australian Defence Force (Defence). This provides a confidential mechanism to report serious abuse for those who feel unable, for whatever reason, to access Defence's internal mechanisms. Serious abuse means sexual abuse, serious physical abuse or serious bullying or harassment which occurred between two (or more) people who were employed in Defence at the time.

For the most serious forms of abuse and sexual assault, the Ombudsman may recommend to Defence it make a reparation payment. This is limited to abuse which occurred on or before 30 June 2014.

Overview

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 reparation payments may be recommended

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.

Contact us

defenceforce.ombudsman@ombudsman.gov.au

ombudsman.gov.au
1300 395 776

GPO Box 442
Canberra ACT 2601

The Ombudsman has offices in:

- » Adelaide
- » Brisbane
- » Canberra
- » Melbourne
- » Perth
- » Sydney

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
- a payment of up to \$20,000 to acknowledge other abuse involving unlawful interference accompanied by some element of indecency.

An additional payment of \$5,000 may also be recommended where the Ombudsman is satisfied that Defence mismanaged the incident of abuse.

The above payments may be reduced if a reportee has already received a reparation payment relating to abuse in Defence, such as from the Defence Abuse Response Taskforce.

Applying 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, if the abuse occurred on or before 30 June 2014. An application must be received by the Ombudsman on or before 30 June 2021. A person may only apply for a reparation payment once. You can access our reporting abuse form on our [website](#).

Any person who has reported abuse to the Ombudsman since 1 December 2016 and whose report has been accepted may apply for a reparation payment. There is no requirement to have legal representation to apply for a reparation payment. 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.

Effect of payments

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, such as the Department of Veterans' Affairs income support.

Need more information?

Frequently Asked Questions (FAQs) are available to respond to questions and issues that have been raised so far regarding reparation payments. They aim to provide clarity and help reportees engage with the Ombudsman. You can access these at our [website](#).

More information is available at ombudsman.gov.au.

This factsheet has 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.

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 will a ‘Defence mismanagement’ payment be recommended?.....	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?.....	6
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?	8
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 Commonwealth 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?	11
Need more information?	11

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.

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.

An additional payment of \$5,000 may also be recommended where the Ombudsman is satisfied that Defence mismanaged 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 will a ‘Defence mismanagement’ payment be recommended?

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 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 to the Veterans and Veterans Families Counselling Service (VVCS) 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?

Yes, if our preliminary view is that we propose to recommend less than the maximum amount of \$50,000. If this is the case, we will write to you to let you know our preliminary view. You will be given 28 days to provide any comments or further information to be considered before a final recommendation is made about a reparation payment.

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.

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 Commonwealth Redress Scheme arising from the Royal Commission into Institutional Responses to Child Sexual Abuse?

Any monetary payment a person may otherwise receive from the Commonwealth 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: dss.gov.au/families-and-children/programs-services/children/commonwealth-redress-scheme-for-survivors-of-institutional-child-sexual-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.

Need more information?

Fact sheets about Reporting abuse in Defence, the Restorative Engagement program, Counselling referrals 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**