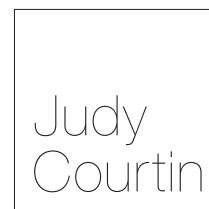


What does a typical legal claim for compensation for institutional abuse look like?



Legal

The parties to a civil claim

The Plaintiff

In these claims you are known as the 'plaintiff'.

The Defendant

The institution is known as the 'defendant'.

Sometimes there can be more than one defendant.

Who has to prove what?

The onus to prove things in these claims is upon us, the plaintiff.

The defendant mostly defends itself.

What do you have to prove?

1. That you suffer from what the law calls an 'injury'. That is, some type of harm such as depression, anxiety, PTSD and/or drug and alcohol issues.
2. That this 'injury' or psychiatric harm was caused by the institutional abuse.
3. That this 'injury' also impacted other areas of your life such as your education, your work life or career, your interpersonal relationships and loss of enjoyment of life.
4. That the institution is legally responsible or liable for the harm that you suffered.

Legal liability or responsibility of the institution

We have two main legal hooks upon which we try to hang our hat:

1. **Negligence**
2. **Vicarious Liability**

With the law of negligence, we first have to show or establish that the institution had a duty to prevent what is called a 'foreseeable harm' to you when you were under their care as a child. Most of the time, this is a given and the easy element to prove.

The more challenging element of negligence we have to prove is that the institution 'breached' that duty of care. This would typically involve the institution knowing, or ought to have known, that the offender was already offending and the institution did not take any action to prevent further offending.

The second potential legal hook to prove liability of the institutions is called 'vicarious liability'. This is an indirect liability, and we don't necessarily have to prove the institution was at fault as with negligence, as above.

With this type of liability, we need to establish that the offender was either in an employer-employee type relationship with the institution and/or whether the institution provided the offender, such as a priest, with the authority, power, trust, control and ability to abuse the child.

This type of liability is evolving in institutional abuse law and it was only in 2022 that the Supreme Court of Victoria found that the Catholic church was vicariously liable even though the church argued strongly that priests were not like employees.

O'Connor v Comensoli [2022] VSC 313.

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Compensation

If we can establish that:

1. *you suffer from some form of psychological or psychiatric harm; and*
2. *that it was caused by the abuse; and*
3. *that the institution is legally liable or responsible for that harm,*

we can then turn our minds to the potential types of compensation that can be claimed for you.

The two most common types of compensation are:

1. Pain and suffering

This is compensation for the psychiatric harm and general loss of enjoyment of life and other non-economic losses. Up until November 2023, the range the courts had awarded was between about \$200K and \$520K for this category of compensation.

In November 2023, two juries in Victoria awarded much higher amounts for pain and suffering. In one matter against the Footscray Football club, more than \$3 Million were awarded and in a matter against the Wagga Wagga Catholic Diocese, \$1.1 Million were awarded. As at December 2023, it is expected that both of these amounts will be appealed.

(Pain and Suffering is also called General Damages)

2. Economic loss

If your education and working life suffered as a result of the childhood abuse and the psychiatric harm, it may be possible to claim this type of compensation.

To establish your economic loss, we look at what you have actually earned up until now in your life and we compare that with what we say you should have earned if the crimes were not committed against you and you did not suffer the psychiatric harm.

Most of the time there will be a considerable difference between these two scenarios – although not always. Further, there will be what is called a ‘past’ loss (until now) and potentially a ‘future’ loss, from now until retirement age of about 67 years.

Economic loss is often complicated and involves much conjecture. It can be very difficult to prove that you would have had a different working life or career. Such notional estimates will invariably be discounted by the courts from 15% to about 55%.

(Economic loss is also called loss of earnings due to loss of earning capacity.)

Intervening injuries

One of the tricky things about these claims relates to what are called ‘intervening injuries’.

The best example of this would be a work-related injury. For example, if you suffered a back injury at work that prevented you from working again, this may well interfere with your economic loss claim against the institution. Every case is different though, and your claim is based on your own circumstances.

Time frames for these claims

Unfortunately, these claims take a long time.

In Victoria, we allow between about two and three years.

But every jurisdiction is different. In Western Australia and Queensland, claims can take four-plus years. Each state and territory has slightly different legal procedures. The delays are also caused by the increasing number of these matters in the courts.

Reclaiming the power

It is a common experience that you will, bit by bit, reclaim much of the power that was stolen from you as a child by the offender and the institution.

Making the institution accountable for the crimes committed against you, creates a shift in the power base.

You become empowered.