



Claims for survivors of sexual abuse: what you need to know about the National Redress Scheme and Civil Law

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Royal Commission and Redress timeline



2012	2013	2015	2016	2017	2018	2019	2020	2021
<p>12 Nov Gillard government announces a Royal Commission</p>	<p>11 Jan Terms of Reference directs the Royal Commission</p>	<p>14 Sep Royal Commission releases the <i>Redress and Civil Litigation Report</i></p> <p>Notes 60,000</p>	<p>4 Nov Turnbull government announces it will set up a Federal redress scheme</p>	<p>26 Oct Institutional Child Sexual Abuse Bill 2017 introduced</p> <p>15 Dec Royal Commission Final Report released</p>	<p>Early 2018 Senate Committee Hearings into Redress legislation</p> <p>18 June Legislation passes the Senate</p> <p>1 July Scheme commences</p>	<p>3900 applications in the first year</p> <p>Fewer than 200 payments received</p> <p>Wait time 3-12m</p>	<p>7000 applications, only 2900 decisions</p> <p>30 June 2020 deadline for institutions to join the scheme</p> <p>1 July Second anniversary of the scheme</p>	<p>7 year extension give to join the Scheme</p> <p>15 Feb 2021 Amendments introduced</p> <p>1 July Third anniversary of the scheme</p>

Royal Commission statistics

60,000	survivors identified	204	prosecutions commenced
8,013	private sessions held	57	public hearings
4,000	institutions reported on	Over 50	research papers published
2,575	referrals to police and authorities		

Of survivors reporting in a private session:



- 62% reported abuse in faith-based institutions
- 27% reported abuse at government-run institutions
- 40% reported abuse in Catholic institutions
- 8% reported abuse in Anglican institutions
- 4% reported abuse in Salvation Army institutions



Redress and Civil Litigation Report, 14 September 2015

Recommended elements of redress included:

- **Direct personal response**
- **Counselling and psychological care**
- **Monetary payments**
 - **maximum payment of \$200K**
 - **carefully considered matrix of assessment taking into account severity of abuse, severity of impact and other factors**



Redress Scheme

National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth)

- **Scheme commenced 1 July 2018**
- **Redress is:**
 - 1. A payment of up to \$150K;**
 - 2. Counselling and psychological assistance; and**
 - 3. An apology/response from the entity responsible for the abuse.**
- **Accessing redress will mean signing away common law rights**



Participating Institutions

- **All Commonwealth, State and Territory institutions are participating institutions**
- **Non-government institutions must be declared to be a 'participating institution'**
- **Non-government institutions have until 1 July 2020 to join the Scheme**
- **Over 20,000 current and historical entities are 'participating institutions'**
- **Most large institutions are participating entities**

Who can access Redress?

- 1. Sexual abuse must have occurred before 1 July 2018;**
- 2. Applicants must be over 18 or turn 18 before 30 June 2028 (the end date of the scheme);**
- 3. Applicants must be an Australian citizen or permanent resident;**
- 4. A participating institution must be responsible for the abuse; and**
- 5. Applicants must apply between 1 July 2018 and 30 June 2027.**

Who can not apply

- **If an application has already been made**
- **A security notice is in place**
- **The applicant is a child who will not turn 18 before 30 June 2027**
- **The person is in gaol**

The application process

- **Application is submitted**
- **An applicant must satisfy the Operator that there is a *reasonable likelihood* that they were sexually abused**
- **An Independent Decision Maker will make a decision about the application; and**
- **If approved the Operator must make an offer as soon as reasonably possible**
- **Only one application may be submitted for the lifetime of the Scheme**

Counselling and psychological care

- **In addition to any offer of redress:**
 - Access to counselling and psychological services, depending on where the Applicant lives (provided by the State through associated schemes); or
 - A payment of up to \$5K for counselling outside the scheme as follows:
 - \$5k (for penetrative abuse)
 - \$2.5k (for contact abuse)
 - \$1.25k (for exposure abuse)

Direct personal response

- **Institution must take reasonable steps to provide a direct personal response if requested to do so**
- **Includes any one or more of:**
 - An apology or statement of regret
 - An acknowledgement of impact
 - An assurance as to steps taken to prevent the abuse
 - An opportunity to meet with a senior official of the institution

Redress – just one choice

- Important to note that redress is just one choice – survivors can also bring a common law claim
- Accepting a redress offer forever removes the right to bring or continue a common law claim
- Critical that anyone who receives a redress offer understands whether they might succeed with a common law claim – damages usually far in excess of redress
- Ideally obtain legal advice prior to lodging application for redress

Assessment Framework

Amount of redress payment						
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Kind of sexual abuse of the person	Recognition of sexual abuse	Recognition of impact of sexual abuse	Recognition of related non-sexual abuse	Recognition person was institutionally vulnerable	Recognition of extreme circs of sexual abuse
1	Penetrative abuse	\$70,000	\$20,000	\$5,000	\$5,000	\$50,000
2	Contact abuse	\$30,000	\$10,000	\$5,000	\$5,000	Nil
3	Exposure abuse	\$5,000	\$5,000	\$5,000	\$5,000	Nil

Assessment framework - definitions

- **Penetrative abuse** – if any abuse involved penetration
- **Contact abuse** – physical contact (including with an object) with no penetration
- **Exposure abuse** – none of the abuse involved physical contact
- **Extreme circumstances** – penetration taking into account institutional vulnerability and related non-sexual abuse
- **Institutionally vulnerable** – living arrangements increased risk of sexual abuse (eg closed institutions)

Worked examples

1. Child abused in a closed institution

- Abuse over 5 years by priest, approximately 20 occasions
- Abuse includes penetration
- Related physical abuse
- Maximum payment \$150,000

Worked examples

2. Child abused in a closed institution

- Abuse over 5 years by priest, 4 times per week
- Abuse comprised of oral sex and masturbation
- No penetration
- No related physical abuse
- Maximum payment \$45,000

Worked examples

3. Child abused on 6 occasions by a State school teacher

- Penetration on each occasion
- Associated physical abuse
- Maximum payment \$95,000
- If no physical abuse, maximum payment of \$90,000

Worked examples

4. Child abused on 6 occasions by a State school teacher

- No penetration
- Associated physical abuse
- Maximum payment \$45,000
- If no physical abuse, maximum payment of \$40,000

Worked examples

5. Child abused by a gymnastics coach (in a participating, non-closed, institution)

- No penetration or contact
- Grooming behaviour, including giving of alcohol, showing pornography, masturbation in front of the child
- Maximum payment \$10,000
- If associated physical abuse, maximum payment of \$15,000

Redress v common law

	Redress	Common law
Need for lawyers	No	Yes
Time frame	Not clear – likely to be less than a year	Usually around 18 months if claim settled before litigation
Likely amount	Limited to maximum of \$150,000 for the most severe abuse. Average payments expected to be \$76,000	Damages for pain and suffering, past and future lost income, past and future out of pocket expenses
Cost	Free if claim brought by an individual or by <i>knowmore</i>	Only part of legal costs covered by the Institution – will always be a gap fee
Counselling	Included if need established	Included if need established
Direct personal response	Included if requested	Included if requested

Personal stories

Picture: Jamie Hanson



Albert's 'landmark win' just in time

Fast settlement for dying sexual abuse survivor

EXCLUSIVE DANIELLE LE MESSURIER

A survivor of institutional childhood sexual abuse who has been given just weeks to live will be paid over \$1 million by the Anglican Church and the State after a landmark case in WA's highest court.



Redress WA and the Anglican Church amounting to about \$125,000. The historic case comes five years after The Sunday Times first uncovered abuse at the Swan Homes orphanage. "Had Albert passed away before a judgment had been reached, his claim would have

picked up by lawyers from Maurice Blackburn's dust team, who represented him in a successful mesothelioma case that settled in May. When it became apparent how serious the claim was, the matter was referred to the firm's abuse team. Mr Aitken's abuse started at



I hope I can now live out what's left of my life without having to think about all those years of hell I suffered.

Albert Aitken

time as an orphan living at Swan Homes from 1944 to 1955. At least two of his siblings, George and Phyllis, also lived at the orphanage, but they were not abused. A spokeswoman for the Anglican Diocese of Perth said the diocese "had prior contact with Mr Aitken through its own Redress Scheme and as

iting of Mr Aitkens' case was "at the direction of the Supreme Court, on the application of the plaintiff's lawyers". "Following recommends.



Personal stories

- **45 year old man abused as a child by a Scout master**
- **Scout master was a known paedophile – there had been complaints about him**
- **Psychological trauma has left him virtually unemployable**
- **Claim settled for \$1.65M in June 2020**

2020 second anniversary review and amending legislation

- **Robyn Kruk AO** tasked with review – ongoing, was due to report end February 2021
- **National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020**
 - clarify how participating institutions that are associates of a responsible institution are to be determined and specified;
 - clarify that where there is more than one funder of last resort, the defunct institution's share of the redress cost is to be divided equally between the government institutions;
 - amend the approval and consultation process in relation to the engagement of an independent decision-maker by a national redress scheme operator;
 - protect the names and symbols used in connection with the scheme;
 - permit a payment to be made to a person who has been appointed to manage the financial affairs of a person entitled to redress;
 - permit the operator to extend the timeframe for payment of a funding contribution by an institution;
 - authorise the disclosure of certain protected information; and
 - correct minor typographical errors.

2020 second anniversary review and amending legislation

Labor amendments (not accepted – failed by two votes in the Senate)

- Name and shame non-participating institutions
- Increase the cap on redress amounts from \$150k to \$200k
- End the indexing of previous payments
- Adding safeguards to dictate when prior payments are to be taken into account and when they're not
- Introduce an advance payment scheme for elderly and ill applicants
- Add in a funders of last resort guarantee, such that there is always a government body there to pick up the tab if the institution is defunct or unable to fund the redress
- For the Minister to prepare a report on how he wants to improve psych counselling and support
- For the Minister to prepare a report on how he wants to better recognise the impact of sexual abuse
- Ensure that a review of determinations cannot reduce payments
- Requiring non-participating institutions to contribute to scheme – including by removing the opportunity for institutions to restructure to shield assets.

“Survivor Farming” – what you need to know



Questions?

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