

Consumer guide to compensation for embarrassment or humiliation

The TIO can consider a claim for compensation for embarrassment or humiliation caused by a privacy breach. We call this 'non-financial loss'.

This is separate from claims for financial loss.

When will we consider a non-financial loss claim?

We will only consider a claim where a provider has breached a privacy obligation under the Privacy Act 1988. This includes breaches of the Australian Privacy Principles, and rules relating to credit reporting.

Who can make a claim?

We can only consider non-financial loss claims from individuals. We cannot consider claims from businesses or from representatives of deceased estates. This is because the Privacy Act covers personal information about living individuals.

How we assess claims

We assess claims by:

- determining if there was a breach of privacy
- looking at the impact the breach had on you
- determining if compensation is the appropriate way to resolve the complaint.

We might consider alternatives to compensation

We might decide that instead of paying compensation, the provider should apologise or take some other action, such as correcting the personal information it holds about you.

We have guiding principles to decide how much compensation is appropriate.

If we think the provider should pay compensation, we follow these principles to suggest the amount that the provider should pay.

Any amount of compensation for non-financial loss will:

- reflect the individual circumstances of the complaint
- not be punitive nor tokenistic
- be fair and reasonable.

Our decisions are guided by cases decided by the Office of the Australian Information Commissioner, other external dispute resolution schemes, and the courts.

We do not consider any of the following:

- time spent and costs of making a TIO complaint
- inconvenience
- loss of business reputation
- compensation to punish or penalise a provider.