IM LAWYERS



Can I get compensation for abuse suffered as a ward of the State in Queensland?

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Historical abuse, sexual and physical, has occurred across multiple institutions in Australia over many decades and, unfortunately, continues today. Many survivors of abuse were wards of the State, and it is understandable that they may want to know about their rights to compensation for any abuse experienced whilst under the care of a child welfare authority.

The simple answer is: yes, compensation may be available but (like many things in law) it depends.

In this blog, we focus on sexual/serious physical abuse suffered by individuals whilst they were ‘wards of the State’.

What compensation is available for survivors of child abuse?

There is a variety of compensation options open to survivors of historical abuse. These include a common law claim, the National Redress Scheme and options to revisit previously settled matters.

You can learn more about compensation for historical abuse here.

Abuse claims time limits removed

To suggest that the law in the area of compensation for child sexual abuse has seen significant change, would be something of an understatement!

Without a doubt, the most significant and important change to the law related to historical abuse compensation claims has been the removal of ‘limitation periods’ for cases where compensation is being sought for abuse suffered whilst a child.

Usually, a child who suffers personal injury only has until their 21st birthday to bring a claim for that injury. However, there is now no limit to the time that someone has to bring a claim if that injury is a result of abuse (of a child) that was:

sexual in nature;

'serious physical abuse'; or

psychological abuse perpetrated in connection with sexual abuse or serious physical abuse.

It is important to note that the phrase 'serious physical abuse' is not defined in the relevant legislation (for good reason) so what this phrase means is still not exact. If you experienced sexual abuse or what you consider serious physical abuse as a ward of the State and are unsure if you would be entitled to compensation, you should seek legal advice.

It costs you nothing to find out where you stand: 1800 001 339

What does the term 'ward of the State' mean?

Essentially, a 'ward' was a child whose legal guardian was the State (for example, the state of Queensland) and who is cared by the child welfare authority at that time (this is sometimes referred to as 'Child Services' or "Child and Family Services").

Historically the statutory power governing wards (and responsibilities etc.) was provided by the *Children's Services Act 1965* (now repealed).

Duty of care of the child welfare authority to a ward of the State

It is well settled in Australian common law that a public authority (such as the child welfare authority) is generally subjected to a common law duty of care when exercising their statutory power (such as the child welfare authority being the legal guardian of the ward).

The courts have observed that for child welfare authorities, the interests of the child are always to be considered paramount. This concept is very important in 'framing' the extent of the duty of care which applied in any particular child's situation, no matter when the child was considered a ward of the State.

As with any common law action for damages (compensation) for personal injury, when considering a child abuse case of a child who is a ward of the State, the court considers what the 'reasonable' response ought to have been by the child welfare authority to any potential risk of abuse that child might have been under at the relevant time.

It is this concept of 'reasonable response' to any risk which is what is carefully examined by lawyers and ultimately a judge if a case can't be resolved beforehand and needs to proceed through the court system. This is a very complex concept and it is why it is crucial that you work with a lawyer experienced in abuse claims, to optimise the success of your claim.

How can IM Lawyers help?

The standard of care that a court might determine to be assessed in any particular case involving an allegation of child abuse will depend on the facts of the particular case. But generally, the standard is informed by community standards and expectations which, when it comes to ensuring our children are protected from any form of harm (especially from adults), attracts the highest standard of care in any community, the world over.

But child sex abuse cases are still hard to run and it is very important that you (or someone you know) seek legal advice from a solicitor who is experienced in the conduct of these types of cases if you (or they) have been abused or experienced abuse as a child.

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.