



Australian Government

# Defence Abuse Reparation Scheme Guidelines

Guidelines to provide for a reparation payment to people who plausibly suffered abuse in Defence prior to 11 April 2011, as part of the Australian Government's response to the *Report of the Review of allegations of sexual and other forms of abuse in Defence*

# DEFENCE ABUSE REPARATION SCHEME GUIDELINES

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# Part 1 – Preliminary

## 1A – General

### 1.1 Short title

1.1.1 The Defence Abuse Reparation Scheme Guidelines may be cited as the Guidelines.

1.1.2 The Defence Abuse Reparation Scheme may be cited as the Reparation Scheme.

### 1.2 Commencement

1.2.1 The Reparation Scheme came into effect on April 10 in accordance with the approval of the Australian Government on April 10.

### 1.3 Guidelines subject to amendment

1.3.1 The Guidelines may be amended by the Australian Government independently, or in accordance with a recommendation from the Defence Abuse Response Taskforce.

## 1B - Interpretation

### 1.4 Interpretation of the Guidelines

1.4.1 In the Guidelines, unless the contrary intention appears:

“**abuse**” means sexual abuse, physical abuse, sexual harassment, workplace harassment and bullying

“**accepted certifier**” means a person qualified to certify a Statutory Declaration, including persons currently licensed or registered under a law to practise in one of the following occupations

- Chiropractor
- Dentist
- Legal practitioner
- Medical practitioner
- Nurse
- Optometrist
- Patent attorney
- Pharmacist
- Physiotherapist
- Psychologist
- Trade marks attorney
- Veterinary surgeon

“**Application**” or “**Application for Reparation Payment**” means an application for a Reparation Payment under the Reparation Scheme pursuant to the Guidelines

**“Application for Reparation Payment Form”** means the form to be completed, as required by the Defence Abuse Response Taskforce, in order to make an Application for Reparation Payment under the Reparation Scheme pursuant to the Guidelines

**“Australian Defence Force”** means the Royal Australian Navy, the Australian Army and the Royal Australian Air Force

**“Category of Reparation Payment”** means a category of Reparation Payment under Part 4

**“Defence”** means the Australian Defence Force and the Department of Defence

**“eligible person”** has the meaning set out in Part 3

**“employed in Defence”** means:

- (a) an employee of the Department of Defence, whether the person is or was so employed under a law of the Commonwealth or under a contract of service or apprenticeship, or
- (b) a serving member of the Australian Defence Force including a member of the Australian Defence Force Reserves, or
- (c) a cadet (who for example is presently known as an Australian Navy Cadet (ANC), Australian Army Cadet (AAC) or Australian Air Force Cadet (AAFC))

**“ineligible person”** has the meaning set out in Part 3

**“person”** means a person who makes, or in respect of whom an authorised representative makes, an Application for Reparation Payment under the Guidelines

**“Reparation Payment”** means a payment made to a person under the Guidelines

**“Reparation Payment Assessment”** means an assessment by a Reparation Payments Assessor for the making, or not, of a Reparation Payment to a person in accordance with the Guidelines

**“Reparation Payments Assessor”** means the individual as designated, from time to time, by the Minister for Defence under the Guidelines

**“Secretary of Defence”** means the Secretary of the Department of Defence

**“Taskforce”** means the Defence Abuse Response Taskforce established by the Australian Government in November 2012 in response to the DLA Piper *Report of the Review of allegations of sexual and other forms of abuse in Defence*.

- 1.4.2 References in the Guidelines to an opinion or satisfaction that a person may have, plausibly, suffered abuse and/or mismanagement, refer to an opinion or satisfaction that an allegation of abuse and/or mismanagement should be regarded as having an appearance of reasonableness.

## **1C - Purpose**

### **1.5 Purpose of the Reparation Scheme**

- 1.5.1 The purpose of the Reparation Scheme is to establish a mechanism by which a monetary payment may be made by the Department of Defence to persons who in the opinion of the Reparation Payments Assessor may have, plausibly, suffered abuse whilst employed in Defence.
- 1.5.2 The making of a Reparation Payment to a person under the Reparation Scheme is made in acknowledgement by the Australian Government, Department of Defence and Australian Defence Force that:
- (a) abuse is wrong
  - (b) abuse can have a lasting and serious impact, and
  - (c) mismanagement by Defence of verbal/written reports or complaints about abuse is unacceptable.
- 1.5.3 The nature of the Reparation Scheme is such that:
- (a) a legal burden of proof is not required to be met in order that a Reparation Payment be made, and
  - (b) a Reparation Payment Assessment will be made by a Reparation Payments Assessor on the basis of the information available to the Reparation Payments Assessor, in accordance with the Guidelines,
- in order that Applications for Reparation Payment be resolved promptly.
- 1.5.4 The types of alleged abuse that fall within the scope of the Reparation Scheme are allegations of:
- (a) sexual abuse
  - (b) physical abuse
  - (c) sexual harassment, and
  - (d) workplace harassment and bullying,
- that are received by, or reported to, and considered by, the Taskforce in accordance with the Terms of Reference of the Taskforce, and the Guidelines.
- 1.5.5 The Reparation Scheme is part of the wider program of reparation administered by the Taskforce.

### **1.6 Impact on the legal rights of the person**

- 1.6.1 A payment to a person under the Reparation Scheme is not paid as compensation or damages for any asserted, perceived, or possible legal liability on the part of the Commonwealth, or for any injury, disease or impairment, and does not constitute an admission of liability on the part of the Commonwealth.
- 1.6.2 Nothing in the Guidelines, nor the making of a Reparation Payment to a person, or their authorised representative, in accordance with the Guidelines, is intended to affect the statutory, common law or other legal rights of the person, save and except that a court or tribunal may, if it thinks fit, take the making of a Reparation Payment into account in assessing the quantum of any damages or compensation otherwise payable to a person under common law or statute.

## Part 2 – Reparation Payments under the Guidelines

### 2.1 Reparation Payments

- 2.1.1 A Reparation Payment may be made to a person, or their authorised representative, where in the opinion of the Reparation Payments Assessor, on the basis of the information available:
- (a) the person meets all of the requirements of Part 3, and
  - (b) the person has, plausibly, suffered abuse and/or mismanagement under Part 4, and
  - (c) the person qualifies for a Category of Reparation Payment under Part 4.
- 2.1.2 No Reparation Payment will be made to a person, or their authorised representative, where in the opinion of the Reparation Payments Assessor, on the basis of the information available:
- (a) the person fails to meet one or more of the requirements of Part 3, and/or
  - (b) the person has not, plausibly, suffered abuse and/or mismanagement under Part 4, and/or
  - (c) the person does not qualify for a Category of Reparation Payment under Part 4.
- 2.1.3 A person may receive only one Reparation Payment under the Guidelines.
- 2.1.4 The amount of any Reparation Payment is at the discretion of the Reparation Payments Assessor, in accordance with the Guidelines.
- 2.1.5 A Reparation Payment may only be comprised of:
- (a) one of the amounts available under Categories 1, 2, 3 or 4 (Abuse), or
  - (b) the amount available under Category 5 (Mismanagement by Defence), or
  - (c) one of the amounts available under Categories 1, 2, 3 or 4 (Abuse), and the amount available under Category 5 (Mismanagement by Defence),
- whether or not:
- (i) the person may have allegedly experienced more than one instance of abuse, and/or
  - (ii) the person may allege more than one instance of mismanagement by Defence of a verbal/written report or complaint.
- 2.1.6 The Guidelines do not require, or make provision for, hearings, negotiations or appeals in relation to the making of a Reparation Payment.

## Part 3 – Making an Application for Reparation Payment

### 3.1 Who can make an Application

3.1.1 An Application for Reparation Payment may be made by a person, or their authorised representative.

3.1.2 A person's authorised representative is someone who the Reparation Payments Assessor is satisfied is:

- (a) a trustee, guardian or administrator appointed under legislation, or by a court or tribunal order
- (b) the holder of a power of attorney
- (c) a legal representative
- (d) someone who has legal or written authority (general or specific) to represent the person in relation to the person's Application for Reparation Payment under the Reparation Scheme, or

someone who the Reparation Payments Assessor is otherwise satisfied is authorised to make an Application for Reparation Payment on behalf of the person, under the Reparation Scheme.

3.1.3 A Reparation Payment will only be made to a person who the Reparation Payments Assessor is satisfied is an eligible person.

3.1.4 A person is an eligible person if the Reparation Payments Assessor is satisfied of each of the following matters in relation to the person:<sup>1</sup>

- (a) the person made a complaint about alleged abuse in Defence, to either DLA Piper or the Taskforce, prior to 31 May 2013
- (b) the person alleges that they suffered one, or more, instances of abuse in Defence
- (c) the person was, at the time of the alleged abuse, employed in Defence
- (d) (i) the alleged abuse occurred prior to 11 April 2011; and (ii) in relation to alleged mismanagement, a verbal/written report or complaint about the alleged abuse was initiated prior to 11 April 2011
- (e) the alleged abuse was allegedly initiated and/or effected by someone employed in Defence
- (f) there is a sufficient connection between the alleged abuse and the person's employment in Defence
- (g) the person is alive, and
- (h) the person is not, or does not become, an ineligible person.

3.1.5 A person is, or becomes, an ineligible person if the Reparation Payments Assessor is satisfied that:

- (a) after making an Application for Reparation Payment, and before any Reparation Payment is made to the person, the person becomes deceased, or
- (b) the person has previously received a Reparation Payment under the Reparation Scheme.

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<sup>1</sup> For the avoidance of doubt it is noted that the matter stated in 3.1.4(d)(ii) only applies in relation to alleged mismanagement.



## 3.2 How to apply

- 3.2.1 A person, or their authorised representative, making an Application for Reparation Payment must complete an *Application for Reparation Payment Form* to the satisfaction of the Reparation Payments Assessor.

## 3.3 Personal Account

- 3.3.1 A Personal Account must be provided as part of each Application for Reparation Payment.
- 3.3.2 A Personal Account must be provided by the person who allegedly suffered the abuse and/or mismanagement unless the person is medically or legally incapable of providing a Personal Account, in which case the Personal Account must be provided on behalf of the person by the person's authorised representative.
- 3.3.3 A Personal Account must be provided by way of Statutory Declaration and should include:
- (a) the person's history of employment in Defence
  - (b) details of the alleged abuse and/or mismanagement for which the person receives a Reparation Payment, including details of the following in relation to each alleged instance:
    - (i) (approximate) date of occurrence
    - (ii) in what position and at what physical location, the person was employed/serving/deployed at the time (for example the rank/ship/base/Defence Department)
    - (iii) where the alleged abuse occurred
    - (iv) a description of the circumstances of the alleged abuse and/or mismanagement, including information about any connection between the alleged abuse and the person's employment in Defence
    - (v) who allegedly initiated or effected the abuse and/or mismanagement, and
    - (vi) the names and/or ranks/roles of witnesses or third parties
  - (c) information about when, how and to whom any written/verbal report or complaint was made, and
  - (d) any resultant actions taken in regard to, or outcome of, any written/verbal report or complaint.

## 3.4 Proof of identity

- 3.4.1 Proof of identity in respect of the person applying for a Reparation Payment is required to be provided with an Application for Reparation Payment, to the satisfaction of the Reparation Payments Assessor.
- 3.4.2 Copies of original documents, certified by an accepted certifier, may be provided as proof of identity for the purpose of the Reparation Scheme.

- 3.4.3 Where a person has been known by more than one name, particulars must be provided to the Taskforce, including evidence of the person's change of name.

### **3.5 Application to encompass all allegations of abuse and/or mismanagement**

- 3.5.1 If a person alleges that they suffered more than one instance of abuse and/or mismanagement, the Application for Reparation Payment is to encompass all allegations for which the person seeks a Reparation Payment.
- 3.5.2 A person may not submit separate Applications in respect of separate instances of alleged abuse or mismanagement.

### **3.6 Timeframe for making an Application**

- 3.6.1 An *Application for Reparation Payment Form* must be provided to the Taskforce within the timeframe required by the Taskforce.

### **3.7 Applications in respect of deceased persons**

- 3.7.1 An Application for Reparation Payment cannot be made in respect of a deceased person.

## **Part 4 –Reparation Payment Assessment**

### **4A – General matters**

#### **4.1 Reparation Payment Assessment made by Reparation Payments Assessor**

- 4.1.1 A Reparation Payment Assessment is made by a Reparation Payments Assessor under the Guidelines.
- 4.1.2 A Reparation Payment Assessment is an assessment as to whether or not a Reparation Payment may or not be made to a person, or their authorised representative, under the Guidelines.
- 4.1.3 In making a Reparation Payment Assessment, the Reparation Payments Assessor is not bound by rules or practice as to evidence or procedure.

#### **4.2 Reparation Payment Assessment is final**

- 4.2.1 A Reparation Payment Assessment by a Reparation Payments Assessor under the Guidelines is final.

#### **4.3 Information required to make Reparation Payment Assessment**

- 4.3.1 The Reparation Scheme is based on the principle that, generally speaking, the Personal Account will be regarded by the Reparation Payments Assessor as the person's personal experience of alleged abuse unless there is evidence to the contrary.
- 4.3.2 In order for the Reparation Payments Assessor to make a Reparation Payment Assessment, there may be a requirement that the personal history and information provided in the Personal Account, and/or the documentation provided with an Application for Reparation Payment, be supplemented to the satisfaction of the Reparation Payments Assessor.
- 4.3.3 The supplementary information or documentation that may be required will depend on the circumstances arising in each Application for Reparation Payment, and may include:
  - (a) further relevant information from the person, or their authorised representative
  - (b) records from the Department of Defence and/or the Australian Defence Force including but not limited to records held by Defence training and medical institutions in relation to the person
  - (c) where applicable, and with the express authorisation of the person or their authorised representative, records from the Department of Veterans Affairs, Comcare and/or records from another Commonwealth agency or department.

#### **4.4 Reparation Payment Assessment where Defence records unavailable**

- 4.4.1 If, once an Application for Reparation Payment has been made:
  - (a) the Taskforce seeks records from Defence in relation to the person, and
  - (b) Defence cannot locate the records and/or cannot produce the records within 30 days, and

- (c) in the opinion of the Reparation Payments Assessor, the records that have not been produced by Defence would likely have assisted the Reparation Payments Assessor to make a Reparation Payment Assessment,

the Reparation Payments Assessor may, if satisfied that it is appropriate to do so, progress the Application for Reparation Payment on the basis that any records that have not been produced by Defence would not have contradicted or undermined information provided by the person applying for a Reparation Payment.

- 4.4.2 If the Reparation Payments Assessor proceeds on this basis it will remain a matter for the Reparation Payments Assessor to consider whether he/she is satisfied that the person may have, plausibly, suffered abuse and/or mismanagement, and/or otherwise meets the requirements of the Guidelines.

## **4B – Plausibility that a person suffered abuse and/or mismanagement**

### **4.5 Plausibility of alleged abuse and/or mismanagement**

- 4.5.1 A Reparation Payment shall not be made to a person, or their authorised representative, unless in the opinion of the Reparation Payments Assessor on the basis of the information available the person may have, plausibly, suffered abuse and/or mismanagement.
- 4.5.2 The Reparation Payments Assessor may take such steps as he/she considers necessary or appropriate in order to form an opinion as to whether the person may have, plausibly, suffered abuse and/or mismanagement.

## **4C – Qualifying for a Category of Reparation Payment**

### **4.6 Categories of Reparation Payment**

- 4.6.1 The Categories of Reparation Payment are:
- *Category 1 (Abuse): \$5 000*
  - *Category 2 (Abuse): \$15 000*
  - *Category 3 (Abuse): \$30 000*
  - *Category 4 (Abuse): \$45 000, and*
  - *Category 5 (Mismanagement by Defence): \$5 000.*
- 4.6.2 Category 4 (Abuse) is intended to provide reparation for the most serious forms of alleged individual or collective abuse.

### **4.7 Qualifying for a Category of Reparation Payment**

- 4.7.1 A Reparation Payment cannot be made to a person, or their authorised representative, unless in the opinion of the Reparation Payments Assessor, on the basis of the information available, the person qualifies for one of the Categories of Reparation Payment under this Part.
- 4.7.2 When assessing whether or not a person qualifies for a Category of Reparation Payment under this Part, the Reparation Payments Assessor will:

- (a) in relation to Categories 1 to 4 (Abuse), have regard to the collective allegations of abuse which in the opinion of the Reparation Payments Assessor, on the information available, the person may have, plausibly, suffered, and
- (b) in relation to Category 5 (Mismanagement by Defence), have regard to the allegations that Defence failed to properly manage or respond to a verbal/written report or complaint about alleged abuse, which in the opinion of the Reparation Payments Assessor, on the basis of the information available, are plausible.

4.7.3 A person may qualify for only one Category 5 (Mismanagement by Defence) Reparation Payment, notwithstanding that Defence may allegedly have (i) mismanaged more than one report or complaint of one instance of alleged abuse; and/or (ii) mismanaged one or more reports or complaints of multiple instances of alleged abuse.

4.7.4 The assessment of whether or not a person qualifies for a Category of Reparation Payment is not to be undertaken by reference to the quantum of damages or compensation payable were legal liability to be established against the Commonwealth for the alleged abuse or alleged mismanagement.

#### **4.8 Abuse that cannot be categorised under a Category of Reparation Payment**

4.8.1 The Reparation Payments Assessor may form the opinion that certain alleged individual or collective experiences, which have been described as alleged abuse, cannot be categorised under Categories 1 to 4 (Abuse).

4.8.2 However, notwithstanding that the Reparation Payments Assessor may form the opinion that certain alleged individual or collective experiences, which have been described as alleged abuse, cannot be categorised under Category 1 to 4 (Abuse), the Reparation Payments Assessor may form the opinion that the alleged mismanagement by Defence of a verbal/written report of alleged abuse may be such that a person qualifies for a Reparation Payment under Category 5 (Mismanagement by Defence).

## **Part 5 – Miscellaneous**

### **5.1 Timeframe for progressing an Application**

- 5.1.1 The Reparation Payments Assessor will progress each Application for Reparation Payment as expeditiously as possible having regard to the Taskforce Terms of Reference and the Guidelines.

### **5.2 Confidentiality**

- 5.2.1 The Taskforce will not disclose a person's information or documentation to any third party other than the Minister for Defence, Secretary of Defence, and/or Chief of the Defence Force, unless the Taskforce:
- (a) holds a current written authorisation and consent from the person, or their authorised representative where appropriate, to provide the information to the third party, in order to facilitate the work of the Taskforce, or
  - (b) is required by Parliament to disclose the person's information to Parliament, or
  - (c) is otherwise authorised or required by law to disclose the person's information.

### **5.3 Procedural Fairness**

- 5.3.1 Procedural fairness will be accorded in respect of an Application for Reparation Payment as required by law.

### **5.4 Costs**

- 5.4.1 Legal or any other costs may not be paid under the Reparation Scheme to a person, or their authorised representative, in respect of any costs associated with preparing, or pursuing, an Application for Reparation Payment, under the Guidelines, nor in relation to the making of a complaint in relation to the handling of an Application for Reparation Payment under the Guidelines.

### **5.5 Providing false or misleading information to the Taskforce**

- 5.5.1 If a person, or their authorised representative, provides false or misleading information to the Taskforce in relation to the person's Application for Reparation Payment under the Guidelines, the Application for Reparation Payment may be rejected.
- 5.5.2 A person, or their authorised representative, who provides false or misleading information to the Taskforce in a statutory declaration may also commit a criminal offence.
- 5.5.3 Where a person provides false or misleading information to the Taskforce in relation to an Application for Reparation Payment under the Guidelines, and subsequently receives a Reparation Payment, the Commonwealth may seek repayment of the Reparation Payment.

### **5.6 Incomplete Applications**

- 5.6.1 Where a person, or their authorised representative, has made an Application for Reparation Payment which in the opinion of the Reparation Payments Assessor is incomplete, reasonable attempts will be made by the Taskforce to locate the person and/or their authorised representative.

5.6.2 Where reasonable attempts have been made to contact the person and/or their authorised representative, and they cannot be located, the Taskforce will take all reasonable steps to progress the Application for Reparation Payment, until it is considered no longer appropriate to do so by the Reparation Payments Assessor.

### **5.7 Death of an eligible person after Application made**

5.7.1 If an Application for Reparation Payment is made by a person, or their authorised representative, and prior to any Reparation Payment being made to the person the person becomes a deceased person, the Application for Reparation Payment will not be progressed.

### **5.8 Certain Reparation Payments to be held on trust**

5.8.1 Certain Reparation Payments may be held on trust for:

- (a) a person who is a prisoner incarcerated in any State or Territory of Australia or in a foreign jurisdiction (in which case a payment may be held until a prisoner is released, or may be forwarded to the Department of Corrective Services, or equivalent department in the relevant jurisdiction, to be held for the benefit of the person and paid subject to the responsible department's operational procedures), or
- (b) a person where it is apparent that the person is mentally incapable of managing their own affairs and there is not in place a guardianship order or any other relevant court order, or

in any other case where it is considered necessary or appropriate by the Reparation Payments Assessor.

### **5.9 Management of complaints**

5.9.1 Complaints will be managed in accordance with the complaints policy of the Taskforce.