

CIVIL CLAIMS

Each step of the way

Always speak to your lawyer or a lawyer at **knowmore** on 1800 605 762 about your options. knowmore is a free national legal service giving specialist legal advice in child sexual abuse claims.

INTRODUCTION | GET LEGAL ADVICE ON YOUR AVAILABLE OPTIONS



You have important legal rights. It is important to get legal advice to help you make the right decision for you – civil claim or redress?

This factsheet is to give you an overview of your rights but cannot take the place of legal advice. If you choose the National Redress Scheme (NRS) pathway first and accept redress, you will no longer be able to get further compensation by starting a civil claim against the same institution.

However, if you settle a civil claim, you may be eligible to ask the NRS for redress which may include a 'top up' payment.

For example - if you received \$160,000 in your civil claim and after you paid legal costs of \$40,000, \$120,000 was paid into your account, you may be eligible to apply for redress from the National Redress Scheme where the maximum payment is \$150,000 (the maximum payment of \$150,000 is only available in the case of penetrative abuse where there are extreme circumstances of sexual abuse).

Applications to the National Redress Scheme must be lodged by 30 June 2027, as the Scheme comes to an end on 30 June 2028.

CIVIL CLAIMS

There will be four times when you feel 'uncomfortable' during the civil claim process.

These will be:

- 1) When you speak to your lawyer for the first time – you will be telling them what happened to you and they will need to ask you for all of the details.
- 2) When you have your appointment with the medical expert, likely to be a psychiatrist
- 3) When the time for the settlement conference/mediation approaches and as you and your legal team prepare for this
- 4) During the conference/mediation when you may be asked by your lawyer to decide to accept the offer or opt for a court hearing.





STEP 1 | FINDING A LAWYER

- Choose a law firm that has experience in personal injuries claims of this type; speak to more than one lawyer, check out the firm websites; talk to people who you know have made a claim like this; talk to knowmore. You need to feel comfortable with your choice of lawyer as you will be entrusting them with all of the details of your abuse.
- You will be asked to sign a costs agreement which will be a 'no win no fee' costs agreement. Lawyers must give you the costs agreement before they start work.
- A 'no win no fee' costs agreement means you will pay the costs at the end if you are successful. It is very important that you read the costs agreement as to what 'success' means.
- Ask someone you trust, to read over the costs agreement with you. The costs agreement will tell you what the costs are likely to be. It will tell you the hourly rates that will be charged. It will also set out the estimated total of the costs and charges.
- A 'no win no fee' costs agreement does not mean the lawyer is doing the work for free or pro bono. It means you will pay legal costs: -
 - i. if you are successful; or
 - ii. if before you get to the end of your case, you decide to change lawyers.
- Always talk to your lawyer about any questions you have about the costs you will have to pay. Sometimes difficulties can develop between you and your lawyer meaning that you may start to think about changing your lawyer. Make sure you are clear about what costs you will have to pay if you decide to change lawyers.



STEP 2 | PREPARING YOUR CASE WITH YOUR LAWYER

- Once you have chosen a lawyer you will have an initial meeting with them. If possible take a support person along with you.
- Your lawyer will need lots of information about what happened to you because they need to write up your statement.

For example - *you may be asked about the surroundings where the abuse occurred – was there anything distinctive about the room – a poster or painting on the wall? You will be asked to describe as much as you can remember about what happened.*

- You will have to give your lawyer this statement, even if you have given statements to the police.
- You will also have to give your lawyer a victim impact statement detailing the effects of the abuse on you.

For example – *you may be asked about nightmares and flashbacks, your sleep, your emotions, your relationships, any alcohol or drug problems, any convictions or gaol terms, your education, your work and career and your finances.*

- Your lawyer may discuss with you a likely range for a settlement payment. This figure will include damages, loss of earning, past and future expenses. If this happens, check in through the various stages to see if this estimate or range has changed because of the evidence the lawyer is collecting. It is important to realise the figures discussed are very unlikely to be the figure you receive.
- You will be asked to sign 'authorities' or consent forms allowing your lawyer to collect some of your personal information needed for the case, including welfare, medical, institutional, taxation, Centrelink and other records. A civil claim will include damages for past, present and future economic loss. The lawyer will use the signed authorities to collect information from various organisations, for example the Australian Taxation Office. The information in your past Income Tax Returns will help your lawyer understand and calculate your economic loss.
- Your Medicare Claims History statement will also be required, again with your authority. This Claims History statement will show what (if any) money needs to be repaid to Medicare for any claims made to Medicare that related to your injury for example counselling costs.
- Once your statements have been typed up and all information has been gathered, your lawyer may arrange for you to see a medical expert (usually a psychiatrist) who will assess your injuries arising out of your claim. At this appointment you will again need to go through what happened to you. Sometimes your lawyer and the lawyer for the other side will agree to send you to a single medical expert for assessment rather than you being assessed by two separate medical experts. This will happen after the other side has been told of your claim.
- Once the medical report is received and/or statements have been typed up and all of the information has been gathered, your lawyer will chat with you about your claim. If there is not enough evidence for your claim to be successful, your lawyer will discuss with you other available options.
- Make sure you ask your lawyer about obligations your lawyer has to the other side and to the court, especially when it comes to decisions about whether to continue your case.



STEP 3 | SETTLEMENT CONFERENCE/MEDIATION

- Once the medical report(s) are received, your lawyer and the lawyer for the other side will agree on a date for the settlement conference/mediation.
- Your legal team is likely now to include a barrister with specialised skills in this area of law.
- A couple of weeks before the settlement conference/mediation your lawyer should tell you what the expected outcome is likely to be.
- Generally you will meet with your legal team the day before the settlement conference/mediation. They will let you know how they think the settlement conference/mediation will progress and discuss with you the range for any settlement payment.
- Make sure you have a good understanding of what your legal team's strategy will be at the settlement conference/mediation and have thought about what you might be prepared to accept.
- The settlement conference/mediation is likely to go all day and you should aim to be there. If you can, take someone you trust with you for support. Sometimes settlement conferences/mediations can proceed without you physically being there, provided your legal team is able to contact you throughout the day.
- You will be required to give your legal team instructions during the day as settlement offers are discussed and then to provide the final instructions as to whether you accept the settlement offer.
- An apology will usually be provided at the settlement conference/mediation by a representative of the institution the subject of your claim. This is normally given verbally and in writing and it is your choice as to who will be present when the apology is given, whether yourself alone, one or a number from your group, everyone at the settlement conference/mediation or any combination.
- Don't forget 10% of the settlement money will go straight away to Medicare. This 10% is used to pay back to Medicare any medical costs it has paid, which related to your treatment following the abuse for example counselling costs. Medicare will then pay back to you the balance from the 10% after those treatment costs have been deducted.
- When the other side makes a final offer at the settlement conference/mediation you can decide to accept the offer on the day, though you will usually have about 14 days to think about whether or not to accept the offer.
- If you accept the settlement offer, you will be asked to sign a Deed of Release or formal document that will mark the end of your civil claim. Once this has been signed you should receive the settlement monies within 28 days of the Centrelink clearance being received. It can take several weeks for the Centrelink clearance to be issued.
- Your lawyer will normally submit their costs and fees as a separate part of your claim so that the other side pays these costs and fees as part of the settlement. Otherwise, your lawyer will take their costs and fees out of the settlement money.
- The settlement payment is not taxable. When all of the necessary deductions have been made (including legal fees, Medicare payment) the balance will be paid directly into your bank account.
- Remember signing the Deed of Release will not stop you from applying to the National Redress Scheme for a possible 'top up' in the event you receive less than what you would be entitled to receive under the National Redress Scheme. This will depend on how much you received at the settlement conference/mediation after your legal costs have been deducted. Talk to your lawyer or a lawyer at knowmore about this.



STEP 4 | YOU ARE THINKING OF SAYING "NO" TO THE OFFER AND OF GOING TO COURT

If you are thinking about not accepting the settlement offer and going to court, there are some important things you need to consider:

- i. It will take longer to finalise your claim, possibly another 12 – 24 months.
- ii. You may be cross-examined by the other side; this can be very traumatic.
- iii. You may have to pay legal costs both your lawyers and those of the lawyer on the other side

Make sure you talk to your lawyer about all these issues before you make the decision to go to court.

Always speak to your lawyer or a lawyer at knowmore on 1800 605 762 about your options. knowmore is a free national legal service giving specialist legal advice in child sexual abuse claims.

Support can also be provided by **SAMSN**.



The material in this factsheet is intended as general information and cannot be taken as legal advice.

© Survivors & Mates Support Network | February 2023

