

Alexandra Cassar

From: Policy MailIn
Sent: Wednesday, 15 April 2020 2:53 PM
To: Alexandra Cassar; Katy Wood
Subject: FW: Submission to Discussion Paper – Setting aside past settlement agreements for past child abuse claims
Attachments: Submission to NSW Discussion Paper - Setting Aside Settlement Agreements For Past Child Abuse Claims.pdf
Importance: High

From: [REDACTED]
Sent: Wednesday, 15 April 2020 2:45 PM
To: Policy MailIn
Cc: Paul McKnight
Subject: Submission to Discussion Paper – Setting aside past settlement agreements for past child abuse claims
Importance: High

Paul McKnight
Executive Director
Policy Reform and Legislation
Department of Communities and Justice

Discussion Paper – Setting aside past settlement agreements for past child abuse claims

Anonymity requested

Dear Mr McKnight

Please see attached submission to the Discussion Paper. As previously discussed, I request non-publication of my identity please. For the convenience of your staff I have redacted identifying details from the document, saving them the time and labour associated with this activity.

Please pass on my gratitude to staff engaged in the process of developing the Discussion Paper as it is clearly very well thought through and the issue appears to be very well understood. Please also pass on my thanks, if it is appropriate to do so, to the Minister's / Attorney-General's office for making it a priority to develop policy in relation to this issue.

One small matter of addition to the Discussion Paper: the paper mentions other jurisdictions who have legislated to provide a right to set aside a past settlement in relation to child abuse claims. The discussion paper lists: Queensland, Western Australia, Victoria and Tasmania.

It is my understanding that Northern Territory should also be on that list. I am reliably advised, from a prominent and senior legal authority, that Northern Territory also permits this via s53(2) and s54 of their *Limitation Act 1981*. It is my understanding

that correct legal interpretation of those sections is that the power to set aside a judgement under s54 extends to settlement agreements by the definition provided in s53(2)

“in this division a reference to a judgement given includes a judgement entered and also extends to an agreement entered into in relation to settlement of a matter of damages for personal injury to a person arising from child abuse of the person”

This interpretation is supported by examination of the Explanatory Notes which state:

Subsection (2) provides that a reference to a judgement given extends to a judgement entered, and also to an agreement entered into in relation to settlement. This means that a claimant may still make a claim where they had previously accepted a settlement on the ground that the limitation period on their claim had expired.

The Minister’s second reading speech further states:

Clause 8 inserts a new Division 2 which provides that previous judgements, including agreements entered into in relation to a settlement of a matter, determined on the basis that the cause of action was statute barred, do not prevent a cause of action being brought before the court. Judgements entered into may be set aside by the Supreme Court on application or by the court hearing the action and the case may be reopened.

I trust that is of assistance.

Please let me know if the Department requires any further information in relation to my submission.

Kind regards

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