



## Two compensation options for survivors of childhood abuse – civil common law or National Redress Scheme

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The compensation options available to [survivors of childhood sexual abuse](#) have significantly changed for the better since the [Royal Commission into Institutional Responses to Childhood Sexual Abuse handed down its findings](#) and recommendations in 2015. There are now two very different options for compensation; a Civil Common Law claim or the Federal Government National Redress Scheme.

### Compensation capped under the redress scheme but open for economic loss under a common law claim

Survivors of childhood abuse must now consider whether they are content with a capped claim of up to a maximum of \$150,000 through the [National Redress Scheme](#) or alternatively, wish to pursue a common law claim for pain and suffering and economic loss damages.

With the right legal advice and case preparation, **common law claims result in significantly higher settlement sums** so that survivors of childhood abuse can receive the maximum compensation they are entitled to.

### History of compensation for survivors of childhood abuse

Up until the Royal Commission's findings and the subsequent legislative reforms, survivors of childhood sexual abuse had limited compensation options available to them.

They were hampered by a three-year statute of limitations from the date they turned 18 in which to bring a claim; meaning, claimants only had a maximum of three years after they turned 18, to access compensation for the abuse they experienced.

Survivors were also barred by the [Ellis defence, which arose from the case \*Ellis v Pell\*](#). This case set a legal precedent that survivors of childhood abuse could not bring claims against unincorporated entities, such as the Catholic Church (and other similar institutions), as they were not a proper legal entity to sue.

Following the Royal Commission's recommendations, the statute of limitations was removed for survivors of childhood abuse; meaning there is now no time limit to bring a compensation claim for childhood abuse. The Ellis defence was also removed on 31 December 2018. You can learn more about this in our blog, ["Time limits for childhood abuse compensation claims"](#).

Both of these significant changes mean that childhood abuse claims for pain and suffering, past and future economic loss as well as medical expenses in the past and future, are now regularly and successfully pursued through the Courts to achieve significant and life changing results for survivors.

Further, The National Redress Scheme was created in response to the recommendations by the Royal Commission and commenced on 1 July 2018. The scheme can provide counselling, a redress payment capped at a maximum of \$150,000 as well as an apology.

In practical terms, the changes have meant that survivors of childhood sexual abuse are now able to come forward when they are ready to tell their story in a supported environment and seek full and appropriate compensation for the harm they have suffered. They are no longer hampered by the three year time limit or excluded as a result of it.

## Current options for childhood abuse compensation

### 1. Common law claim

Currently, common law claims achieve the highest amounts of compensation for survivors of childhood abuse.

Depending upon your specific circumstances, settlements can consist of payment for:

- pain and suffering damages;
- past and future economic loss;
- past and future medical and like expenses which includes medication, care and treatment;
- aggravated damages; and
- an apology.

## How much compensation is payable with a common law claim?

We find that taking careful and detailed instructions from our clients, as well as obtaining expert material, pain and suffering claims can be maximised and significant past and future economic loss claims can successfully be brought for often very significant amounts of compensation.

## 2. National Redress Scheme

The National Redress Scheme was implemented from 1 July 2018 and is available for survivors of childhood abuse where:

- the abuse happened before July 2018;
- an institution was responsible for bringing you into contact with the person who abused you;
- you were born before 30 June 2010; and
- at the time of the application, you were an Australian Citizen or a permanent resident.

You should be aware that if you are currently in gaol or have received a sentence of more than 5 years, you are precluded from bringing a claim.

## How much compensation is payable under the National Redress Scheme?

The maximum redress payment a person can receive is \$150,000.

Depending on the nature of the abuse, the amount you are entitled to may be anywhere between \$20,000 to \$150,000.

**Unlike common law claims, the National Redress Scheme does not provide for what can often be significant past and future economic loss as well as medical and like expenses. These can equate to a substantial sum under a common law claim.**

Before you consider a Redress claim, you should seek legal advice to ensure that you understand all of your options.

## Did you previously settle a childhood abuse claim before 1 July 2015? You may be entitled to revisit it

Prior to 1 July 2015, survivors of childhood abuse who settled their compensation claims, settled them for what is now considered minimal compensation. This was due to the restrictive legal framework of the time. Upon settlement of their claims, survivors were required to sign a deed of release which meant that they could not bring a further claim for the abuse they had suffered.

In 2019 after a landmark case, legislation was amended to allow the Court to set aside prior deeds of settlement in historical childhood abuse claims; basically, voiding that deed or release. This only applies to matters which were settled before 1 July 2015.

These amendments allow survivors the opportunity to seek further compensation where their previous settlements were not appropriate or were inadequate as a result of the previous legislative restrictions.

If you settled a childhood abuse claim before 1 July 2015, you should seek legal advice to determine if there are any options available to you for further compensation by way of a deed revisit.

## How do I know which compensation option is right for me?

At Guardian Injury Law, we take the time to get to know you and take careful and detailed instructions so that we can provide you with clear legal advice so that you can achieve the maximum compensation available to you.

We have helped clients achieve much better results with a common law claim than they would achieve through the Redress Scheme.

If you are considering lodging a Redress application, we strongly encourage you to call Guardian Injury Law to make sure you understand your options and to achieve the maximum compensation possible.

## Contacting Guardian Injury Law

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