



National Redress Scheme for Institutional Child Sexual Abuse

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Anna Swain, Acting Managing Lawyer (Sydney Office), Knowmore.

This webinar can be viewed for free at <https://www.askloisnsw.com/past-webinars/>

This factsheet looks at:

- The Royal Commission into Institutional Responses to Child Sexual Abuse
- The National Redress Scheme including:
 - who can apply and what does the scheme offer
 - eligibility issues
 - redress nominees
 - implications of a payment and other options
 - how to assist with completing an NRS Application
- knowmore Legal Service

The Royal Commission into Institutional Responses to Child Sexual Abuse:

- Was established in 2013.
- Finalised in December 2017.
- Role of the Royal Commission was to investigate institutional responses to child sexual abuse
- Held 57 formal public hearings during which it heard evidence about child sexual abuse within institutions from 1,200 witnesses over 400 days of hearings, across all Australian capital cities and in several regional areas.
- In August/September 2015 the Royal Commission released its Redress and Civil Litigation Report.
- One of the key recommendations of the Redress and Civil Litigation Report was that a National Redress Scheme be set up.
- The Australian Government has now established a National Redress Scheme.

National Redress Scheme – What is it?

- Provides support to people who experienced institutional child sexual abuse.
- Commenced on 1 July 2018 and will run for 10 years (applications can be made at any time between now and 30 June 2027).
- Institutions do not have to participate in the scheme. Institutions are invited to join the scheme and can choose whether or not to participate.
- The responsible institution(s) must have formally joined the scheme before an application can be processed. You can check whether your institution has joined here:
<https://www.nationalredress.gov.au/institutions/joined-scheme>

knowmore legal service:

- is a free service offering legal advice and information to help you consider your options about compensation, redress and other legal issues related to abuse.

© Women's Legal Service NSW 2018 www.asklois.org.au

This factsheet is not intended to take the place of legal advice given by a qualified legal practitioner familiar with the individual case or subject matter. No responsibility is taken for any loss suffered as a result of the information presented.



- has been established by, and operates as a separate program of, the National Association of Community Legal Centres, with funding from the Australian Government, represented by the Attorney-General's Department.
- staff are trained and experienced in working with people who have experienced trauma, and in providing culturally safe services.

Who can apply?

You can apply to the National Redress Scheme if:

- you experienced sexual abuse (and related non-sexual abuse) when you were a child, (under 18 years of age) **and**:
 - the abuse happened before 1 July 2018 **and**
 - an institution was responsible for bringing you into contact with the person who abused you **and**
- you were born before 30 June 2010 **and**
- you are an Australian citizen or permanent resident.

Your application may be processed differently if you:

- were abused in an institution that hasn't joined the National Redress Scheme
- are under 18
- have ever been sentenced to more than 5 years in gaol or
- have already received a payment related to the abuse.

You cannot apply if you:

- are in gaol (you can apply once you are released or in exceptional circumstances)
- have already applied for redress through the National Redress Scheme.

You cannot access redress if you:

- did not suffer sexual abuse
- have already received a court-ordered payment from the institution.

It has been anticipated that there will be in excess of 60,000 people eligible to apply for redress.

What does the National Redress Scheme Offer?

- A monetary payment up to \$150,000 – noting the average payment will be around \$76,000 and past payments for the abuse will be taken into account.
- Counselling and psychological support – noting access to these services will depend on where you live; if there are no scheme services where you live, you will receive a payment of up to \$5000.
- A direct personal response from the responsible institution/s, if you want that.

What is the payment for?

- It is important to remember that a payment under the National Redress Scheme is not 'common law' damages. The redress payment will not include any amount for loss of income or pain and suffering. The purpose of the Scheme is to recognise and acknowledge the impact of institutional child sexual abuse and related abuse.
- Even if you were abused in many institutions, people can only make one application.

© Women's Legal Service NSW 2018 www.asklois.org.au

This factsheet is not intended to take the place of legal advice given by a qualified legal practitioner familiar with the individual case or subject matter. No responsibility is taken for any loss suffered as a result of the information presented.



- People have 6 months from the date of the determination to accept, reject or request a review. If nothing is done within those 6 months, the application is taken to have been rejected.
- **You can only make one application.**

Assessment Framework

- See framework on slide 9 of the Ask LOIS presentation.
- Maximum monetary payment available under the scheme is \$150,000 - only for most extreme cases of abuse.
- Look at form and how much detail is needed.

Kind of sexual abuse:

- exposure: max of \$20k.
- contact: max of \$50k
- penetrative abuse: max of \$150k

Institutionally vulnerable:

- Was the applicant 'institutionally vulnerable'? There is an extra financial amount if so and this should be noted on the format Q44
- This includes if the applicant lived in the institution, if the institution was responsible for their day-to-day care, if the applicant did not have access to family/friends, if the applicant was unable to leave the institution

Relevant Prior Payments:

- If the applicant had received a payment for any abuse contained in the form, this is a relevant prior payment
- For example: civil claim payment/ negotiated settlement from institution, victim's compensation payment, Redress payment
- This amount will be indexed and then deducted from any NRS payment

Debts & other income:

- Redress payments are non-taxable and protected from Commonwealth debt recovery processes.
- State based debts may not be protected. Refer to financial counselors.
- A payment under the scheme is not considered income for Centrelink purposes.

Situation for people sentenced to gaol

Currently in jail

- In most cases, people cannot apply to the National Redress Scheme while they are in gaol. A person will have to wait until they have been released from gaol before lodging an application.
- Gaol includes a prison, youth training centre, remand, or community correction centre.



- There are some limited exceptions when an application may be accepted. For example, if a person will not be released from gaol until after the Scheme closes or if it is felt that the person will be too ill to make an application after being released.

If your client has ever been sentenced to more than 5 years gaol

- The assessment process [for the National Redress Scheme] will be different if the person has been convicted of a crime in Australia or overseas and sentenced to serve 5 years or more in imprisonment.
- The person applying will be asked to provide details about the nature of the offence, the sentence and rehabilitation.
- The application will also be reviewed:
 - by the Attorney-General in the participating state or territory where the abuse occurred,
 - by the Attorney-General in the state or territory where you were convicted of the offence and sentenced (if this is different), and/or
 - by the Commonwealth Attorney-General if the offence and sentencing occurred overseas.
- These Attorneys-General will be requested to provide advice to support or deny the application.
- The National Redress Scheme will consider all the Attorneys-Generals' submissions about the application before making a decision to allow the application to be processed to assessment.
- The National Redress Scheme's Operator will also take into account:
 - the nature of your offence and the length of imprisonment it carried
 - the period of time since the person committed the offence for which they were imprisoned, any rehabilitation since then, and
 - any other relevant information.
- The Operator will then determine if, by making a redress payment, it would bring the scheme into disrepute or reduce public confidence in the scheme.
- If the application is progressed, the Independent Decision Maker will then make an assessment. However, should a decision be made that the applicant can't proceed, **there is no right of review from that decision.**

Redress nominees

Assistance nominees

- Help to complete your application for redress.
- Receive copies of all letters.
- Ask questions about your application for redress.
- Receive phone calls about the application for redress.
- Provide information.
- Ask for an offer of redress to be reviewed.

Legal nominees

- Do anything that an assistance nominee can do, and
- Apply for redress on your behalf,

© Women's Legal Service NSW 2018 www.asklois.org.au

This factsheet is not intended to take the place of legal advice given by a qualified legal practitioner familiar with the individual case or subject matter. No responsibility is taken for any loss suffered as a result of the information presented.



- Accept or decline an offer of redress on behalf of the person applying.

National Redress Scheme – Key points

- Not all institutions or States have joined the Scheme.
- The Scheme runs for 10 years.
- People who are unwell or have life threatening illnesses should apply as quickly as possible.
- Redress has three components:
 1. A monetary payment.
 2. Counselling and psychological support.
 3. A direct personal response from the responsible institution/s.
- Even if a person was abused in many institutions, they can only ever make one application.
- Important time limit—6 months from date of determination to accept, reject or request review.

Legal Implications of the scheme and other options

- For many people, making an application for redress will be the right thing to do. However, it is important to remember that at the end of the process an applicant will be asked to sign a Statutory Release. By signing this release, an applicant will not be able to continue or to commence any civil or common law proceedings against the responsible institution. This is an important right that is being given up. knowmore lawyers can give you advice about the release and as to the legal options that you might have apart from redress.
 - It is important to get legal advice as to your options before you choose which one is right for you.
 - With the changes in legislation around civil litigation reform, many clients now have viable civil claims and should definitely seek legal advice.

Completing the form

Things to consider:

- Legal advice – refer to knowmore.
- Civil law advice
- Eligibility issues?
- Include enough details about the kind of sexual abuse
- Include any related non-sexual abuse
- Debts/financial impact of a payment
- Unwell /elderly applicants: lodge as quickly as possible & alert the NRS
- Does the applicant have a current Will?

© Women's Legal Service NSW 2018 www.asklois.org.au

This factsheet is not intended to take the place of legal advice given by a qualified legal practitioner familiar with the individual case or subject matter. No responsibility is taken for any loss suffered as a result of the information presented.



Application form can be downloaded from the National Redress Scheme website at: <https://www.nationalredress.gov.au/applying/start-continue-application> or applications can be made online through myGov.

- Part 1: Personal information, Part 2: experience of sexual abuse, Part 3: Impact of the sexual abuse
- **Detail is needed!** See assessment framework and definitions
- Include related non-sexual abuse – psychological abuse, physical abuse & neglect
- Was the applicant institutionally vulnerable?
- Use statements where available so a person does not need to re-tell story - unless statements are contradictory
- Relevant prior payments: If legal fees were paid, note the amount on the form
- Statutory Declaration
 - who can witness the applicant's signature? See back page of NRS form for list
 - make sure Statutory Declaration is completed fully
- Will a Redress Nominee form be used?

Knowmore contact details:

1800 605 762
info@knowmore.org.au
<http://knowmore.org.au/>