



Abuse compensation under the Sentencing Act s85B

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At Guardian Injury Law, we specialise in [abuse law compensation claims](#). There are a number of options for survivors to pursue compensation for the abuse they have suffered.

- A [common law claim](#);
- A deed revisit if you have received a past settlement;
- An application under the [National Redress Scheme](#); and
- In Victoria, a claim under the *Sentencing Act 1991*.

In this blog, we explore an abuse survivor's compensation options when they pursue a claim brought under section 85B of the Sentencing Act.

Who can make s85B Sentencing Act claim?

s85B of the Sentencing Act states:

'(1) If a court—

(a) finds a person guilty of an [offence](#); or

(b) convicts a person of an [offence](#)—

it may, on the [application](#) of a person who has suffered any injury as a direct result of the [offence](#), order the [offender](#) to pay compensation of such amount as the court thinks fit for any matter referred to in paragraphs (a) to (d) of subsection (2).'

What does s85B of the Sentencing Act mean?

If you are the survivor of abuse and the offender has been found guilty of a criminal offence for the abuse, you may be eligible to make a claim for compensation against the individual who abused you.

In other words, it is a requirement that the offender has been found guilty of a criminal offence related to the abuse for this option to be available to you.

Is there a time limit to make a claim under s85B of the Sentencing Act?

An application for a compensation order under s85B must be made within **12 months** of the offender either being found guilty or convicted of the offence. While there is a potential to apply to the court for an extension of time to make the application, there is no guarantee this will be granted.

It is, therefore, important that you do not delay getting legal advice. The earlier you engage an experienced abuse law lawyer, the better.

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What sort of compensation can I claim under the Sentencing Act?

There are generally four types of compensation that can be awarded to survivors of abuse in a s85B claim. They are:

1. Pain and suffering damages: this type of damages aims to recognise the loss of enjoyment of life or any other non-economic consequences suffered by the claimant as a result of the injury or abuse.
2. Counselling expenses, either actually incurred or likely to be incurred as a result of the abuse.
3. Medical expenses, either actually incurred or likely to be incurred as a result of the abuse.
4. Any other expenses, either actually incurred or likely to be incurred as a result of the abuse.

Compensation awarded under the Sentencing Act can potentially be sizeable. It is therefore recommended you get assistance from an experienced abuse law lawyer to maximise any potential entitlements you may have.

Are the offender's financial circumstances relevant?

Pursuant to s85H of the Sentencing Act, if a court decides to make a compensation order, it may, in determining the amount and method of payment of the compensation, take into account the financial circumstances of the offender and the nature of the burden

that the payment will impose.

A court is not prevented from making an order for compensation if they cannot find out what the offender's financial circumstances are.

Unfortunately, the reality is if the person does not have any means to pay a compensation award, this can make the process difficult. We recommend getting assistance from an experienced abuse law lawyer to make sure you understand all of your potential options to pursue compensation.

[Contact us for free advice: 1300 700 761](tel:1300700761)

What if I have received a Victims of Crime payment for the abuse?

You can still make a s85B application even if you have received a Victims of Crime ('VOCAT') payment for the abuse in the past.

If you have previously received a VOCAT payment in relation to the abuse, the court must reduce any compensation to be paid under s85B, by the amount you have received from VOCAT.

Will I have to go to court for a s85B claim under the Sentencing Act?

A s85B claim is made by way of an application to the court. However, this does not mean you will necessarily have to go to court. Many cases are able to be resolved by way of negotiations outside of court, but going to court is a possibility.

At Guardian Injury Law, we know that this can be a worrying prospect for some people. We aim to deliver our services in a way which makes our clients as comfortable as possible with the whole process.

Are there other options to pursue compensation for abuse?

If the abuse occurred in an institutional setting, you may also be able to pursue a common law claim in negligence or a National Redress Scheme application against the relevant institution. Some common examples of institutional settings for claims of this nature include:

- schools;
- religious organisations;
- government run Institutions, for example, Turana Youth Training Centre;
- scouts bodies;
- sporting bodies.

To give you a better idea of what this might practically mean, consider this scenario:

- A person was abused by a teacher in a school; and
- that teacher had been found guilty of a criminal offence in relation to the abuse.

In this situation, the abuse survivor may be able to make a s85B application against the individual teacher and also pursue a [common law claim in negligence against the school](#) where the abuse occurred.

This is not an exhaustive list of the potential types of institutions that claims can be brought against. We highly recommend seeking the advice of an experienced abuse law lawyer to about all your potential entitlements.

How an abuse lawyer can help your claim

We understand, through our experience with these sorts of claims, how challenging a process it can be for survivors of childhood abuse. At Guardian Injury Law, we aim to deliver our services in a trauma informed manner. We will listen to your story and advise you on all potential compensation options available to you.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

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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.