Discussion Paper

Setting aside settlement agreements for past child abuse claims

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1. Introduction

1.1. The Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) issued its *Redress and Civil Litigation report* in September 2015[1]. It made powerful and far-reaching recommendations about what governments and institutions should do to deliver justice and support to survivors, including establishing a national redress scheme for survivors of child sexual abuse and improving the capacity of civil litigation systems to provide justice to survivors.

1.2. In 2016, the NSW Government retrospectively removed limitation periods for child abuse and introduced an updated Model Litigant Policy.[2]

1.3. In 2018, the NSW Government implemented a requirement that a proper defendant be appointed for cases brought against unincorporated organisations (removing what was known as the Ellis defence) and two new statutory liabilities for child abuse.[3]

1.4. Together, the 2016 and 2018 reforms were designed to remove barriers to seeking civil justice for survivors. However, prior to the 2016 and 2018 reforms, many survivors entered into settlements that they identified as inadequate or far too low and that they felt forced to accept the settlement offers due to "legal technicalities".[4] In particular, many of these settlements were made in relation to claims that were statute barred or where there was no proper defendant to sue.

1.5. Some of those settlement amounts might now be considered unfair, in light of the fact that those legal technicalities are no longer a barrier to sue responsible institutions. However, many survivors of child sexual abuse who entered into those agreements would be barred from seeking further compensation as those agreements generally released the institution from any further liability.

1.6. Recently, Western Australia, Queensland, Victoria and Tasmania introduced legislation to give the courts the discretion to set aside past settlement agreements for child sexual abuse causes of action (WA)[5] and child abuse causes of action (Vic, Tas and Qld).[6] A comparison of the relevant legislation is at **Appendix 2**.

1.7. The NSW Government is seeking submissions on:

- whether NSW courts should be given the discretion to set aside historical settlement agreements for child abuse; and if so
- options for how this possible reform should operate.

[1] Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation* report (2015).
[2] *Limitation Act 1969* (NSW), s. 6A and *Premier's Memorandum M2016-03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse*, *NSW Government Guiding Principles for Government Agencies Responding to Civil Claims for Child Abuse.*
[3] *Civil Liability Act 2002*, ss. 6A-6Q.
[4] *Redress and Civil Litigation* report (2015), p. 96.
[5] *Limitation Act 2005* (WA), ss. 6A and 89.
[6] *Limitation of Actions Act* 1958 (Vic), *Justice Legislation Amendment (Organisational Liability for Child Abuse Act 2019* (Tas), *Civil Liability and Other Legislation Amendment Act 2019* (Qld).

2. Consultation process

2.1. We welcome interested individuals and organisations to provide written submissions in response to any of the issues raised in this Discussion Paper.

2.2. Discussion questions are set out in full at **Appendix 1**. The discussion questions are presented for consideration by a wide variety of stakeholders, including a range of organisations working with children, survivors of abuse, NGOs, insurers and the legal profession.

2.3. Some of the questions are legal and technical in nature. It is not expected that all stakeholders will be in a position to respond to all discussion questions.

2.4. Submissions should be sent to:

- Policy Reform & Legislation, Department of Communities and Justice, GPO Box 6, Sydney NSW 2001, or
- policy@justice.nsw.gov.au by **15 April 2020**.

2.5. Submissions may be published on the Department's website, unless you specifically ask us not to do so.

2.6. If you are interested in participating in the consultation but are unable to make a written submission, please contact us at policy@justice.nsw.gov.au.

2.7. If you require a copy of this Discussion Paper in a more accessible format, please contact us by telephone on 1800 990 777 to request. If you are deaf, or have a hearing or speech impairment, please contact us through the National Relay Service on 1800 555 677 and then ask for 1800 990 777.

3. Context

Royal Commission into Institutional Responses to Child Sexual Abuse

3.1. The Royal Commission considered the extent to which survivors of child sexual abuse have achieved justice under the existing civil litigation systems in Australia, and whether reforms are required. The evidence gathered by the Royal Commission, and reported in its 2015 *Redress and Civil Litigation Report*, demonstrates that survivors have not had the same ability to access compensation as other injured persons, and often find the process of civil litigation to be difficult and traumatic.[7]

3.2. The Royal Commission made 99 recommendations for the establishment of a redress scheme and civil litigation reform. The civil litigation recommendations relate to:

- limitation periods (85-88)
- the civil liability of institutions (89-93)
- identifying a proper defendant (94)
- insurance (95), and
- model litigant approaches (96-99).

3.3. The Royal Commission did not make any recommendations in relation to legislative reform to allow past settlement agreements to be set aside.

The National Redress Scheme for Institutional Child Sexual Abuse

3.4. On 1 July 2018, the National Redress Scheme for Institutional Child Sexual Abuse (**National Redress Scheme**) was established in response to the Royal Commission's recommendations in its *Redress and Civil Litigation* report.

3.5. Redress is an important alternative to civil litigation for claims regarding past child sexual abuse occurring before 1 July 2018. In its *Redress and Civil Litigation* report, the Royal Commission acknowledged that civil litigation is not an effective way for all survivors to obtain adequate redress and to address or alleviate the impact of institutional child sexual abuse.[8]

3.6. The National Redress Scheme was established to address the need for access to redress for survivors of past abuse. The National Redress Scheme is an alternative to civil litigation and has a lower evidentiary threshold that determines applications based on a 'reasonable likelihood' test.[9]

[7] *Redress and Civil Litigation* report, p. 42-43, 91-93, 95-96.
[8] *Redress and Civil Litigation* report, p. 92-93.
[9] Explanatory Memorandum, National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, 38 and 109.

3.7. Under the National Redress Scheme, redress includes:

- monetary payment of up to $150,000
- access to counselling and psychological support, and
- a direct personal response from participating institution(s) responsible for the abuse.

NSW Government implementation of Royal Commission's civil litigation reforms

3.8. The NSW Government implemented the Royal Commission's recommendations regarding limitation periods[10] in 2016 with the passage of the *Limitation Amendment (Child Abuse) Act 2016*. That reform went further than the Royal Commission recommendations by amending the *Limitation Act 1969* to retrospectively remove limitation periods for both sexual and physical abuse and any connected abuse.

3.9. On 1 July 2016, the Premier issued *Premier's Memorandum M2016-03 Model Litigant Policy for Civil Litigation* and the *Guiding Principles for Civil Claims for Child Abuse*. The updated Model Litigant Policy sets out the principles for the State of NSW for maintaining proper standards in litigation and legal services. The Guiding Principles are binding and aim to make litigation a less traumatic experience for survivors and to ensure a compassionate and consistent approach to civil claims for child abuse across the NSW Government.[11]

3.10. In 2018, the NSW Government implemented the *Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018* in response to the remainder of the Royal Commission's civil liability recommendations.[12] The reforms, contained in Part 1B of the *Civil Liability Act*, enact:

- a statutory duty on certain organisations to take reasonable steps to prevent child abuse, with a reverse onus of proof (Division 2).
- an extension to the common law of vicarious liability so that it applies not only to employees but also to those akin to employees (such as priests and volunteers) (Division 3).
- the proper defendant reforms, allowing unincorporated organisations to be sued for child abuse, requiring a proper defendant to be appointed to such proceedings and allowing assets of associated trusts to be used to satisfy judgment in some circumstances (Division 4).

3.11. The 2016 reforms were both prospective and retrospective, that is, they affected the law in relation to both past and future abuse.

3.12. However, the 2018 reforms affected the law relating to past and future abuse in different ways. In particular, the requirement that a proper defendant be appointed for claims against unincorporated organisations relates to claims for both past and future abuse. However, the two new statutory liabilities for child abuse by

[10] Recommendations 85-88, *Redress and Civil Litigation* report.
[11] *NSW Government Guiding Principles for Government Agencies Responding to Civil Claims for Child Abuse.*
[12] Recommendations 89-99, *Redress and Civil Litigation* report.

associated individuals and vicarious liability apply to claims for future abuse only in line with the recommendations of the Royal Commission.

Reforms introduced by other jurisdictions

3.13. Queensland, Western Australia, Victoria and Tasmania have introduced legislation giving the courts the discretion to set aside settlement agreements in relation to child abuse or child sexual abuse claims.[13]

3.14. Those jurisdictions introduced the reforms with the intention of providing a framework to allow people to sue responsible institutions in cases where they were previously impeded from doing so by limitation periods. This was to address the unjust results of previous barriers created by the existence of the limitation period, and to complement the Royal Commission's work in relation to previous settlements.

3.15. The legislation in these jurisdictions is similar, in that they all provide the courts with the power to set aside historical settlement agreements where claims were previously statute barred (i.e. prior to the removal of the limitation period). However, there are some differences in the legislation regimes relating to the scope of settlement agreements covered and the test for the court to apply.

3.16. A comparison of the legislative scheme is at **Appendix 2**. The potential elements of a scheme are examined in Part 5 of this Discussion Paper.

[13] *Limitation of Actions Act 1974* (Qld), *Limitation Act 2005* (WA), *Limitation of Actions Act* 1958 (Vic), *Justice Legislation (Organisational Liability for Child Abuse) Amendment Act* 2019 (Tas).

4. The rationale for allowing settlement agreements to be set aside

The importance of access to compensation

4.1. The impact of child abuse on survivors and their families can be devastating. Abuse can have a profound impact on the mental health and social functioning of survivors, who may suffer feelings of trauma, isolation and post-traumatic stress.[14] Abuse can have a significant financial impact on survivors, as it may lead to loss of earning capacity, medical and counselling expenses, and legal costs.[15]

4.2. The principle underlying compensation is that those who are responsible for the harm suffered should pay for the cost of their actions or omissions. It acknowledges this unjust loss, damage and hardship caused by the perpetrator, and provides survivors with the financial means to access services and support.

Obstacles faced by survivors when negotiating settlements for child abuse

4.3. In its *Redress and Civil Litigation* report, the Royal Commission found that many survivors entered into settlement agreements "under time pressure, and in some cases, without the opportunity to obtain independent advice and with little or no knowledge of what others in comparable positions had been offered or paid".[16] The Royal Commission found there was often a power imbalance between the survivor and the defendant when negotiating claims, with the nature of the trauma suffered by the survivor creating a significant power imbalance during negotiations.[17]

4.4. The Royal Commission heard that many survivors found redress provided in past schemes was inadequate and the process for calculating payments was unfair or difficult to understand.[18] The Royal Commission also found that, for survivors who made a claim against responsible institutions, legal technicalities often forced people to accept settlements without being able to have their claims determined on the merits.[19]

4.5. Many of the settlement agreements entered into by survivors might now be considered unjust or unfair, particularly where those legal barriers have been removed following the NSW Government's reforms to civil liability in 2016 and 2018. If those legal barriers had not existed at the time of the settlement, those survivors would have been in a better negotiating position and may have negotiated a higher settlement amounts.

4.6. However, people who entered into these settlement agreements would generally be prevented from seeking any further compensation for the abuse by terms in their settlement agreements that released the responsible institution(s) or persons from

[14] Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, Volume 3 – Impacts (Royal Commission *Final Report*).
[15] Royal Commission *Final Report*.
[16] *Redress and Civil Litigation* report, p. 42-43.
[17] *Redress and Civil Litigation* report, p. 91.
[18] *Redress and Civil Litigation* report , p. 95-96.
[19] *Redress and Civil Litigation* report, p. 96.

liability. This type of release is common across personal injury matters, including child abuse claims.

4.7. The ultimate effect of this is that survivors who entered into settlement agreements prior to the reforms may be unable to benefit from the removal of the legal barriers to civil litigation in 2016 and 2018.

4.8. The exact number of these settlement agreements is unknown. A number of people entered into settlement agreements confidentially outside of proceedings, in the context of court proceedings, or through non-government institutions' privately run redress or compensation schemes.

Existing mechanisms for setting aside a settlement agreement

4.9. There are some common law, equitable and statutory mechanisms that allow a court to declare a contract, including a settlement agreement, void or that allow a person to rescind a contract or settlement agreement.

4.10. However, these mechanisms have significant limitations. Survivors would find it very difficult to have a settlement agreement set aside solely on the basis that the law had changed such that they would be entitled to a higher amount if the settlement had been negotiated now.

4.11. In common law and equity, a person may seek to rescind a settlement agreement or have a court declare the agreement void on the basis of a number of vitiating factors. Such factors include there having been a misrepresentation, mistake, duress, undue influence, and/or unconscientious or unconscionable conduct.

4.12. The test for a court to apply in relation to the above vitiating factors is generally quite high. For example, the principle of unconscientious or unconscionable conduct requires the innocent party to be at a special disadvantage which seriously affected their ability to make a judgment as to their own best interests. The stronger party must then have in some way exploited this special disadvantage.[20] This test would be particularly difficult to apply in circumstances where a significant disadvantage to a claimant often arose from legal defences that were legitimately available to the defendant at the time.

4.13. The *Contracts Review Act 1980* (NSW) arguably gives the court wider jurisdiction to deal with unjust or unfair contracts, at least in relation to some common law and equitable principles such as unconscientious conduct. The Act allows the Supreme Court to grant relief against harsh, oppressive, unconscionable or unjust contracts.[21] Under the Act, the Supreme Court may refuse to enforce an unjust contract or declare it void "if just to do so and for the purpose of avoiding as far as practicable an unjust consequence or result".[22]

4.14. However, the *Contracts Review Act* is unlikely to be a sufficient mechanism for a person to have a settlement agreement for a child abuse claim set aside for a number of reasons. Although the Act could be used by a survivor to seek to aside a

[20] See *Thorne v Kennedy* (2017) 263 CLR 85, 38.
[21] NSW, *Parliamentary Debates (Second Reading Speech)*, 14 November 1979, page 3052, Legislative Assembly, Syd Einfeld MP (Minister for Consumer Affairs).
[22] *Contracts Review Act 1980* (NSW), s.7.

previous settlement agreement, the Act is intended to be targeted at unjust or oppressive commercial contracts.[23] An application for relief under the Act in relation to a child abuse claim can generally only be made in the 2 year period after the date the contract was made.[24] This would exclude the vast majority of settlement agreements entered into for historical child abuse claims.

4.15. The Supreme Court recently found, in relation to an application to set aside a deed of release for a child sexual abuse claim, that the Act prevents the court from having regard to injustice arising from circumstances not reasonably foreseeable at the time the agreement was made, including the subsequent removal of the limitation period.[25] The court therefore could not take into account the perceived injustice arising from the change in the law when considering the fairness of the deed in that matter.[26]

Institutions

4.16. The Royal Commission acknowledged that its recommendations for civil liability reform may have financial impacts on institutions, including on their insurance arrangements.[27]

4.17. Historically, institutions have entered into settlement agreements for child abuse claims with the expectation that the institution was forever released from liability for that claim. Additionally, many institutions have run their own redress schemes, which operated outside of the civil liability system, but may have required survivors to agree to release the institution from further liability.

4.18. Any reforms in this area are likely to have a financial impact on both government and non-government institutions, if they entered into settlement agreements in the past that the court would be minded to set aside under the possible reforms.

4.19. A settlement agreement ordinarily brings finality to the rights and obligations between the parties. Allowing a court to set aside a settlement agreement for child abuse claims would retrospectively remove that finality. This would be contrary to established principles relating to the importance of upholding the private nature of a settlement agreement.

4.20. However, there are already common law, equitable and statutory mechanisms that allow courts to intervene in some private contractual arrangements. Additionally, the Royal Commission's findings in relation to survivors' experiences in settling claims and the fact that survivors often reported that the settlement amounts they received were too low may be reasons for giving the courts the discretion to set aside these types of settlement agreements.

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[23] NSW, *Parliamentary Debates (Second Reading Speech)*, 14 November 1979, page 3052, Legislative Assembly, Syd Einfeld MP (Minister for Consumer Affairs).
[24] *Contracts Review Act 1980* (NSW), s.16(a).
[25] *Magann v Trustees of the Roman Catholic Church of the Diocese of Parramatta* [2019] NSWSC 1453, 225.
[26] Ibid.
[27] Royal Commission *Final Report ,* p. 449, 457-458, 477, 481-482.

Discussion questions

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

5. Key features of potential reform

5.1. Potential reforms in NSW could seek to provide an avenue for people who entered into unjust or unfair settlements to bring proceedings, or seek a further settlement payment from the responsible institution. The ability to do so could be made possible via legislation that allowed the courts to set aside previous settlement agreements for child abuse claims.

5.2. Potential reforms would not seek to allow every settlement agreement entered into prior to the 2016 and 2018 reforms to be set aside. Instead, the reforms could allow for settlement agreements to be set aside where appropriate to do so. This would be a discretionary decision for the courts and the proposed reforms could seek to provide a balanced test for the courts to consider in every case.

5.3. There are a number of issues to be addressed in relation to the potential reforms. This paper seeks submissions on specific questions in relation to these key issues.

What types of abuse should be covered?

5.4. An issue for consideration is the types of abuse to which the potential reforms should relate. This would likely be set out in a definition of child abuse used in the potential reforms.

5.5. If a type of abuse is covered by those definitions, this would mean that settlement agreements for that type of abuse could be the subject of an application to have the agreement set aside by the court.

5.6. For example, the reforms could apply to:

- Child sexual abuse only
- Child sexual abuse and physical abuse, or
- Child sexual abuse, physical abuse, and any other connected abuse.

5.7. The Royal Commission was limited by its terms of reference to recommendations relating to child sexual abuse. However, people who experienced physical child abuse faced similar technical difficulties and power imbalances in bringing civil litigation against the responsible institutions. Additionally, many survivors who experienced physical and sexual abuse may have entered into a settlement agreement in relation to both physical and sexual abuse.

5.8. The 2016 reforms to the *Limitation Act 1969* and 2018 reforms to the *Civil Liability Act 2002* defined 'child abuse' differently:

- The reforms to the *Limitation Act 1969* defined child abuse to include sexual abuse, serious physical abuse, and any other connected abuse.[28]

28 Limitation Act 1969 (NSW), s. 6A(2) "… child abuse means any of the following perpetrated against a person when the person is under 18 years of age:
(a) sexual abuse,
(b) serious physical abuse,
(c) any other abuse (connected abuse) perpetrated in connection with sexual abuse or serious physical abuse of the person…).

- The reforms to the *Civil Liability Act 2002* (relating to the proper defendant reforms) defined child abuse to mean a civil claim arising from abuse (including sexual abuse) against a child.[29]
- The reforms to the *Civil Liability Act 2002* (relating to the two new duties of care) defined child abuse to mean sexual abuse or physical abuse.[30]

5.9. The definitions of 'child abuse' in the *Limitation Act* and *Civil Liability Act* (relating to the proper defendant reforms) are broad as they include any connected abuse. This is because the objective of the reforms to the *Limitation Act* was to remove barriers to bringing civil claims for child abuse. It was therefore important that the definition cover sexual abuse, serious physical abuse, and other types of abuse perpetrated in connection with that abuse, to ensure people had the opportunity to bring proceedings in relation to all connected abuse in a single claim.

5.10. In contrast, the definitions in sections 6F and 6H of the *Civil Liability Act* are narrower as they only include sexual and physical abuse. This is because the definition is connected with the commencement of two new prospective statutory liabilities for child abuse, being liability for child abuse by associated individuals and vicarious liability for child abuse perpetrated by employees.

5.11. It might be argued that the reforms should adopt the broader definitions of child abuse to those used in the *Limitation Act* because the reform is primarily targeting claims which were settled prior to the limitation period being removed. It could be said to be inconsistent with the objective of the reform if a plaintiff would have had the benefit of having the limitation period removed for a particular form of abuse, but could not have a settlement agreement set aside due to a narrower definition of 'child abuse'.

5.12. This definition would be consistent with the definitions used in Victoria's, Tasmania's, and Queensland's legislation.[31]

5.13. It is noted that the definition of child abuse in the *Limitation Act* does not include psychological abuse as a separate category. However, a survivor of child sexual, physical abuse, or connected abuse could seek damages for pain and suffering caused by the sexual or physical abuse. This pain and suffering may include psychological harm, emotional harm or other harm.

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29 Civil Liability Act 2002, s. 6J:
In this Division:
Child abuse proceedings means proceedings for a civil claim arising from abuse (including sexual abuse) against a child, whether arising under this Part or the common law.

30 Civil Liability Act 2002, s.6F(5):
In this section:
child abuse, of a child, means sexual abuse or physical abuse of the child but does not include an act that is lawful at the time it takes place.
S. 6H(4): In this section:
child abuse means sexual abuse or physical abuse perpetrated against a child but does not include any act that is lawful at the time that it takes place.

31 *Limitation of Actions Act 1958* (Vic), s.27O(1), *Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019* (Tas), s. 8 (s.5C(1) inserted), *Civil Liability and Other Legislation Amendment Act 2019* (Qld), s. 11(2).

Discussion questions

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

   a. Sexual abuse only (similar to Western Australia)

   b. Sexual and physical abuse (similar to 6F(5) or 6H(4) of the *Civil Liability Act* (NSW))

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

   d. Some other definition?

What settlements should be covered?

5.14. The main goal of the potential reforms would be to give people who entered into unfair or unjust settlement agreements the opportunity to have that agreement set aside and to bring a further claim (or seek further settlement) against the responsible institution(s). In particular, some of those agreements might now be considered unjust or unfair in light of the fact that legal barriers which existed at the time of settlement no longer exist due to the reforms to civil liability in 2016 and 2018.

5.15. Queensland, Western Australia, Victoria and Tasmania have each introduced legislation giving the courts the discretion to set aside settlement agreements in relation to previously statute barred causes of action only (i.e. the reforms only apply where, at the time of settlement, the plaintiff would have been barred from commencing an action due to the expiry of the relevant limitation period).[32] It would appear that any reform in NSW would need to include these statute barred settlements.

5.16. In NSW, it is also possible that, despite the limitation period being lifted on 1 July 2016, a person's cause of action was prevented by there being no proper defendant to their claim up until 1 January 2019 (i.e. the date that the 'proper defendant' provisions of the 2018 amendments commenced). It is therefore arguable that settlements which were made in matters where there was no proper defendant up until 1 January 2019 should also be within the scope of any reforms.

5.17. Furthermore, it is arguable that a number of historical settlement agreements might have been unfair or unjust even if they were not statute barred or prevented by there being no proper defendant. We know from the Royal Commission that survivors experienced a number of barriers to seeking compensation from institutions, including power imbalances that arose from the nature of the trauma caused by the abuse.[33]

5.18. Potential reforms could allow applications to set aside settlement agreements entered into before 1 January 2019, being the date on which the proper defendant reforms commenced. This would ensure that the potential reforms cover all

[32] *Limitation of Actions Act 1974* (Qld), s.48(6), *Limitation Act 2005* (WA), s.89, *Limitation of Actions Act 1958* (Vic), s.27OA, *Limitation Act 1974* (Tas), s.5C.
[33] *Redress and Civil Litigation Report*, p. 91.

settlements that were entered into at the time they were statute barred claims or where there was no proper defendant for the claim.

5.19. The potential reforms could include a test and/or criteria for the courts to apply so that only settlements relating to certain claims can be set aside. This could include a requirement that the claim was statute barred or there was no proper defendant.

5.20. Alternatively, the scope of the potential reforms could also be broadened by the test or criteria to capture claims that were not statute barred or prevented by there being no proper defendant but that were subject to other circumstances that would mean the settlement was unjust or unfair.

Discussion questions

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?

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?

How should the courts' discretion to set aside settlement agreements be formulated?

5.21. An issue to be addressed is the formulation of the courts' discretion to set aside settlement agreements. This formulation should be developed in light of the Royal Commission's findings and the overall objective of the potential reforms. The formulation of the test and/or criteria for the courts to apply will also ultimately be informed by the scope of settlements that the reforms will cover.

Test to be applied by the courts when exercising the discretion to set aside a settlement agreement

5.22. There are a number of examples from the other jurisdictions' and NSW legislation that could be used as the test to be applied when determining whether to set aside a settlement agreement.

5.23. Queensland's, Western Australia's and Victoria's legislation gives the courts the discretion to set aside a previously statute barred settlement agreement if 'just and reasonable' to do so.[34]

5.24. In NSW, if a court had given judgment that the limitation period that applied to a claim had expired prior to the 2016 reforms, a court can now set aside that

[34] *Limitation of Actions Act 1974* (QLD), s.48(5A), *Limitation Act 2005* (WA), s.92(2),(3) and *Limitation of Actions Act 1958* (VIC), ss.27QD and 27QE.

judgment if it considers it 'just and reasonable' to do so.[35] This section was introduced as a part of the 2016 reforms to ensure that a pre-2016 court judgment on the limitation date could not prevent a person from bringing a claim following the removal of the limitation date in 2016.

5.25. While this provision only relates to judgments that determined that a limitation period had expired, it could be beneficial to have a consistent test for the courts to apply under the potential reforms.

5.26. While the *Contracts Review Act 1980* is not an appropriate mechanism for a settlement agreement for a child abuse claim to be set aside, the Act may provide useful guidance on the formulation of the test to be applied and criteria to assist the courts in applying this test (see below). The *Contracts Review Act* allows the Supreme Court to refuse to make a number of orders in relation to a contract that it considers unjust. Under the *Contracts Review Act*, the Supreme Court may refuse to enforce an unjust contract or declare it void, 'if just to do so and for the purpose of avoiding as far as practicable an unjust consequence or result'.[36]

5.27. An advantage of adopting the 'just and reasonable' test is that the NSW legislation would be consistent with the majority of the jurisdictions that have implemented similar reforms, and analogous legislation in NSW.

5.28. Tasmania has taken a different approach to the other jurisdictions, with its *Limitation Act 1974* allowing a settlement agreement to be set aside on the grounds that it is 'in the interest of justice' to do so.[37]

Discussion questions

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

a. 'just and reasonable' (Qld, Western Australia and Vic test);

b. 'in the interests of justice' (Tas test);

c. 'if just to do so' (*Contracts Review Act* (NSW) test); or

d. some other test?

Criteria for the courts in determining whether to set aside a settlement agreement

5.29. A related issue is whether the possible reforms should also provide criteria for the courts to consider when determining whether to set aside a settlement agreement. The criteria could provide guidance to the courts when exercising the discretion to set aside a settlement agreement, while not limiting the courts' power to exercise this discretion.

[35] *Limitation Act 1969* (NSW), Sch 5, Part 3, cl.10.
[36] *Contracts Review Act 1980* (NSW), s.7.
[37] *Limitation Act 1975* (TAS), s.5C(2).

5.30. Queensland's, Western Australia's and Victoria's legislation does not provide any criteria for the courts. However, recent case law in Queensland and WA provides some guidance on what the courts will take into consideration when determining whether it is just and reasonable to set aside a settlement agreement.[38]

5.31. In *TRG v Board of Trustees of the Brisbane Grammar School* [2019] QSC 157, the court took the following factors into account when determining whether to set aside a settlement agreement under section 48(5A) of the *Limitation of Actions Act 1974* (Qld):[39]

- If settlement was set aside, the applicant had good prospects of recovering significantly more than the settlement sum paid,
- The respondent paid its own costs of the proceedings and the applicant's party to party costs,
- The only potential prejudice to the respondent was the decay of memories of potential witnesses,
- The respondent's conduct, in that:
    - there was no intimidation, bullying or high handed action
    - the respondent paid for and facilitated a settlement process
    - by those actions, and because the applicant was legally represented, there was no inequality of bargaining position.[40]

5.32. The court in *TRG* ultimately determined not to set aside the settlement agreement and found the settlement "was the product of fair, arms-length negotiations between two parties on equal footing, both appropriately represented" and reflected the factual and legal strengths of the parties' cases as assessed by them at the time.[41] The court also determined that the settlement was not "materially contributed to by any consideration of limitation defences".[42]

5.33. In *JAS v the Trustees of the Christian Brothers* [2018] WADC 169, the District Court of WA found it was just and reasonable to grant leave for an application to commence an action and set aside a settlement agreement for the following reasons:

- As a general rule there is now no statutory limitation period for such a claim;
- At the time the applicant entered into the settlement agreement, his claim was statute barred. This meant his bargaining position was severely curtailed and he was left with no choice but to accept whatever amount was being offered;
- The extent of the applicant's entitlement if he was successful on a cause of action has never been decided on its merits;

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[38] See *TRG v Board of Trustees of the Brisbane Grammar School* [2019] QSC 157 and *JAS v The Trustees of the Christian Brothers* [2018] WADC 169.
[39] Ibid, 272 – 277.
[40] Ibid, 277.
[41] Ibid, 278-279.
[42] Ibid, 279.

- The respondent is not likely to be financially disadvantaged by having made the payment under the settlement agreement because the court can take into account any amount paid under a settlement agreement to the extent it relates to child sexual abuse;
- Granting leave is consistent with the broad intention of the amending legislation to remove legal barriers to claimants commencing an action and having their claims decided on their merits; and
- The respondent did not oppose the application.[43]

5.34. In contrast to the other jurisdictions, Tasmania has provided non-exhaustive criteria for the courts to consider when determining whether to set aside a settlement agreement. Section 5C(3) of the *Limitation Act 1974* (Tas) provides that:

> *Without limiting the matters to which a court may have regard in determining whether it is in the interests of justice to set aside an agreement effecting a settlement in respect of a relevant right of action, the Court is to have regard to the following:*
>
> *(a) the amount of the agreement;*
>
> *(b) the relative strengths of the bargaining positions of the parties; and*
>
> *(c) any conduct, by or on behalf of the organisation to which the agreement relates, that –*
>
> *(i) relates to the cause of action; and*
>
> *(ii) occurred before the settlement was made; and*
>
> *(iii) the court considers to have been oppressive.*

5.35. In NSW, the criteria for the Supreme Court to consider when making orders under the *Contracts Review Act* also provides a useful example of criteria that are applied in a similar area, that being when making orders regarding an unjust contract.[44] Examples of criteria under the *Contracts Review Act* include:

- Inequality in bargaining power between the parties.
- Extent of negotiation between the parties in relation to the contract's provisions.
- Impact of a person's age, physical or mental capacity on their ability to protect their interests.
- The parties' economic circumstances, education and literacy.
- Access to legal or other expert advice in relation to the contract, and whether the provisions of the contract were accurately explained to the parties.
- Undue influence, unfair pressure or unfair tactics.
- The conduct of the parties in relation to similar contracts or dealings.

5.36. If criteria were to be included in the potential reforms, they could also be derived from the Royal Commission's findings regarding survivors' experiences in relation to civil claims. In particular, the Royal Commission found that some survivors signed agreements under time pressure, without the opportunity to obtain independent advice, with little knowledge of what others in comparable positions

[43] *JAS*, 27.
[44] *Contracts Review Act 1980* (NSW), s.9(2).

had been offered or paid, and with a significant power imbalance between themselves and the responsible institution.[45] These findings could provide a useful basis for criteria for the courts to apply.

Discussion questions

6. Should specific criteria be prescribed that the court must consider in determining whether to set aside a settlement agreement? If so, what should these be?

How should payments under a set aside settlement agreement be treated?

5.37. It is important that any potential reforms address how the courts are to treat a monetary payment made under a settlement agreement once the agreement has been set aside.

5.38. It would be impractical and unfair for a person to be required to pay back an amount paid under a settlement agreement that has been set aside, only to then receive further damages. However, it is well established that a court should assess damages in a personal injury claim so that they represent no more and no less than a plaintiff's loss.[46] This means that any further damages should be awarded in light of previous amounts paid to a person for the same claim.

5.39. It is arguable that any potential reforms should therefore:

- Prevent a party from seeking to recover the payment that was made under the set aside settlement agreement; and
- Require the courts to take the past payment into account when awarding damages in relation to a claim arising from the set aside agreement.

5.40. This approach is consistent with that taken by Queensland, Western Australia, Victoria and Tasmania.

5.41. Many people may have commenced proceedings or otherwise sought payment in relation to child abuse or child sexual abuse along with other causes of action. In some cases, the settlement amount may be entered into globally without setting out the amount apportioned to the child abuse or child sexual abuse claim.

5.42. If potential reforms adopt a definition that covers sexual abuse, physical abuse and other connected abuse, the majority of unjust or unfair settlement agreements will likely be able to be set aside in full.

5.43. For those settlement agreements that included other heads of damages, but did not specify the amount for each head of damage, the potential reforms could either:

(a) Provide that, when awarding damages/legal costs in relation to a cause of action that included other heads of damages but did not specify the amount for each head of damage, 50% of the total amount paid is taken to relate to child abuse; or

[45] *Redress and Civil Litigation* report, p. 42-43.
[46] *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, Lord Blackburn at 39.

(b) Allow the court to apportion the amount paid for the head of damage relating to child abuse.

5.44. Option (a) is consistent with Western Australia's and Tasmania's approach. Both of these jurisdictions' legislation provides that, if the claim involved multiple heads of damages and the settlement agreement did not set out the amount paid for child sexual abuse (Western Australia) or child abuse (Tasmania), it is presumed that **half** of the settlement amount was paid for that head of damage.

5.45. Option (b) is consistent with the approach taken by Queensland and Victoria. Neither of these jurisdictions' legislation stipulates what portion of a settlement amount should be taken into account as being paid for child sexual abuse (Queensland) or child abuse (Victoria).

5.46. Given it is likely that the minority of settlement agreements sought to be set aside would involve heads of damages that are not captured under the definition of 'child abuse', it is arguable that the potential reforms should not stipulate a portion for the courts to take into account for child abuse where there were multiple heads of damages; and that the courts should have the discretion to consider these settlements on a case-by-case basis and on the evidence put forward by the parties.

Discussion questions

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? Alternatively, should this be left to the courts' discretion?

How should judgments giving effect to settlement agreements be treated?

5.47. Parties who entered into a settlement agreement in relation to proceedings that had been commenced would likely have had to seek orders or a judgment from the court in order to finalise their proceedings. In some cases, the orders or judgment may have given effect to the terms of the settlement agreement. For example, orders may have been entered into by consent that specify that the defendant must pay the plaintiff the settlement amount within a certain amount of days.

5.48. Depending on the exact orders made or judgment entered, a survivor would be prevented from bringing further proceedings by both the clauses in their settlement releasing the institution from liability and the orders or judgment. This means if a settlement agreement is set aside, any court orders or judgment that give effect to that settlement must also be set aside to allow the survivor to bring further proceedings.

5.49. A settlement agreement may also be supported by other associated contracts or agreements. To ensure a settlement agreement no longer has any effect once set aside, it may be necessary that the courts have the power to set aside associated contracts and agreements.

5.50. One type of contract that may relate to a settlement agreement is a contract or agreement for insurance cover between a defendant to proceedings or the party paying the settlement amount under an agreement and their insurer. It is arguable that to ensure clarity, insurance contracts or agreements should not be subject to the courts' scrutiny under any potential reform in this context. Proposed reforms could therefore exclude insurance contracts and agreements from being set aside.

5.51. The approach outlined above is consistent with that taken by Victoria (see **Appendix 2**).

Discussion questions

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?

Should any settlements be excluded?

5.52. Survivors entered into settlement agreements via a number of different ways, including in the context of court proceedings, without commencing proceedings, or through non-government institutions' privately run redress or compensation schemes.

Privately run redress schemes

5.53. In relation to privately run schemes, the Royal Commission heard from survivors that they considered redress provided through these schemes to be inadequate, and the process for calculating payments was unfair or difficult to understand.[47] While it is recognised that many privately run schemes were set up to provide some form of acknowledgement and redress for the abuse, it remains the case that survivors may have accessed these schemes because they were otherwise prevented by legal technicalities from bringing civil proceedings.

5.54. Other jurisdictions' legislation did not seek to exclude settlement agreements that arose from schemes run by non-government institutions. Relevantly, it was noted during debate in the Victorian Legislative Assembly in relation to the Catholic Church's scheme, the Melbourne Response, that Victoria's reforms in this space were "important because the Melbourne Response was designed not for the victims but to protect the church".[48]

The National Redress Scheme

5.55. Under the National Redress Scheme, a person may apply for a redress payment of up to $150,000, counselling and a direct personal response from the institution/s responsible for the abuse. The National Redress Scheme was established in recognition of the fact that civil litigation is not always an effective way for survivors

[47] *Redress and Civil Litigation* report, p. 95-96.
[48] Victoria, *Parliamentary Debates,* Legislative Assembly, 29 August 2019, 3062, Nicholas Staikos MP.

to obtain adequate redress and to address or alleviate the impact of institutional child sexual abuse.[49]

5.56. The Royal Commission recommended that people who have already received monetary payments through other redress schemes or through some other settlement should remain eligible for redress under the National Redress Scheme, provided that any previous monetary payments are taken into account in the redress payment.[50] Under the Redress Act, any 'relevant prior payment' is adjusted for inflation and deducted from the redress payment. A 'relevant prior payment' includes a payment made to the person by, or on behalf of, the responsible institution in relation to the abuse for which the institution is responsible.

5.57. If a person has already been to court about the abuse, and the court has already made a ruling on the case (including awarding damages), that person cannot apply to the National Redress Scheme for redress from the institution that has already paid them compensation. A person can still apply for redress if they have received an out-of-court settlement or payment from another redress scheme, but this is taken into account as a 'relevant prior payment'.

5.58. The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (Redress Act) expressly provides that once a person accepts an offer of redress and signs a deed of release, the responsible institution(s) is released and forever discharged from civil liability for abuse.[51]

5.59. Some survivors in NSW with prior settlement agreements may have already accepted an offer of redress in part because they had understood that, having entered into a prior settlement, they could not bring a further civil claim against the responsible institution. However, due to the operation of the Redress Act, potential reforms in NSW could not give NSW courts the power to set aside a deed of release or accepted offer of redress, or a past settlement that was taken into account as a relevant prior payment in an accepted redress offer. This is because the Commonwealth's legislation would override any NSW legislation that allowed a redress payment or relevant prior payment deducted from the redress payment to be set aside.

5.60. It therefore seems that the potential reforms should not seek to apply to settlement agreements entered into as a result of a payment under the National Redress Scheme (being a deed of release under section 43 of the Redress Act). For clarity, the potential reforms could include provisions providing that the courts do not have discretion to set aside:

- A deed of release or accepted offer of redress under the Redress Act; or
- Any settlement that was taken into account as a relevant prior payment for that offer of redress.

[49] *Redress and Civil Litigation* report, p. 103-104.
[50] *Redress and Civil Litigation* report, p. 258.
[51] Redress Act, s.43.

5.61. This approach is consistent with the approach taken by Victoria and Tasmania, both of which introduced reforms after the National Redress Scheme had commenced.

Discussion questions

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

10. Should any other categories of settlement be excluded?

Who should be able to apply to have a settlement agreement set aside?

5.62. The possible reforms would only allow the person who received payment under a settlement agreement to apply to have the settlement agreement set aside. This means that, if the person who received payment under the settlement agreement is deceased, the settlement agreement will not be able to be set aside. This is to ensure some degree of certainty to those settlements and to avoid the evidentiary challenges that may otherwise arise.

5.63. This would also mean that defendants to a claim could not seek to set aside a settlement agreement, including one entered into as a result of a cross-claim between defendants.[52]

Discussion questions

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?

Other issues

5.64. Submissions are otherwise sought from stakeholders on any other issues relating to the potential reforms.

Discussion question

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

[52] See *JS v The State of Western Australia* [2019] WADC 136.

Appendix 1 – Discussion questions

1. Should the courts be given the discretion to set aside settlement agreements in relation to historical child abuse claims?
2. Which definition of 'child abuse' should be used in the proposed reforms:
    a. Sexual abuse only (similar to Western Australia)
    b. Sexual and physical abuse (similar to 6F(5) or 6H(4) of the Civil Liability Act (NSW))
    c. Sexual, physical and other connected abuse (similar to s6A(2) of the Limitation Act (NSW)
    d. Some other definition?
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?
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?
5. Which test should the legislation provide for the exercise of the court's discretion to set aside a settlement agreement:
    a. 'just and reasonable' (Qld, Western Australia and Vic test);
    b. 'in the interests of justice' (Tas test);
    c. 'if just to do so' (*Contracts Review Act* (NSW) test); or
    d. some other test?
6. Should criteria be prescribed that the court must consider in applying the above test? If so, what should these 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? Alternatively, should this be left to the courts' discretion?
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?
9. Are there any other issues that stakeholders have identified in relation to the interaction between the potential reforms and the National Redress Scheme?
10. Should any other categories of settlement be excluded?
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?
12. Are there any further issues that stakeholders wish to raise in relation to the potential reforms?

Appendix 2 – Comparative table of other jurisdictions' legislation

Issue	Queensland ***Limitation of Actions Act 1974***	Western Australia ***Limitation Act 2005***	Victoria ***Limitation of Actions Act 1958***	Tasmania ***Justice Legislation (Organisational Liability for Child Abuse) Amendment Act 2019*** **(Part 3 – Limitation Act 1974 Amended)**
Type of abuse	Currently, child sexual abuse. (Sections 11A & 48) At the time of writing, the *Civil Liability and Other Legislation Amendment Act 2019* (Qld) has received assent but not commenced. It will introduce a definition to include child sexual abuse, serious physical abuse, and psychological abuse perpetrated in	Child sexual abuse (Section 6A(1) and 89)	Physical or sexual abuse of a minor and psychological abuse that arises out of an act or omission that is physical or sexual abuse (Section 27O(1))	Sexual abuse or serious physical abuse of a child, and any psychological abuse that arises from the sexual abuse or serious physical abuse (Section 8 (Section 5C(1) inserted))

Issue	Queensland ***Limitation of Actions Act 1974***	Western Australia ***Limitation Act 2005***	Victoria ***Limitation of Actions Act 1958***	Tasmania ***Justice Legislation (Organisational Liability for Child Abuse) Amendment Act 2019*** **(Part 3 – Limitation Act 1974 Amended)**
	connection with child sexual abuse or serious physical abuse. (			
Scope of settlement agreements that may be set aside	Previously settled rights of action that settled after a limitation period applying to the right of action had expired (section 48(6))	Previously settled cause of actions that settled after being statute barred (section 89)	Previously settled causes of action settled before the removal of limitation periods for child abuse (section 27OA)	Previously settled rights of action settled after a limitation period but before the removal of limitation periods for child abuse (section 8(section 5C(1) inserted)
Test to be applied for the court to set aside a settlement agreement	If just and reasonable to do so (section 48(3))	If just and reasonable to do so (section 92(3))	If just and reasonable to do so (Section 27QE(2))	On the grounds that it is in the interest of justice to do so (section 8 (section 5C(2) inserted))

Issue	Queensland *Limitation of Actions Act 1974*	Western Australia *Limitation Act 2005*	Victoria *Limitation of Actions Act 1958*	Tasmania ***Justice Legislation (Organisational Liability for Child Abuse) Amendment Act 2019* (Part 3 – Limitation Act 1974 Amended)**
Criteria to be taken into account	This legislation does not include criteria.	This legislation does not include criteria.	This legislation does not include criteria.	(a) the amount of the agreement; (b) the relative strengths of the bargaining positions of the parties; (c) any conduct, by or on behalf of the organisation to which the agreement relates, that – (i) relates to the cause of action; and (ii) occurred before the settlement was made; and (iii) the court considers to have been oppressive (section 8 (section 5C(3) inserted)

Issue	Queensland ***Limitation of Actions Act 1974***	Western Australia ***Limitation Act 2005***	Victoria ***Limitation of Actions Act 1958***	Tasmania ***Justice Legislation (Organisational Liability for Child Abuse) Amendment Act 2019*** **(Part 3 – Limitation Act 1974 Amended)**
Process	1. An application is made to the court to set aside a settlement agreement; 2. If a court makes an order to set aside the settlement agreement, the agreement is void; and 3. An action may then be brought on the previously settled right of action (section 48(5A), (5B))	1. An application is made to the court for leave to commence an action; 2. The court may: (a) Grant leave to commence the action; (b) to the extent necessary, set aside the settlement agreement; and (c) if the court does so, the settlement agreement is void (section 92(2), (3) and (4))	1. an action may be brought on a previously settled cause of action; and 2. a person may apply to the court for the settlement agreement to be set aside (section 27QE)	1. an action may be brought on a previously settled right of action; and 2. the court may set aside the agreement giving effect to the settlement (Section 8 (section 5C(2))
Treatment of payment made under set aside settlement agreement	1. a party to the agreement or associated agreement cannot	1. a party to the agreement cannot seek to recover an amount paid under	1. the court may take into account any consideration or costs paid or given	1. a party to a void agreement cannot seek to recover an amount paid under

Issue	Queensland ***Limitation of Actions Act 1974***	Western Australia ***Limitation Act 2005***	Victoria ***Limitation of Actions Act 1958***	Tasmania ***Justice Legislation (Organisational Liability for Child Abuse) Amendment Act 2019*** **(Part 3 – Limitation Act 1974 Amended)**
	seek to recover money paid under the agreement; and 2. the court may take into account any amount paid under the agreement/s when awarding damages and/or costs (section 48(5B), (5C))	the agreement; 2. and the court may take into account any amount paid under an agreement when awarding damages / costs; and 3. if the settlement agreement does not expressly provide how much of the settlement amount was paid for child sexual abuse, 50% of the amount paid is taken to have been paid for child sexual abuse (section 92(5),(6) and (7))	under a set aside settlement agreement or a related agreement when awarding damages or costs; and 2. if a settlement agreement is set aside, a person who paid an amount under the agreement cannot recover the amount paid under the agreement (Section 27QE(2) and 27QF(2))	the agreement; 2. a court may take into account any amount paid under the set aside agreement in relation to child abuse when awarding damages; and 3. if the settlement agreement does not expressly provide how much of the settlement amount was paid for child abuse, half of the amount paid is taken to have been paid for child abuse (section 8 (section 5C(5), (6) and (7) inserted)

Issue	Queensland ***Limitation of Actions Act 1974***	Western Australia ***Limitation Act 2005***	Victoria ***Limitation of Actions Act 1958***	Tasmania ***Justice Legislation (Organisational Liability for Child Abuse) Amendment Act 2019*** **(Part 3 – Limitation Act 1974 Amended)**
Interaction with payments under the National Redress Scheme for Institutional Child Sexual Abuse	This legislation commenced prior to the establishment of the National Redress Scheme and does not refer to payments under the Scheme	This legislation commenced on the same date as the establishment of the National Redress Scheme and does not refer to payments under the Scheme	A court cannot set aside a deed of release or accepted offer under the Redress Act or a settlement that has been taken into account in any deed of release or accepted offer for redress (section 27QA(3))	A court cannot set aside a deed of release or accepted offer of redress under the Redress Act (section 8 (section 5C(8) inserted)
Treatment of judgments and other contracts relating to the settlement agreement	If a court sets aside a settlement agreement, each associated agreement is also void (section 48(5B))	A court may also set aside any judgment giving effect to the settlement and each agreement relating to the settlement (other than an insurance contract) (section 92(3), (4))	A court may also set aside any order or judgment giving effect to a settlement agreement and any associated settlement agreement is also void (section 27QE)	If a court sets aside a settlement agreement, any other related agreement is void (apart from an insurance contract) (section 8 (section 5C(4))