



# Guide to compensation for abuse victims of Foster Parents

**Sydney:** (02) 8315 8900  
**Newcastle:** (02) 4907 4200  
**Free call:** 1800 650 707  
**[kelsolawyers.com](http://kelsolawyers.com)**



AustraLaw Pty Ltd is registered under the Corporations Act 2001 and trades as Kelso Lawyers

## About Kelso Lawyers

Kelso Lawyers are specialists in historical abuse cases.

Founder and director, Peter Kelso was himself physically and emotionally abused while a State ward.

Now a lawyer, Peter has made it his mission to provide compassionate and supportive legal representation to abuse survivors seeking compensation.

You can hear Peter tell his own story of abuse and recovery on our website [kelsolawyers.com/au/peter-kelso](https://kelsolawyers.com/au/peter-kelso).

Kelso Lawyers have offices in Sydney and Newcastle, but represent abuse survivors right across Australia. Peter is supported by an expert legal team who share his passion for helping survivors to seek justice and compensation from the institutions that abused the individuals in their care.

Liability limited by a scheme approved under Professional Standards Legislation.  
Legal practitioners employed by Kelso Lawyers are members of the scheme.

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# 1 Why compensation?

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“ ***While no amount of money can erase the harm caused by abuse, a compensation payment can ease the pressure and help to make life more comfortable in the here and now...*** ”

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## **Why compensation?**

Compensation provides victims of abuse and violence with some financial security to ease stress and hopefully help survivors to find a breakthrough moment on their journey to healing.

Compensation is a key component in the provision of justice in Australia. The aim of the payment is to restore a person to a financial position that they may have been in had it not been for the abuse. It also recognises the costs that survivors accumulate in the years after the abuse, such as medical costs and lost income.

Compensation is also a way of sealing an apology. Without a financial component, an apology may just be words. But a compensation payment can make a material difference to a survivor's life and ensures that an apology is genuine.

While no amount of money can erase the harm caused by abuse, a compensation payment can ease the pressure and help to make life more comfortable in the here and now. Used wisely, compensation can be life-changing.

Read more about our approach to clergy and institutional abuse compensation claims on our website [kelsolawyers.com/au/our-work/clergy-and-institutional-abuse-claims](https://kelsolawyers.com/au/our-work/clergy-and-institutional-abuse-claims).

## **How do I make a claim?**

The first step in making a claim is to complete Kelso Lawyers' Claimant Information Form on our website at <https://kelsolawyers.com/au/foster-parent-abuse-compensation-form/>.

This will provide us with some initial details to begin an assessment of your claim. Or, if you would prefer, you can just pick up the phone and call Kelso Lawyers on (02) 4907 4200.

Once Kelso Lawyers have this information, our legal team can assess whether or not you may be eligible for compensation.

## 10 Steps to Justice

Many abuse survivors are hesitant to engage in legal proceedings. It is often seen as a costly process tied up in red tape. We understand that. It's for this reason that we follow a process that is as straightforward, fair and stress-free as possible.

1

Complete a Claimant Information Form or phone Kelso Lawyers.



2

Claim assessed for eligibility for compensation.



3

Have a personal conversation with founder and principal, Peter Kelso.

4

Receive a letter of introduction and our Conditional Costs Agreement. These documents need to be signed and returned before we commence proceedings.



5

Ensure that you have a professional and personal support network in place.

6

Case assigned to one of Kelso Lawyers' experienced solicitors to prepare case.



7

Make a statement.



8

Attend a mediation when a respectful compensation payment will be negotiated and a face to face and written apology made.

9

Notify Medicare and Centrelink of impending compensation payment.



10

Receive compensation into your own bank account as cleared funds.



## **2** Making a claim



*If you feel like it's too much and you have fallen through the cracks, like nobody cares or believes you, please don't give up. Peter Kelso and Jodie Scanlon do care about you.*



*Greg Scully*

## **What to expect when making a claim**

Kelso Lawyers understand that revisiting past memories can be a distressing experience and we go to great lengths to ensure that our process is as supportive as possible for survivors.

Once Kelso Lawyers have accepted your case, a time will be arranged for you to have a personal phone conversation with our founder and principal, Peter Kelso. Many people approach our firm because of Peter's own history of abuse, and he likes to speak personally with each and every survivor that we represent. Many survivors find these chats with Peter both cathartic and inspirational.

The foundation of a successful client-lawyer relationship is to be clear about expectations. For this reason, we send all of our new clients a letter detailing what you can expect of us and what we see as a respectful relationship. We ask all of our clients to read and sign this letter. At this time, we will also send you our Conditional Costs Agreement.

We ask that our clients be respectful of our staff at all times. While we understand that this process can at times be frustrating and distressing, please remember that we are always in your corner.

If you are at any time finding the process particularly distressing, it is important that your first point of contact is with your counsellor or doctor. While we can try to comfort and reassure you, we are not qualified mental health workers.





# **3** Giving a Statement



*These people have been a guiding light for me when things got very dark. They believe in what they do and their advocacy for survivors of abuse is awe inspiring.*



*Margaret Heathwood*

## **Getting ready to give a statement**

We recommend that all of our clients engage with a professional counsellor to ensure that they are well supported throughout the compensation process. If you are not already in touch with a professional counsellor, we can provide you with a list of services to contact. Many of these services are provided to abuse survivors free of charge.

Also, we advise our clients to tell a trusted friend or family member that you will be engaging with Kelso Lawyers. It is important to have an informal support network to provide a friendly ear or a word of encouragement through a process that can, at times, be mentally demanding and stressful.

## **Giving a statement**

To build a case for compensation, we will need to draft a comprehensive statement that details the abuse and the impact it has had on your life. The solicitor working on your case will work with you to include as much detail as possible.

Raking through memories of abuse affects different people in different ways. During this process you may have your good days, and your bad days, which is why it is important to have a support network in place before beginning this process.

You may prefer to discuss the details of your case via written correspondence, over the phone, or in person. We will work with you in whatever way you feel most comfortable.

Your solicitor will also need to compile as much documentation as possible to support your case. This may involve sourcing child welfare records, any police records, hospital records, medical records, and tax records. You will need to sign authorities to enable us to access this paperwork on your behalf.

You may also need to see a psychiatrist or clinical psychologist so that they can prepare a report to confirm any psychiatric or psychological injury you have sustained from the abuse.

## **Do I have to go to court?**

No. There are two pathways to seek compensation: through the court system (also called 'litigation'), and through a process called 'alternative dispute resolution' or ADR.

Giving evidence in court can be a stressful experience for anyone, but even more so for survivors of child abuse. Having your claim questioned and disputed over an extended period can re-traumatise victims and be counterproductive.

Cases pursued through the court system are very public and may take many years to be finalised. Survivors have no involvement in the process of calculating compensation; that's all up to the judge. It is also unlikely you'll get an apology. The other side's lawyers will deny everything and take every legal point. Court is not the best way to resolve these sort of claims.



# **4** Alternative Dispute Resolution (ADR)

## **Tell me about alternative dispute resolution (ADR) and mediation**

We have found that seeking compensation through ADR is much better suited to historical child abuse cases. ADR enables a compensation claim to be completed in a much shorter time frame and in a less confrontational manner.

By seeking compensation through ADR, you will never have to set foot in a courtroom.

The compensation claim is negotiated in a process called 'mediation'. The mediation usually takes place in a warm and supportive environment.

A mediator – a neutral person who is usually a barrister -- presides over these meetings between the survivor and their legal representatives, and a senior representative of the institution, Church or Government agency responsible for you at the time of the abuse. Importantly, the actual perpetrator will never be at these meetings.

The mediator does not play the role of a judge. Rather, they facilitate a constructive discussion between the two parties to help them to come together in agreement.

In contrast to the court system, mediation also enables survivors to participate in the compensation negotiation if they would like to do so. Some of our clients find this involvement to be empowering.

Another benefit of ADR is confidentiality. You will never read about these cases on the internet or hear the outcome on the nightly news. Your privacy is assured.

You can read more about ADR on our website: [kelsolawyers.com/au/our-work/alternative-dispute-resolution-child-abuse-compensation/](https://kelsolawyers.com/au/our-work/alternative-dispute-resolution-child-abuse-compensation/)

### **Will I get an apology?**

At the start of the mediation process, the survivor will be offered an apology. Receiving an apology can contribute to a sense of healing for child abuse survivors, and is a key benefit of the ADR process.

During the mediation, we ensure that survivors receive both a face-to-face and written apology by a very senior member of the institution or organisation responsible for the abuse.

These apologies are delivered in a private and respectful way.



# **5** Payments and costs



### **How much will it cost?**

Like most legal firms working in the area of compensation, we operate on a 'no-win, no-fee' basis. We classify a 'win' as an offer of compensation of \$10,000 or more.

But this is where the similarity ends. You may have heard of cases where a victim is awarded compensation only to find most of the payment has been swallowed up by legal fees.

Our Conditional Costs Agreement ensures that we will never make more from your compensation than you do, and most clients will keep around 80% of their award.

We have specifically developed our costs agreement for historical child abuse cases, in recognition of the fact that some cases are more complex than others and will take more of our time to resolve.

Our costs agreement takes an outcome-based approach. The larger the compensation payment, the larger our fee; and the smaller the payment, the smaller our fee.

It's simple and, most importantly, it's fair to our clients.

### **How long will the process take?**

Every case is different, but we find that most compensation claims can be finalised in around 12-16 months. We ask our clients to be patient during this period, because at times it can seem like time is at a standstill. However, you can be assured that we are working tirelessly in the background to build the best possible case for compensation.

We will be in touch with you as your case progresses, but if you ever feel the need to talk to us, we are only a phone call away.

### **Who pays for the compensation?**

The compensation payments are made by the institution, government agency, or State that was responsible for you at the time of the abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse shone a light on the neglectful and inadequate practices of institutions charged with the care of children. The revelations made in the Royal Commission have made many institutions more willing to negotiate fair compensation payments to abuse survivors than in past years.

## **Will I have to pay back Government benefits?**

Many survivors are anxious about the impact that a compensation payment may have on their regular Government benefits. But there is nothing to worry about – in the vast majority of cases, the impact is minimal.

However, it is important to notify both Centrelink and Medicare before receiving a compensation payment. We do this for you.

For **Centrelink payments** – including the aged pension, disability pension, carer's pension, unemployment benefits, and many others – it is extremely unlikely that receiving compensation for historical child abuse will affect your benefits.

As the abuse happened many years – often decades ago, any period for which your payments would be suspended (called the 'preclusion period') would have already been served. Put simply, for most cases, your Centrelink benefits will just continue as usual.

The exceptions are if your compensation payment is unusually large (in the millions), or if you are in debt to Centrelink. Clients who have a debt to Centrelink as a result of a loan, overpayments or fraud, may have this money deducted from their compensation. The good news is that this will completely clear the debt and your benefit payments will return to their full amount.

**Medicare payments** are slightly different and survivors receiving compensation may have to pay back some money. Again, this is nothing to be concerned about because this usually amounts to no more than a few hundred dollars. In the lead up to finalising the settlement, we will notify the Health Insurance Commission (the organisation that administers Medicare), and you will be sent a 'Notice of Past Benefits'.

This Notice will include every consultation for which Medicare benefits have been paid over many years. It's very important that you tick **ONLY** medical services that are related to the abuse, as Medicare will require the repayment of benefits for these services.

We recommend that you talk this through with us to be sure that you do not nominate more services than necessary. If you get it wrong, we can have it corrected with Medicare.

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“ *I'm enormously proud of the costs agreement. I developed it specifically for abuse cases, and I think it's the fairest costs agreement for this type of work that anyone will find.* ”

*Peter Kelso*

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# **6** Life after making a claim



## Life after making a claim

Many survivors of child abuse have had their abuser living 'rent-free' in their head in the decades after the abuse. Receiving a genuine apology and a fair compensation payout from the institution, alongside counselling support, can help abuse survivors to finally close this horrific chapter of their life.

Survivors often use the compensation money to pay off a mortgage and do something for their children. They might book that dream holiday or pursue educational opportunities that were denied to them as a child.

One of our clients bought a caravan to travel around Australia to prospect for gold. The compensation claim had set him free from an extremely troubled past and enabled him to take

charge of his future. You can read Brett's\* story on our website <link to <http://kelsolawyers.com/au/case/brett/>> \*Name changed to protect privacy

What you do with your compensation is completely up to you, but it is our hope that the process can help our clients to find some joy and freedom in their lives. It can be a real relief just to have the pressure taken off.

It is worth remembering that compensation is not a cure-all. You may find that you will need to continue with professional counselling or to call on support networks from time to time. This is completely normal.

Compensation cannot change history, but it can make the world of difference.

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“ ***Without wanting to seem cliché, this whole experience has been life changing. My life has changed dramatically over the last eighteen months. It is not in any way an easy process, though I have been supported the whole way with assistance in knowing how to gain counselling and with being treated with respect and care at all times.*** ”

***Susan \* (\*Name changed for privacy reasons)***

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# **7** FAQ's & Glossary of terms

## FAQs

### **Does it matter if the offender is dead?**

Not at all. Many cases of abuse in the ADF occurred some decades ago, and often the offender has died. But it makes no difference to cases being negotiated through ADR. However, it will make it extremely difficult to pursue compensation through the court system.

“From time to time, people phone us thinking they couldn’t do anything because the offender was dead, but are very surprised and relieved to hear that they can still do something.” Peter Kelso

### **I was abused by a relative, can I still get compensation?**

Sadly, these cases are very difficult to pursue. While abuse within families is by far the most common type of abuse, avenues for recourse are extremely limited.

The perpetrator needs to be wealthy, and to have been criminally convicted before there is any chance of seeking compensation. While we have taken on a handful of such cases, our focus is on institutional child abuse.

### **My relative was abused and has passed away. Am I able to get compensation?**

These cases are also very difficult to pursue. Mostly, the case for compensation dies with the victim. However, if a person was financially dependent on the person who was abused and subsequently passed away, there may be a narrow opportunity to discuss the possibility of compensation.

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“ *From time to time, people phone us thinking they couldn’t do anything because the offender was dead, but are very surprised and relieved to hear that they can still do something.* ”

*Peter Kelso*

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## Glossary of terms

**Alternative Dispute Resolution (ADR):** ADR provides child abuse survivors with an alternative to going to court, which can be a traumatic and drawn-out process. In contrast, cases resolved by ADR are usually finalised in about 12 months and survivors can be involved in the compensation negotiations. These meetings are held in private and the outcomes are confidential.

**Barrister:** A barrister is a courtroom specialist that a solicitor may engage to advocate on behalf of their client. Barristers are also often appointed as mediators in the ADR process, due to their skills in negotiation and speaking on their feet.

**Costs agreement:** Kelso Lawyers have developed a costs agreement specifically for historical child sexual abuse cases. It is 'no-win-no-fee' style agreement, where a win is classified as an offer of compensation of \$10,000 or more. We recognise that some cases are more complex than others, so our fee is linked to the outcome, not the number of letters written.

**Litigated:** A litigated case is one that is resolved through the court system.

**Mediation:** This process is designed to resolve matters of conflict by negotiation, rather than through judgement. It is less confrontational than seeking compensation through the courts, and enables survivors to be involved in negotiations.

**Mediator:** A mediator is appointed to facilitate negotiations in the alternative dispute resolution (ADR) process. Usually a barrister, the mediator is an impartial participant in the meeting and aims to help the parties reach agreement.

**Non-litigated:** A non-litigated case is one that does not go through the court system, such as a case resolved through ADR.

**Redress:** Redress is a remedy to set right a wrongdoing. The Royal Commission into Institutional Responses to Child Sexual Abuse recommended in 2015 that a National Redress Scheme be established by mid-2017 to help to compensate survivors of institutional abuse. It is expected that around 60,000 child abuse survivors around Australia would be entitled to access the scheme. Federal and State Governments are yet to agree on the structure of such a scheme.



**Contact Kelso Lawyers today with your details.**  
**We would like to help you in your fight for justice.**

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