



JUSTICE BEHIND BARS



Personal injury claims in prison

This fact sheet provides general information about particular laws that relate to prisoners who lodge personal injury claims. This fact sheet does not explain whether you have a personal injury claim and you should seek advice from a personal injury lawyer about your case. PLS cannot provide advice or representation about personal injury matters.

Limitation periods

Strict time limits apply to claims for personal injury. Failing to start a claim within a relevant time limit will likely mean that you will not be able to bring a claim.

The general limitation periods are as follows:

- Under the *Personal Injuries Proceedings Act 2002*, a Notice of Claim must be served on any respondent within **nine months** of the incident or within one month of instructing a law practice (whichever is the earlier) (“the PIPA limitation period”).
- Under the *Limitation of Actions Act 1974*, a person has only **3 years** from the date of incident to file court proceedings for personal injury (“the LAA limitation period”).

For prisoners who suffered personal injury:

- Before 7 November 2008 – the PIPA limitation period and the LAA limitation period start to run **from the date of release from prison** and is not delayed by further incarceration.
- On or after 7 November 2008 - the PIPA limitation period and the LAA limitation period start to run **from the date of the injury**.

There is no limitation period that applies to prisoners who bring a claim for personal injuries as a result of being sexually abused as a child.

Prisoners' Legal Service Inc.

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Justice Behind Bars

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A free service providing assistance to prisoners with parole, prison law matters and financial counselling

PLS respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of this land and acknowledges their Elders, past, present and emerging

Written consent from the Public Trustee

If you have been convicted of an indictable offence and are serving a sentence of three or more years of imprisonment, the Public Trustee automatically has control over the management of your financial affairs under Part 7 of the *Public Trustee Act 1978*.

This means that the Public Trustee has authority over your financial affairs instead of you.

The Public Trustee can choose to stop managing your financial affairs. If the Public Trustee decides to stop managing your financial affairs, they will send you a 'Notice to Discontinue'. If you have received a Notice to Discontinue from the Public Trustee and they have stopped managing your financial affairs, you do not require permission to start legal proceedings.

If the Public Trustee is managing your financial affairs, you may only start legal proceedings for personal injuries with the written consent of the Public Trustee.

To obtain consent, you must write to the Public Trustee and request that you be given permission to start your action. The Public Trustee may charge fees to your account to respond to a request for permission to start legal proceedings.

If you start legal proceedings for a personal injury action before obtaining written consent from the Public Trustee, you may not be allowed to continue with your action unless you obtain and file written consent from the Public Trustee in court.

You also cannot enter into a retainer with legal representatives in your personal injury matter without the consent of the Public Trustee. A retainer is the agreement that you may enter with your solicitor or barrister that outlines the legal services that they will provide and the fee that they will charge you.

To obtain consent from the Public Trustee you can write to the following address:

THE PUBLIC TRUSTEE OF QUEENSLAND
GPO Box 1449
Brisbane QLD 4001

Victim trust fund

If you receive compensation for a personal injury claim against the State that happened while you were in prison, you will not automatically receive any compensation payment.

The *Corrective Services Act 2006* provides authority for the freezing of certain compensation and damages awards made to prisoners.

Section 319L of the *Corrective Services Act 2006* provides that prisoners do not have any property or interest in causes of action for a civil wrong committed by a protected defendant while the person is a prisoner. A protected defendant includes Corrective Services Officers and Queensland Corrective Services.

This means that while you can still start proceedings for a civil wrong against a protected defendant (e.g. injuries arising from an assault committed against you by Queensland Corrective Services staff), you will not automatically be entitled to damages or compensation awarded by way of judgment or settlement in those proceedings.

Any money awarded in relation to an award of damages or compensation for a civil wrong committed by a protected defendant against you while incarcerated will not be directly paid to you. Instead, this money will be held in a victim trust fund.

Any victims of crime will be notified of compensation made to you and they will be able to make a claim against the frozen funds in the victim trust fund.

If there is still money left in the victim trust fund after any payments are made to victims, the State and Commonwealth may be able to claim against the award made for any existing debts you have relating to:

- The payment of criminal injuries compensation by the State to a victim
- Unpaid fines held by the State Penalties Enforcement Register
- Unpaid child support or child maintenance

Where there is money remaining in the victim trust fund after any of the above payments are made, you are entitled to receive the remaining amount.

If there are no victim claims and you do not have any relevant existing debts, you will receive the full payment minus Public Trustee fees for administering the fund.

Legal fees and future medical costs arising from the civil claim will not form part of the victim trust fund.