

Can I claim more compensation for child abuse after I signed a settlement deed?

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Survivors of childhood institutional abuse may sue the institution for common law compensation due to the abuse they experienced. When a plaintiff settles a common law compensation claim, they will sign a Settlement Deed which will ordinarily prevent them from returning at a later date for further compensation. However, in cases of historical childhood sexual abuse, there are options for eligible survivors to revisit the Settlement Deed they signed and seek further compensation.

In this blog, we look at two different cases where survivors of childhood sexual abuse sought to revisit their claim for compensation after signing a Settlement Deed, due to the abolition of time limits for such claims. In one matter, the court overturned the original settlement and the survivor was able to sue the institution a second time. In the other matter, the court did not set aside the Settlement Deed.

So why are the outcomes different?

Changes to the law after the Royal Commission into child sexual abuse

When the two original settlements were reached, there were laws which were not in place but which have now been enacted (following the Royal Commission into Institutional Responses to Child Sexual Abuse), namely:

> the removal of the statute of limitations in all jurisdictions in Australia, which means that there is now no time limit to bring a claim for compensation which is categorised as child sexual abuse;

> a survivor may now sue an unincorporated church.

Victorian Court of Appeal sets aside earlier settlement

Roman Catholic Trusts Corporation for the Diocese of Sale v WCB [2020] QSCA 328

In this case, WCB suffered abuse across a period of three years from 1977 to 1980, at the hands of an assistant priest, Hourigan, at the Warragul Catholic Church in Victoria. The abuse was admitted by Hourigan prior to his death.

WCB settled his claim against the Catholic Church in 1996 “at a significant discount”.

In 2020, after the time limits for compensation claims due to child sexual abuse were abolished, WCB went to the Victorian Court of Appeal seeking to have the original Settlement Deed set aside. This would allow WCB to sue, for a second time, the institution responsible for the abuse perpetrated against him, recognising that this would likely produce a much higher result.

The Church submitted that it was not just and reasonable to allow the Settlement Deed to be set aside, because they did not have access to documents that may assist in defending the claim and that they were prejudiced by the passage of time since the abuse.

The court did not accept this argument. Given that there were allegations made between 1986 and 1996, and the Church itself had completed an investigation into those allegations, the court said that lack of access to those documents was of the Church’s own doing, considering that in light of the allegations, these documents should have been kept.

The Court of Appeal set aside the original Settlement Deed, paving the way for WCB to sue the Church for a second time.

Supreme Court of Queensland does not set aside earlier settlement

TRG v The Board of Trustees of the Brisbane Grammar School [2019] QSC 157

TRG was abused by his school councillor, Kevin Lynch, when he attended Brisbane Grammar School between 1986 and 1989. TRG began proceedings in 2001 and reached a settlement for $47,000.00 in 2002.

Following the abolition of time limits for common law claims as a result of childhood sexual abuse, TRG sought to revisit the original Settlement Deed.

The Supreme Court of Queensland said that it was:

> *“… not prepared to conclude that the figure was settled upon as a result of downward pressure from the threat of a limitation defence being successful.”*

In fact, the court considered that at the time of the settlement, there were good prospects to say that there may have been a ‘material fact’ which could have extended the limitation period. That material fact was that during most of the limitation period, TRG was unaware that parents had met with Brisbane Grammar School’s then headmaster, Dr Max Howell, to inform him of the abuse.

The court considered that the real reason the settlement figure was considered to be on the low side of acceptable figures, was

because there was uncertainty of whether it could be proved that Dr Howell knew of the offending and, therefore, whether the school could be held responsible.

Therefore, the court stated that the limitation period was not the reason that the settlement was entered into for a figure on the lower end of what could have been expected.

The court ordered that the Settlement Deed could not be set aside.

The takeaways

The primary difference between the two outcomes is consideration of the factors which created a lower settlement figure.

In TRG, there were additional material considerations other than just the time limit and the inability to find a proper entity to sue. In WCB, the time limit and the ability to now sue an unincorporated church (after changes to the law), were the only considerations which affected the settlement figure.

Get help from an abuse lawyer

We've worked with survivors of childhood abuse for over 20 years, ensuring they get all the compensation they deserve. If you've already settled a claim but feel the compensation was unfair or unreasonable, we can review your case and provide you with advice about the potential to have that settlement set aside.

If you have not sought compensation for the abuse you endured, we are able to talk with you about the options available under the National Redress Scheme or a common law claim against the institution where the abuse occurred.

We accept cases on a no-win-no-fee basis but importantly, we can also assist in meeting the costs of obtaining the necessary medical and other evidence needed to conduct your matter through to a successful conclusion.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.