

**Setting Aside Settlement Agreements for Past Child Abuse
Claims
Submitted by
Fighters against child abuse Australia [FACAA] for the
Australian Productivity commission**



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About Fighters against child abuse Australia

Our mission is to end child abuse once and for all within Australia.

Our vision is to make Australia the only nation on the planet that does not suffer from the scourge of child abuse.

Our guiding principals are to remain completely non-denominational and non-political to achieve our mission of ending child abuse once and for all by whatever means are required (within the laws of the land). If a program does not exist to meet the needs of our clients, then we will make one to meet their needs.

FACAA has been working actively for the past 8 years to end child abuse within Australia. We are currently running a survivor's healing programs, educational and legal reform programs, domestic violence programs, anti bullying programs and a social media awareness campaign which regularly receives over 1.5 million unique views making it the single most successful social media campaign of its kind in Australia.

FACAA is a national organisation that has full deductible gift recipient status as a public benevolent society. We have volunteers working and clients from every part of Australia and we have members from all over the world.



Introduction

Frequently while trying to help survivors of child abuse heal from their ordeals, we find survivors who have survived abuse at the hands of members of the Priesthood.

The major issue we find with helping these survivors heal is the arrogance and lack of acceptance of guilty/responsibility from the church that either abused them or helped hide those who abused them.

One of the major reason for this arrogance and lack of responsibility is the presence of “agreements” which were essentially gag orders for the covering up of crimes. The Catholic church used the “towards healing” program (it was a document with guidelines on how to seek compensation from the church) which literally told survivors to go to lawyers who were funded by the church itself.

This huge conflict of interest at the hands of the church led to shocking deals being done and survivors of child abuse being left with no legal recourse to go to the police for their crimes and unable to speak about what happened to them, with little or no remuneration for their crimes and zero ways of getting more thanks to the “agreement” they have signed.

We at FACAA are thrilled to see that these agreements may now be set aside and survivors could speak about their ordeals and seek proper remuneration for their abuse. Us and our 125 thousand plus members would like to thank the Attorney General’s department for this initiative and the ability to hand this submission in on behalf of all of our members.



Discussion Questions

1. Should the courts be given the discretion to set aside settlement agreements in relation to historical child abuse claims?

Yes absolutely. Many survivors of clergy sexual abuse were advised by the church to seek advice from lawyers who were connected to the church as part of the church's "towards healing program".

Clearly that is a conflict of interest to have a church lawyer negotiating payouts by the church on behalf of its victims. These deals need to be null and void immediately.

2. Which definition of 'child abuse' should be used in the proposed reforms:

C. Sexual, physical and other connected abuse (similar to s6A(2) of the Limitation Act (NSW))

3. Should the courts be given the discretion to set aside:

- a. settlements for claims that were statute barred at the time the settlement was entered into;
- b. settlements entered into where there was no proper defendant for a claim;
- c. settlements entered into in other circumstances that might mean the settlement was unjust or unfair?

All of the above, myself and the FACAA members believe there are grounds to warrant the setting aside of claims in all the examples.

4. Should the courts' discretion be defined by referring to settlement agreements entered into before 1 January 2019? If so, should there be any limitations on this discretion?

The courts should have the discretion to set aside any deals made by the church in regard to the covering up of crimes. That's what we are talking about here, they are paying people to cover up crimes.

5. Which test should the legislation provide for the exercise of the court's discretion to set aside a settlement agreement:

D. some other test?

Option D, The test should be if the payment and contract was set in place to cover up a crime then it should be set aside immediately. The fact they still hold up in court even though they are covering up a crime amazes us.

6. Should criteria be prescribed that the court must consider in applying the above test? If so, what should these be?

Yes, was there a crime committed, if yes then the agreement should be set aside, if the survivor wants it to be.

7. If a settlement agreement entered into in relation to child abuse and other causes of action does not set out the amount paid with respect to child abuse, should the potential reforms specify what portion of the settlement amount is to be taken into account as a payment for child abuse?

In the event of an unspecified amount of the settlement being set aside for the child abuse, the entire amount should be taken as

the payment for child abuse and therefore remain with the survivor of the abuse.

Alternatively, should this be left to the courts' discretion? No letting judges make the decision, as in the case of sentencing for criminal convictions would lead judges to make the wrong decision. Its better to legislate so the survivor is not financially disadvantaged in any way by the setting aside of the judgements

8. If the courts are given the discretion to set aside a settlement agreement, should they also have the discretion to set aside orders, judgments, and other contracts or agreements (excluding insurance contracts) giving effect to the set aside settlement agreement?

Absolutely, at its heart these agreements are illegal because it is wrong to pay someone to cover up a crime or not report it as the case may be. So, any conditions within the agreements should be set aside along with the payments if it's to the benefit of the survivor.

9. Are there any other issues that stakeholders have identified in relation to the interaction between the potential reforms and the National Redress Scheme?

If the survivor wishes their families should also be able to seek compensation for the crimes committed against their family member as all too often it is the families who are left financially burdened by the survivor's abuse. They can be made to pay for legal fees and medical bills that could arise by the survivor self-medicating. They are often the ones who must support the survivor when they are dealing with their trauma so they too should be able to seek compensation from the redress scheme.

10. Should any other categories of settlement be excluded?

No.

11. Should the potential reforms be limited so that only the person who received payment under a settlement agreement can apply to have the settlement agreement set aside?

No, often the survivor of child abuse will take their own life while dealing with the abuse. In this case their surviving family members should be able to have the silencing agreements set aside so they can then civilly sue the church and discuss what took the life of their family member.

12. Are there any further issues that stakeholders wish to raise in relation to the potential reforms?

As well as their families the survivors may wish to nominate departments or charities that have assisted them with their recovery who could also potentially benefit from the settlement deals.



References

Direct interviews, emails and phone calls with FACAA members and clients who have endured clergy abuse and were all subject to silence “agreements” . We spoke directly to 25 clients and heard about their experiences with the abuse at the hands of the Catholic church’s clergy, their experiences with “towards healing” and the deals they were coerced into making and how that made them feel in relation to their belief of their own healing journeys and how the church hurt or hindered their healing.

A very big thank you and reference needs to go to the volunteers of the FACAA social media awareness campaign. [REDACTED]

[REDACTED]

[REDACTED] Without who this submission would have never occurred.

A final thank you needs to go to the NSW Attorney General’s department who (even during these crazy times) have stepped up and made more changes to benefit the children of NSW and help end child abuse in NSW, more than any other Attorney General’s department before. Thank you from all of us here at Fighters Against Child Abuse Australia.