



Pathways to Justice

For Survivors of Abuse



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in Personal Injury, Family and Workplace Relations Law

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Is the National Redress Scheme right for you?

While the new National Redress Scheme has some benefits, it also has some very real limitations. For example, payments from the Redress Scheme are capped at \$150,000 whereas compensation available through civil litigation may extend from \$200,000 to \$500,000 and beyond.

Fortunately, the Redress Scheme is not the only option for redress for people who were sexually abused as children.

Survivors still have the option to take civil litigation against institutions and perpetrators, and in many cases the result will be far superior.

We outline **three basic pathways to justice for survivors of abuse** who are seeking compensation from institutions and perpetrators. Each pathway has its own benefits and limitations, but the advantage for survivors is that they get to choose the option which best suits their situation.

In every case it is worth taking the time to discuss your claim carefully with your lawyer to find out which pathway will best suit your claim.

Ultimately, it's your choice.

Option 1: Out of Court Settlement Conference Process

Who this might suit

Anyone abused by a person associated with an institution – e.g. religious organisation, school, etc.

Compensation range

This will depend on the nature of the abuse, and the impact on the survivor. Typically claims settle in the range of \$80,000 - \$200,000 but each claim is different.

Key benefits

- **Low legal costs**
- **Reasonably quick resolution**
- **No court process**
- **Survivors not exposed to risk of paying costs of defendant**
- **Survivors can negotiate an apology from the institution.**

Key pitfalls

- **Claims for earnings loss usually not settled through this mechanism**
- **In some cases, may not deliver as good a result as the court process**
- **Lacks the ability to force an institution to engage in the process**
- **Legal costs payable out of your compensation.**

Example

Joe (not his real name) suffered significant sexual abuse as a ward of the state while in the care of the Sisters of Mercy. As a result, he has suffered extensive psychological trauma and has been diagnosed with Post Traumatic Stress Disorder.

After preparation of Joe's claim, including getting a report from a psychiatrist, a conference is arranged with lawyers acting for the State and for the Sisters of Mercy. Joe accepts an offer of \$150,000, and a written apology from both institutions. After payments of his legal costs of \$35,000, he receives \$115,000.

Important information

The Out of Court Settlement Conference Process has been developed by lawyers and institutions as a way to fast track claims instead of going through the Court Process. It is still possible to use the Court Process if settlement does not result from the Out of Court Settlement Conference Process.

The underlying basis for claims using this process is that the institution has legal liability for the abuse occurring, because the institution was negligent in some way which allowed the abuse to occur. In some cases, simply proving that the institution employed the abuser is enough, as in these cases the institution may be held responsible as if it had in fact perpetrated the abuse.

The Out of Court Settlement Conference Process

The process typically goes through these steps:

- 1. We investigate your claim and gather relevant documentation including Police records and wardship records, etc.**
- 2. We collaborate with you to prepare your story, in the form of a statutory declaration.**
- 3. We arrange a psychiatric evaluation which demonstrates the impact on your life.**
- 4. We get a barrister to prepare a legal document setting out the basis on which your claim is made.**
- 5. We arrange an Out of Court Settlement Conference.**

The Conference is generally held at our offices. We arrange a safe room which we use to meet with you. There is no need for you to ever meet the other side or their lawyers.

The purpose of the Conference is to reach an agreed settlement of your claim. This may also include, if you want it, an apology or an explanation from the institution of the steps it has taken to ensure abuse will not occur in the future.

If your claim does not resolve at the Conference, you still have the option of using the legal processes through court.

Option 2: Court Process

Who this might suit

Survivors with a strong case who can show that an institution was negligent, or were abused by a perpetrator who has significant assets. Survivors may need to give evidence if the case ultimately proceeds to court, although most cases settle before this stage.

Compensation range

Dependent on the nature of the claim. However, a claim for loss of earnings will increase the claim considerably. Claims may settle for over \$200,000, and there are examples of final court verdicts of over \$500,000.

Key benefits

- Claim can include loss of earnings
- Compensation likely to be higher than if the Out of Court Settlement Process is used
- Legal process puts pressure on a defendant to take steps in a timely manner
- Defendant is liable for part of the survivor's legal costs at settlement.

Key pitfalls

- Survivors may have to give evidence in court
- Survivors exposed to risk of paying legal costs of defendant if unsuccessful
- Court Process likely to take a longer time to reach settlement than Out of Court Settlement Conference Process.

Example

Mary (not her real name) was sexually abused by a teacher at her primary school over a number of years. The school principal was aware of a complaint of inappropriate behaviour against the teacher some years before, but failed to take protective action.

Mary has suffered significant trauma which has affected her all her life. At the age of 37 she has been unable to sustain a serious or long term relationship due to the trauma. She qualified as an accountant but has not been able to maintain a consistent employment record, losing employment due to her ill health and having long periods out of work.

Mary settles her claim at a mediation, 2 years after court proceedings begin, for \$500,000. This amount includes compensation for pain and suffering, and past and future lost earnings. The defendant pays part of her legal costs, and she pays her lawyers a further \$50,000 for costs, leaving her with \$450,000.

Important information

If the Out of Court Settlement Conference Process does not result in a satisfactory offer, the Court Process can still be used. Your lawyer can advise you when and whether to start this process.

Using the Court Process does not mean you are about to go to court. At least 95% of all court cases are settled well before anyone enters a court building or gives evidence, as there is compulsory mediation in all court cases.

The advantage of using the Court Process is that if your case is strong enough, you are likely to get a better settlement offer than if you used the Out of Court Settlement Conference Process.

Some institutions are not prepared to participate in the Out of Court Settlement Conference Process. In these cases, the only way to get a response is to start the Court Process, and show you mean business.

In some cases the Court Process can be slow. However, if your case has been well prepared, we can use the time limits of the process to force the defendant to discuss your claim at an early point.

Option 3: Redress Scheme

Who this might suit

- Survivors who settled their claim some time ago and are unhappy with their settlement
- Survivors who have weaker claims, for example those who do not know the name of the perpetrator.

Compensation range

Not known at this stage, but there is a cap of \$150,000. The average payment is said to be \$76,000 but payments will depend on the survivor's circumstances.

Key benefits

- Claims process is simple (according to Commonwealth government)
- The standard of proof required to prove a claim is easier than other options
- Claimants deal directly with the Redress Scheme, not the institution
- Payments are made to claimants directly by the Commonwealth government (which then seeks reimbursement from the institution)
- Claims for a “top up” can be made by survivors who have previously settled a claim
- Claimants can ask for counselling, up to a maximum of \$5,000, and/or an apology.

Key pitfalls

- Redress paid is in general likely to be less than the amounts claimants can receive through the Out of Court Settlement Conference Process or through court
- Claims limited to sexual abuse only (and any physical abuse associated with the sexual abuse)
- Claims can be made for abuse suffered as a child only
- Limited to abuse occurring before 1 July 2018
- Claims can only be made against institutions which have joined the Redress Scheme;
- Only one claim can be made
- A final release, ending all claims against the institution, must be signed before payment can be received
- No legal costs are paid, although claimants may seek advice from Knowmore.

Example

John (not his real name) was sexually abused as a child by a Catholic priest, whose name he does not know. He does not remember where the abuse occurred. He has suffered trauma as a result, and in 2013 he settled a claim with the Catholic Church for \$30,000.

John makes a claim through the redress scheme, and his compensation is assessed at \$75,000. This amount is then reduced by \$33,000 (the indexed value of the original \$30,000 he received) and he will then receive a further \$42,000.

John also receives counselling, and a written apology from the Church.

Important information

The Redress Scheme is limited. It is recommended for those survivors who previously settled their claims and now wish to have their claim reassessed. It is also suitable for those people who have difficult claims, or do not wish to engage directly with an institution.

The Redress Scheme has been created and will be run by the Commonwealth, but it is funded by those institutions which sign up to the Scheme. The Scheme commences on 1 July 2018, and applies to sexual abuse which occurred before that date.

The Scheme has a lower threshold of proof than most legal claims require. The Scheme operator must only be satisfied there is a “reasonable likelihood” that the abuse occurred. There is no requirement to establish fault on the part of the institution – instead, the institution must be “responsible” for the abuser having contact with the survivor.

The application process is to be simple, run through a bureaucratic process. There is no need for you to speak to anyone, you just fill in a form with details of your claim. Funding has been provided for organisations to help you with the process, as this is not a process where lawyers are encouraged.

There is a cap of \$150,000 on payments, although most payments will be much less than this. Assessments will be made by officers in the Redress Scheme, using a “matrix” which sets out dollar amounts for particular kinds of abuse.

Claims can only be made for:

- **Child sexual abuse, and physical abuse which is connected to that sexual abuse;**
- **Abuse which occurred where an institution which has joined the Scheme, is responsible.**

There are exclusions – a survivor of abuse who has at some time been convicted of a serious crime to five years or more in jail, may not make a claim, except in exceptional circumstances.

Prisoners may not make a claim from jail, but may make a claim once they have been released.

Prior settlement

Where the claimant has received a settlement in the past in respect of the abuse, an application for a “top-up” may be made. An assessment will be made under the Redress Scheme, and a further payment may be made if the assessment exceeds the original payment, which will be indexed. A formula sets out how the original payment is to be indexed.

A claimant may request a direct personal response from the institution, which may be one or more of:

- a) an apology;**
- b) an acknowledgement of the impact of the abuse;**
- c) an assurance as to the steps the institution has taken to prevent abuse;**
- d) an opportunity to meet a senior official of the institution.**

Counselling

If a claimant wants counselling, they are referred to the relevant state for counselling BUT only once the claimant is found to be entitled to redress.

Acceptance of Offer

Once an offer of redress is made, it will remain open for acceptance for 6 months.

The claimant is required to sign a Deed of Release in order to receive a redress payment, which prevents them from making any other claim for the abuse against the institution.

Only one claim for the same abuse can be made to the Redress Scheme.

Do you need to talk to somebody?

Making a decision may be difficult. If you need to talk with someone, you are welcome to call us for an appointment where we can explain these options to you and help you make the choice that best suits your circumstances.

For a free and confidential appointment call **1300 366 441**.

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Contact us to arrange a free first interview



1300 366 441



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