

Limitation Act Amendment – No time limit for child abuse compensation claims

Changes by the NSW Government to the *Limitation Act 1969* have removed the time limit for victims to claim compensation through the courts for damages relating to death or personal injury resulting from child abuse.

Why has the *Limitation Act 1969* been amended?

The Royal Commission into Institutional Child Sexual Abuse found that ‘limitation periods are a significant, sometimes insurmountable, barrier to survivors pursuing civil litigation.’

It is well documented that many survivors of child sexual abuse do not disclose their experiences or act on them until decades after the abuse, if ever. According to the Royal Commission’s Interim Report, the average time for a victim to disclose sexual abuse was 22 years, with men taking longer than women.



As a consequence, many survivors were not able to commence a claim for compensation within the three to 12 year limitation periods which previously applied.

Completely removing time limits means more survivors are now eligible to commence a claim for compensation

What type of actions do the legal reforms cover?

The changes to NSW law treat all ‘child abuse’ claims equally, regardless of who perpetrated the abuse and when it occurred.

The amendments apply to any action relating to death or personal injury resulting from ‘child abuse’, including actions against a perpetrator of the abuse or a negligent institution. It also covers actions that are continued by a victim’s estate after their death and actions brought by the dependants of a deceased victim.

What type of ‘child abuse’ do the reforms cover?

The laws cover sexual abuse, serious physical abuse or other abuse perpetrated in connection with sexual or serious physical abuse against a person under 18.

Where there is sexual or serious physical abuse of a child, the limitation periods no longer apply. Once that threshold is met, a court can consider any connected abuse.

‘Connected abuse’ is any abuse linked to the sexual or serious physical abuse, for example, minor physical abuse and psychological abuse. This ensures the court can consider all of the survivors’ experiences of abuse when determining a claim.

Who can bring a claim under the reforms?

People injured by the actions or negligence of another have a general right to bring a claim for compensation and for that claim to be determined by the court.

Any person who suffered sexual or serious physical abuse when they were under the age of 18 years can claim for compensation – regardless of how long ago the abuse occurred, or whether it occurred in an institution or domestic setting.

The law does not apply where a court has already determined the substantive issues in dispute or where a matter has been settled between the parties.

Why are the changes to the law retrospective?

‘Retrospective’ means the laws apply to past and future claims for child abuse. In other words, there is no limitation period, regardless of when the abuse occurred.

This allows survivors of historical abuse to commence a claim for damages. The evidence shows limitation periods in civil claims for child abuse have been operating unfairly, due to the average length of time for a survivor to act on the abuse being considerably longer than the legal limitation periods.

How can I make a claim?

Generally, people making a claim will start legal proceedings by filing a Statement of Claim in the appropriate court. However, some organisations, such as NSW Government agencies, may resolve claims after receiving a letter from the person making a claim.

What if I have already received financial assistance through the Victims Support Scheme?

The Victim Support Scheme is designed to help those victims who have no other way of seeking financial assistance. The scheme is not intended for victims who obtain substantial compensation from individuals or organisations responsible for their suffering.

Victims who have already received financial assistance through the Victims Support Scheme are obliged to repay overlapping amounts they’ve received from this scheme. Victims are notified of the requirements regarding overlapping payments when they make their application to the scheme.

For more information

- Consult a private legal practitioner.
The Law Society of New South Wales maintains a list of solicitors in NSW www.lawsociety.com.au or 9926 0300.
- Contact your local community legal centre for legal advice and referrals
www.clcsw.org.au/clc_directory.php
- Contact LawAccess NSW for free legal advice and referrals 1300 888 529 or www.lawaccess.nsw.gov.au
- Contact Legal Aid NSW for free legal advice (www.legalaid.nsw.gov.au)
- Contact the Victims Access Line (VAL) on 1800 633 063 for information about your rights as a victim of crime, how to access counselling, financial assistance, the Victims Support Scheme and help with completing victim impact statements
www.victimsservices.justice.nsw.gov.au