

Common law claims due to child sexual abuse

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In Queensland, there are two primary avenues for survivors of child sexual abuse to seek payments and/or compensation for that abuse.

A common law claim against the perpetrator or relevant institution, due to negligence (this type of claim has no maximum compensation); and

The National Redress Scheme (the compensation available through Redress is capped).

In this blog, we explore common law claims due to child sexual abuse, including:

the basic differences between common law compensation and a National Redress Scheme payment;

recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse;

time limits for common law claims related to child sexual abuse;

proving negligence in a common law claim;

the compensation available with a common law claim due to child sexual abuse; and

important information before settling any claim related to child sexual abuse.

Common law claim vs. National Redress Scheme

Many survivors of child sexual abuse will choose to pursue a common law claim as it does not have a maximum limit on the damages that could be paid. There is no time limit on lodging a common law claim due to child sexual abuse.

The National Redress Scheme compensation available is capped and ordinarily, considerably less than what would be available to survivors who pursue common law damages. The ability to claim under the National Redress Scheme will end on 30 June 2027.

Survivors can generally receive a payment through one avenue only; that is, either the National Redress Scheme or a common law claim. Therefore, it is important that survivors fully understand their options before settling any claim and/or accepting any payments. If you have previously received a National Redress Scheme payment, you will likely be prevented from pursuing a common law claim for the same abuse.

It is important survivors seek expert legal assistance with this decision so that they can properly consider the complex legal factors which contribute to the options which may be available.

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Royal Commission into Institutional Responses to Child Sexual Abuse

In November 2012, the Federal Australian Government announced that a Royal Commission would be held to investigate the history of child sexual abuse in an institutional setting. After approximately 5 years of various investigations, the final report was released: Royal Commission into Institutional Responses to Child Sexual Abuse ("the Royal Commission").

One of the recommendations from this Royal Commission, was that the usual time limit which applies to personal injuries matter be removed where the personal injury claim relates to child sexual abuse.

Time limit for bringing a common law compensation claim for child sexual abuse

The general time limit for personal injuries matters in Queensland is three years from the date of the injury, and if the injured person is a child then this three-year period starts on the day they turn 18 (ie. it will expire on their 21st birthday). This time limit applies for matters such as CTP (motor vehicle accident claims), workers' compensation claims, public liability claims and medical negligence claims. However, in Queensland, the time limit no longer applies for common law claims for child sexual abuse.

Following the recommendations in the Royal Commission, this time limit was removed in Queensland for survivors of:

- child sexual abuse;
- serious child physical abuse;
- child psychological abuse perpetrated in connection with sexual abuse or serious psychical abuse of the child.

Therefore, survivors are now able to make their claim at any time without restrictions.

This recognises the significant psychological effect that these types of abuse have on the survivor and that many survivors do not ever report or acknowledge the abuse until much later in their life.

Common law claim for child sexual abuse – establishing negligence

In any common law claim for damages the claimant (eg. the survivor) must establish that the respondent (eg. the perpetrator/the institution) was negligent and that this negligence caused the abuse. The claimant must establish that the respondent's negligence caused their injury which caused the claimant a loss.

Negligence is a high and complex legal threshold which requires the claimant to show that the respondent (to put it simply) did something wrong and outside of what would have been expected of them in the situation.

Often in claims for compensation for child sexual abuse, part of the negligence of the institution or entity which responds will be through a concept called 'vicarious liability'. This means that they can be held responsible for the negligence of (primarily) their employees where the negligence of the employee occurred in the course of their employment or under the instruction of the entity.

As example, if the abuse was perpetrated by a teacher in the course of their employment, then the entity (in this case the school where the teacher worked) responsible will likely be vicariously liable to the survivor for that abuse.

Many other states in Australia have also followed this recommendation to remove time limits for survivors of child sexual abuse.

What damages are available in a common law claim for child sexual abuse?

The key difference between a common law claim for damages and a payment through the National Redress Scheme is that there is no maximum amount of damages in a common law claim.

In the National Redress Scheme, survivors could receive payments of anywhere from $0.00 up to $150,000.00 as their compensation through that scheme. According to a 2020 report from the Australian Government Department Social Services, the average payment under the Scheme was for $82,000.00.

In common law claims, the amount of compensation is calculated based on the loss suffered by the survivor. In many cases, this loss will be greater than the maximum Redress Scheme payment.

When calculating a survivor's damages/loss caused by the abuse, there are various matters which are considered:

> "General damages" – this is a payment for pain and suffering caused by the abuse;

> "Economic loss" – this is to compensate the survivor for the income they have lost, both in the past and the future, because of the injuries caused by the abuse;

> "Special damages" – this can include payments for things like medical expenses for appointments to assist with the abuse related injuries, travel to those appointments, pharmaceutical expenses etc.

It is crucially important to get expert legal advice about the calculation of these amounts as there are many complex legal principles which apply to these calculations. Although an initial offer by the respondent's insurers may seem substantial, our experience shows it is often much less than what the claim is really worth.

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Accepting a settlement offer – legal advice is crucial to protect your financial interests

The most important thing survivors of child sexual abuse to be aware of when considering any compensation option is that generally they are only able to **seek one source of payment**.

If a survivor is considering, or has been offered, a National Redress Scheme payment, they should ensure they have consulted an experienced abuse compensation lawyer to help them consider whether they have any rights to make a common law claim. It is critically important to seek expert legal advice **before** accepting any offer of settlement from the National Redress Scheme.

At IM Lawyers, we offer a free consultation and run eligible claims on a "no win, no fee" basis.

Further reading

- Can I get compensation for abuse suffered as a ward of the State in Queensland?
- Can I claim more compensation for child abuse after I signed a settlement deed?
- Child sexual abuse compensation – National Redress Scheme.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.