



Abuse compensation claims against schools

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We know from our experience at Guardian Injury Law that, sadly, many individuals have suffered both sexual and physical abuse in school settings in Victoria. It is important that survivors know that they may have options to pursue compensation for any injuries arising out of the abuse, regardless of whether the abuse occurred in a public school or a private school.

There are three primary ways to claim [compensation arising out of abuse](#) in a school setting in Victoria. They are:

1. a common law claim is a claim in negligence for pain and suffering and economic loss compensation;
2. a National Redress Scheme claim; and,
3. a section 85B Compensation Application or *Sentencing Act* claim.

What is a common law claim?

A common law claim is a claim in negligence. There are generally three elements that must be established to successfully bring a common law claim for school abuse. They are:

1. that the school owed the student a duty of care;
2. that the school breached their duty of care when the student was abused; and,
3. that the student suffered an injury as a result of the abuse.

A school's duty of care

Teachers and schools have a duty to take reasonable care for the safety of students who are under their supervision and control.

Where a student has been abused by a teacher, a school may be found to be responsible for the actions of the teacher if certain conditions are met. These conditions can include things such as:

- failing to supervise the teacher;
- employing someone who is a known risk for this type of behaviour; or
- failing to respond to complaints about the abuse.

This is a legal concept known as vicarious liability; that is, the responsibility that, in the case of school abuse, the school has for the actions of its teachers, other staff and students.

Where a student has been abused by another student, it must be established that the school either knew or ought to reasonably have known that the student was at risk of being abused and that the school failed to adequately minimise that risk.

Generally speaking, the duty of care owed by a school applies to a child who is on school premises during school hours. There have, however, been some cases in Australia where students have been awarded compensation for abuse that has occurred both on and off school premises. For example, at a teacher's home, in their car or on school excursions and camps.

Can I bring a common law claim for physical abuse at my school?

Along with claims related to historical sexual abuse, common law claims are also able to be brought in relation to physical abuse only, including, for example, suffering PTSD as a result of that physical abuse. At Guardian Injury Law, we know from experience that many people did suffer significant physical abuse in school settings in Victoria as children. We also know from our experience, the profound and long-lasting effect this sort of abuse can have on a person.

Some instances of corporal punishment cannot be claimed for if they were within the 'prescribed standards' at the relevant time. For example, the use of the cane on a once-off occasion in schools in the 1970's and earlier was a prescribed standard (whether we agreed with it or not). However, excessive, unreasonable and repetitive physical abuse would not be considered a prescribed standard.

If you suffered any form of physical punishment or physical abuse in a school setting as a child and have been adversely impacted from a psychological perspective as a result, you should speak to Guardian Injury Law about whether you have a viable claim.

[Book a free interview to find out where you stand: 1300 700 761](#)

The third element – the student must have suffered an injury due to the abuse

The final element of a common law claim is injury. It is a requirement that the person making a common law claim has suffered an injury as a result of the abuse. This is in most circumstances a psychological injury, but things such as scarring from physical abuse can also be considered.

What types of damages can I claim?

There are two main types of damages (compensation) that can be sought in a school abuse claim.

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. **Economic loss:** this type of damages aims to recognise the economic impact of the abuse. For example, for any loss of earning capacity suffered as a result of the abuse. In the context of a school claim, this might be demonstrated in the form of a decrease in academic performance due to the abuse which led to more limited employment activities for the claimant later in life.

There are some other forms of compensation which may be available depending on the individual circumstances of the claim.

Damages in these sorts of claims can be sizeable. It is important survivors have the assistance of an expert abuse lawyer to ensure they maximise the compensation payable.

Are there any time limits for bringing a common law claim?

In 2015, the time limit for childhood abuse claims was abolished. This means there is no time limit for any civil claims brought for injuries arising out of physical or sexual abuse of a minor.

However, the passage of time can impact upon the availability of evidence. In recognition of this, defendants (for example, the school) still have an entitlement to apply to the court to have a case either summarily dismissed or permanently stayed where the time lapse means a fair trial is not possible.

It is, therefore, important you seek legal advice from Guardian Injury Law as soon as possible.

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What is a section 85B claim under the *Sentencing Act*

An 85B claim is a claim brought under the *Sentencing Act* against an individual (as opposed to against the school or institution). This type of application can only be brought against an individual who has been found guilty or convicted of a criminal offence related to the application.

This type of claim has a time limit of 12 months from the date of conviction of the perpetrator and is dependent upon the individual having the means to pay if compensation monies are awarded.

This is something you can discuss with Guardian Injury Law if the person who abused you has been convicted in a criminal court for the abuse.

National Redress Scheme

To understand more about what the National Redress Scheme offers, read our blog [“National Redress Scheme for survivors of childhood sexual abuse”](#).

How an abuse lawyer can help

We understand, through our experience with these types of claims, how challenging a process it can be for survivors of physical and sexual 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.