Cameron Hall
COMPENSATION LAWYERS



Common law claims vs the National Redress Scheme for survivors of child sexual abuse

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There are two compensation options available to survivors of childhood sexual abuse in Australia. They are the National Redress Scheme ('NRS') and a civil common law claim. The compensation payable under each option varies significantly. The NRS compensation is capped whereas a common law claim will usually result in a significantly higher award.

What is the National Redress Scheme?

The National Redress Scheme is a national scheme that provides a sum of money to eligible survivors of child sexual abuse. The Federal Government established the NRS in response to the recommendations included in the Report by the Royal Commission into Institutional Responses to Child Sexual Abuse.

The NRS is administered by a branch of the Federal Department of Social Services, but any benefits which might be paid under it are made by the specific institution (for example, a church, school, sporting organisation, etc) involved in the abuse.

What is a common law claim?

A common law claim is a personal injury claim for damages (compensation) payable when a person is injured due to the negligence of another person or entity.

Common law claims are available for various types of injury, including workplace injuries, motor vehicle accidents, medical negligence and historic child abuse.

How much is payable under the National Redress Scheme?

The amount of any offer that might be made under the NRS will depend on the nature and extent of the sexual abuse suffered by a particular survivor. Notably, however, this amount is capped and cannot exceed $150,000.

In addition to an assessed ‘lump sum benefit’, survivors who successfully apply under the NRS can access counselling. The extent of any paid counselling will again depend on the nature and extent of the survivor’s personal injury.

The ***average*** lump-sum benefit paid under the National Redress Scheme is currently about $83,000.

Unlike a common law claim for compensatory damages, the NRS does not purport to ‘compensate’ survivors of abuse for what happened to them. Rather, it’s been described as a payment to ‘acknowledge and recognise’ the impact of the abuse.

So, unlike a common law claim for damages, the NRS lump-sum benefit does NOT take into account things such as:

the individual pain and suffering and impact on the survivor’s life generally, as a result of the abuse;

how the abuse has impacted upon the survivor’s ability to earn income, both in the past but also into the future (to their normal retirement age);

the extent of specialist medical treatment that the survivor might require; and

in some exceptional cases, the cost of care and assistance that some very significantly injured survivors might require.

How much compensation is payable with a common law claim for child sexual abuse?

The amount of damages awarded in a successful common law claim due to child sexual abuse will be wholly dependent on the circumstances of each individual case.

It is generally accepted that a common law claim due to historical abuse will achieve a higher payout than a National Redress Scheme payout.

Successful common law damages claims will typically include the following compensation components:

Pain and suffering;

Past and future economic loss;

Past and future medical expenses; and

Aggravated damages.

Common law claims are complex and complicated, particularly when they deal with historical events. It is crucial that survivors of child sexual abuse seek legal advice and assistance from a lawyer experienced in abuse compensation when pursuing a common law damages claim.

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Can I accept a National Redress Scheme offer and then seek common law damages for the abuse?

No. If you accept a National Redress Scheme offer, you cannot then pursue common law damages for the same event.

It is, therefore, important that if a survivor of child sex abuse applies for a lump-sum benefit under the NRS and is then made an offer by the Agency, they must make a very important decision about whether they accept the offer of lump-sum benefit under the NRS or choose to pursue a claim for common law damages.

But there is nothing preventing an abuse survivor from running both claims (NRS and common law) at the same time. That is, lawyers experienced in the area of abuse compensation law may advise that it is worth expending the relatively small additional legal expense to prepare and lodge an application to the NRS **and** initiate a common law action at the same time.

This is because you can consider (not accept immediately) any offer of lump-sum benefit that the NRS might make you, and then make an informed decision (assuming you have a good lawyer in your corner) about whether you might be better off accepting the lump sum NRS benefit or declining the offer and pursuing a claim for common law damages instead.

Some “pros and cons” of the National Redress Scheme

Some general notes about NRS payments:

The payment can be made as a ‘once off’, or can be remitted in instalments (or a combination of both of these).

If a survivor has received some form of compensation for the same abuse previously (for example, the Ford Enquiry in Queensland made payments to survivors of historic child sex abuse back in 1999/2000), then these amounts will be ‘off-set’ against any offer of lump-sum benefit to be made to a survivor under the NRS.

NRS benefits are considered to be ‘assets’ for Aged Care Services purposes. You need to get financial and other advice about all this at the appropriate time. That will usually be at the time you are made an ‘offer’ of benefit by NRS, not after you

accept it.

NRS lump sum benefits should not impact any claim for a TPD benefit (say under a super scheme), but they might impact any income protection insurance benefits that a survivor might be receiving (or might receive).

National Redress Scheme – positive impacts for claimants

NRS lump sum payments are protected from Commonwealth Government debt recovery processes. That means if you have any outstanding debts to say Centrelink, or tax debts or Child Support debts, etc (even state government debts), the government cannot seek to be repaid these debts from your lump-sum NRS benefit.

The banking and credit union sectors have voluntarily agreed not to take steps to recover any outstanding debts they might have with a survivor out of any NRS lump-sum benefit the survivor is paid.

Redress payments are not considered 'divisible property' for bankruptcy purposes.

National Redress Scheme – possible negative impacts for claimants

The amount of the lump sum offered is worked out by reference to a 'table', which allows for a maximum (total) benefit of $150,000. The table refers to things such as whether there was 'penetrative' abuse or not and whether the abuse occurred whilst the survivor was resident at the relevant institution (e.g., they were a boarder at a school, or at say Boys Town). As noted earlier, the amount does NOT take into account how the abuse impacted upon the survivor's income earning ability, nor their specific medical treatment requirements, etc.

In some cases, an 'advanced payment' of $10,000 can be made. But beware; accepting an 'advanced payment' has the same consequences as accepting any full offer of benefit. That is, you will extinguish your right to bring, or continue with a common law claim.

Whilst Centrelink cannot access any NRS lump-sum benefit to 'claw back' any formal debt they're owed, the amount can still impact upon the amount of a benefit paid by Centrelink. For example, receiving an NRS benefit may trigger the 'income and asset tests' and then affect your Centrelink income support benefit. These things should be discussed with an experienced financial advisor. Indeed, anyone who has or is about to receive any form of benefit (whether or not under the NRS) should ideally obtain appropriate financial advice about it.

Get help from an abuse compensation lawyer

If you are a survivor of child sexual abuse and are considering claiming under the National Redress Scheme, we strongly recommend you seek legal advice first. Your specific circumstances may very well mean that a common law claim is at least an option you need to consider, which may entitle you to substantially more compensation for the harm you have suffered.

We offer free legal advice and ‘no win, no fee’ options for personal injury claims. So, it costs you nothing to find out where you stand.

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.