LEX 74367

Australian Government

Department of Veterans' Affairs

ELECTRONIC RECORDS

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Introduction

Sexual and physical abuse in the Australian Defence Force has been the subject of a number of inquiries, such as:

- DLA Piper Review, leading to the establishment of the Defence Abuse Taskforce (DART).
- Royal Commission into Institutional Responses to Child Sexual Abuse, leading to the establishment of the National Redress Scheme.

In response to issues identified as part of these inquiries, DVA instituted a number of procedural and policy changes that affect the handling of claims related to sexual and physical abuse in the ADF.

The Specialised Case Team established in 2012 manages claims related to sexual or other forms of abuse in response to the announcement of the DART and the large number of liability claims that followed under each DVA Act.

For policy information, refer to 3.4.7 Claims related to sexual and physical abuse .

Background

The SCT is responsible for the management of claims where sexual or physical assault is alleged to have occurred while serving in the ADF. The SCT may manage other high profile, restricted clients, death claims or contentious cases.

This is an outline of the intake and other procedures for initial liability claims managed by the SCT.

Communicating SCT purpose

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National reparation schemes

On 1 July 2018 the National Redress Scheme was established for people who experienced institutional child sexual abuse. The scheme will continue until 2028.

People who were sexually abused in the ADF or as Cadets while under the age of 18 may be eligible to apply under the scheme for redress payments of up to $150,000, counselling and a direct personal response.

The standard of proof for the scheme is 'reasonable likelihood' which is lower than the standard required for DVA compensation claims.

A redress payment made by the scheme must not be treated as a payment of compensation or damages under the *Veterans' Entitlements Act 1986* or any other Government legislation. Redress payments therefore will not be considered for offsetting purposes.

DVA compensation that may have been received regarding abuse will be explicitly referred to as an exempt prior payment under the Redress Scheme Rules. As a result, DVA compensation

payments will not be taken into account by the scheme when calculating the amount of redress that is payable.

A survivor will not pay tax on a redress payment. Redress payments will also be exempt from government debt recovery and any income tests related to government payments, but they will be included in assets testing for Commonwealth payments.

Redress payments will not be treated as income for the purpose of calculating income support entitlements. However, a payment will be deemed to earn interest at the applicable deeming rate while it is held as a financial asset. This may affect a client's income support payment if it is income tested.

If the payment is used to purchase assets, those assets will be included in the assets tests and will affect the client's income support payment if they are assets tested.

As a result, a claim for a redress payment will have minimal impact on DVA compensation and treatment arrangements and vice-versa.

Any prior reparation payments from the Defence Force Ombudsman or Defence Abuse Response Taskforce may be taken into account when calculating the amount of redress under the scheme. Should a successful applicant's redress payment be reduced to nil by these prior payments, they will still be eligible for a direct personal response and counselling under the scheme.

Further information can be found in the Businessline (19 July 2018 - National Redress Scheme for people who experienced institutional child sexual abuse- (CM9# 18498796E).

The Scheme is administered by the Department of Social Services. Further information on the scheme can be obtained from www.nationalredress.gov.au or by calling 1800 737 377.

Defence Abuse Response Taskforce (DART)

The role of the DART

The DART was established as part of the Government's response to the DLA Piper Review into allegations of sexual and other forms of abuse in Defence.

The Taskforce was established to assess and respond to individual cases of abuse in Defence, occurring before 11 April 2011. The Taskforce determines in close consultation with complainants the most appropriate outcome in individual cases.

The DART was in place from 26 November 2012 and was finalised on 30 June 2016.

Impact of Defence Abuse reparation scheme payments on DVA payments

The Defence Abuse Reparation Scheme was administered by DART and provided for reparation payments of up to $50,000 to people who suffered abuse while employed in Defence. Such reparation payments were made by DART.

A reparation payment under the Defence Abuse Reparation Scheme is not compensation. It is not payment for any physical, psychological, emotional or financial injury, or loss or damage suffered by a person because of abuse. Rather, it is a payment intended as an acknowledgement that abuse itself is wrong and should not have occurred.

Due to differences between DVA administered legislation and DART's Defence Abuse Reparation Scheme, it is possible that a person will be entitled to a reparation payment from DART but not compensation from DVA.

The impact of a reparation payment under the Defence Abuse Reparation Scheme on DVA payments can be summarised as follows:

- Reparation payments are not compensation and do not affect DVA compensation payments through compensation offsetting.
- The receipt of a reparation payment does not affect a claimant's legal right to claim compensation or benefits provided by DVA.
- Receipt of reparation payments will in some cases affect the level of income support payments provided by DVA.

Exchange of information between DVA and DART

On 1 December 2013, a Memorandum of Understanding (MOU) (CM9#1441279E) between DART and DVA was entered into providing for the mutual exchange of information.

Documents that could be requested

Under the MOU, both DVA and DART could request documents held by each other that:

- **For DVA:** Relate to a claim under the *Veterans' Entitlements Act 1986* (VEA), the *Military Rehabilitation and Compensation Act 2004* (MRCA) or the *Safety, Rehabilitation and Compensation (Defence-related claims) Act 1988* (DRCA), where the claimant was also a complainant of an allegation of abuse being assessed by the DART.
- **For DART:** Relate to a complaint where the complainant is a DVA claimant under the VEA, MRCA or DRCA.

For further information and tools for the DART refer to:

- Australian Parliament website - Government response to the Defence Abuse Response Taskforce (DART).