



# Compensation options if your child is abused in paid childcare

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Parents choose childcare centres based on their ability to nurture and keep their children safe. Unfortunately, there are circumstances where children's vulnerability and innocence are taken advantage of, making them victims of those who are entrusted to care for them.

This blog will take you through what child abuse in a paid childcare setting looks like and what you can do if your child has been abused while they were in care, including your options for [abuse compensation](#).

## What is childcare abuse?

Because children are unable to care for themselves, their needs differ from those of an adult, therefore, abuse towards children can look different.

Abuse at a childcare centre can be categorised as:

- **Emotional abuse:** purposely making the child cry through verbal or physical cues.
- **Neglect:** not supervising a child for a long period of time, not caring for their basic needs such as food and water, and not caring for their hygiene, such as changing their nappy for an extended period.
- **Physical abuse:** using force on a child, hitting, or handling children in a rough manner.
- **Sexual abuse:** unnecessary physical contact towards a child, exhibitionism, and exposure to explicit content.

- **Grooming:** acting in a manner to establish an emotional connection with a child with the intention to sexually abuse.

## How can a childcare centre be liable for abuse inflicted by employees?

Childcare services have a duty of care to ensure that the children who are being cared for are safe, and the parents and guardians of those children can be sure that they have left their children with an organisation who have done their due diligence in providing a safe environment for their children.

## What is duty of care?

The childcare centres have a duty of care to ensure that they are:

- hiring staff with the appropriate qualifications;
- vetting their staff, ensuring that they have been properly screened and hold any required police checks (for example, a working with children check);
- hiring enough staff to ensure that all children present can be looked after appropriately;
- properly training staff; and
- equipped to address complaints about staff members should they arise (for example, having suitable workplace policies and procedures in place and ensuring all staff are aware of those policies).

## Whose actions are childcare centres liable for?

It is not just the careers within a childcare centre that have a duty of care towards the children enrolled.

Larger centres often have other staff who are involved with the running of the centre. They may include:

- administration or office staff;
- receptionists;
- maintenance staff;
- drivers;
- kitchen staff;
- childcare assistants; and
- management staff.

If a child has been abused by anyone employed by the childcare centre, anyone contracted to provide services to the centre or any visitors to the centre, the childcare centre can be held liable.

# What to do if your child has been abused while in paid childcare?

## Ensure the child's safety

Whether you are the parent or the guardian, or someone who has witnessed a child in the centre being abused, take the child to safety.

This will involve separating the child from the abuser.

## Contact the parent or guardian

If you are not the parent or guardian of the child, ensure that the child's parents or guardians have been contacted.

## Seek medical attention

Contact 000 once you have attended to the child's immediate safety. The operator may provide you with instructions to follow, which can ensure that the child is kept safe and assessed for any injuries.

Ensure that the child is seen by a medical professional if they are not taken to hospital. This will ensure that they are able to receive a thorough examination.

## Collect evidence

You never know what may assist you in lodging a claim in the future, so to err on the side of caution, it's important to keep track of anything that could be potential evidence.

Evidence can include:

- medical professionals' contact information;
- witnesses contact information and statements;
- hospital records and discharge summaries;
- videos and photos;
- relevant correspondence;
- injury report of the childcare centre;
- child's cloths;

- objects, for example toys and/or furniture;
- not disturbing the environment where the abuse took place.

## Report the abuse

Some parents may not want to report the abuse to the police. While this is not a requirement, reporting the abuse to the police may assist should you wish to pursue future claims. You can read more about this in our earlier blog, [“Do I have to report my abuse to police to claim compensation?”](#)

Not only is it important to report the abuse to the police, but you should also report the injury to relevant management at the childcare centre for appropriate action to be taken.

## Track medical and like expenses

Ensure that you keep track of all medical and like expenses regarding the treatment your child received or continues to receive and all medication that your child been taking.

## Seek legal advice

It's important that you speak to an experienced lawyer who is able to assist you in navigating through your child's rights, including rights to compensation.

[FREE ADVICE FROM AN ABUSE COMPENSATION LAWYER: 1300 700 761](#)

## What type of compensation can be claimed?

### Common law damages

If your child's abuse was caused as a result of the childcare centre's negligence, you may be entitled to a common law damages claim.

Types of compensation available include:

- medical and like costs, including rehabilitation;
- past and future loss of income (for future loss of earning capacity only in the case of a child in childcare);
- pain and suffering;
- additional damages for particularly egregious circumstances, such as aggravated damages.

## Sentencing Act claim

If the abuser has been previously found guilty of a criminal offence for abuse, you may be able to make a compensation claim directly against the abuser.

Should you be successful, you may be entitled to:

- pain and suffering;
- counselling expenses;
- medical and like expenses.

It is important to note that *Sentencing Act* claims will take into consideration the financial circumstances of the abuser. This includes their assets and their capacity to pay for any compensation sought. You can read more about these types of claims in our earlier blog, [“Abuse compensation under the Sentencing Act s85B”](#).

## Compensation for parents and guardians

If the childcare centre has breached their duty of carer to a secondary victim such as parents and guardians of the child that was abused, they can be held liable.

If you are a parent or guardian who has suffered a psychological injury as a result of the abuse sustained to your child, the *Wrongs Act 1958* (Vic) states that should you have sustained a psychiatric injury or a disorder which can be supported by medical evidence, you may be entitled to a compensation claim if you can meet the elements for nervous shock.

## Limitation period – time limits to make a claim for abuse

In Victoria, the *Limitation for Actions Amendment (Child Abuse) Act 2015* has removed the time limit for which a childhood abuse claim is able to be brought forward. This means that at any stage in your life, you are able to bring action against the childcare centre for the harm experienced by your child.

## What if my child was abused by another child?

It is not uncommon for a child to be abused by another child. In these situations, sadly, it is less likely for the victim survivor to come forward, given that they may be unaware of the circumstances surrounding the abuse.

If your child has been abused by another child, the above-mentioned steps still apply; the children should be separated, the parents should be notified, and the relevant authorities must be notified, as well as the perpetrator's parents and the childcare centre. You should also seek advice from a lawyer experienced in abuse compensation.

# Warning signs of child abuse

There are several indicators which may reveal that a child is being abused:

- Sudden behaviour changes;
- Difficulty moving and sitting;
- Changes in sleep pattern or consistent nightmares;
- Bruises;
- Unusual knowledge and behaviour for their age;
- Sudden anxiety;
- Clothing stains or rips;
- Not wanting to be changed.

## Get help from an abuse compensation lawyer

If your child has been abused while under the care of a childcare centre, contact Guardian Injury Law. Our dedicated team will assess you and provide you with the appropriate advice for you to get justice for your child.

We offer initial free advice and run claims on a “no win, no fee” basis, so it costs you nothing to find out where you stand.

## Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

[enquiries@guardianinjurylaw.com.au](mailto:enquiries@guardianinjurylaw.com.au)

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