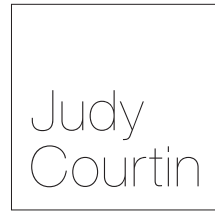


# Setting aside Deeds of Release



*Legal*

## What is a Deed of Release?

If you received a sum of money from an institution as compensation for the harm you suffered, you are likely to have been asked to sign a Deed of Release (DOR). This is a legally binding agreement between yourself and the institution. The DOR generally includes a clause which is designed to stop you suing the institution or re-opening your claim in any way.

You may have walked away from such a settlement feeling that you were not adequately compensated for the physical and/or sexual abuse and any related psychological harm that you suffered.

You may also have been left to negotiate with a powerful institution, without the benefit of legal representation. You may also have not been advised to seek legal advice before signing.

It's no wonder that many survivors felt compelled to settle for paltry sums of money.

## Can my Deed of Release be set aside?

In some cases, we may be able to persuade a Court that the DOR was unfair and unjust, and should therefore be set aside. If this application were to be successful, it would mean that the terms of the DOR would be overturned, and you would be free to pursue a fresh claim against the institution.

If you are in Victoria and you signed a DOR before 2015, the institution may have told you that you are "out of time" to sue or claim for the damage that was caused to you by the abuse. In other words, they told you that you no longer had a right to sue because the abuse occurred a long time ago. This is called a Statute of Limitations argument and is explained in further detail below.

The **Ellis Defence** was also used by unincorporated institutions, such as churches, to avoid paying survivors compensation, by arguing that the institution was not a legal entity, and therefore was incapable of being sued. We explain more about this Defence below.

The institution may have used these arguments as justification to pay you a very small amount of money that did not truly reflect the damage that you have suffered.

## Statute of Limitations

A limitation period is a period of time imposed by the law after which people cannot sue to seek compensation for their injuries within a specified period of time.

This applies to a few areas of the law (such as negligence), and also applied to historical sexual abuse cases in the past.

As the law caught up with the reality of survivors' experiences, it was altered to remove the time limits in respect of historical sexual and/or serious physical abuse.

The law recognized that children and adults often could not speak of their experiences to anyone, let alone approach the law for assistance.

So it made good sense that the statute be abolished in such circumstances.

The removal of the limitation period occurred in Victoria in 2015. Other states removed their limitation periods from 2016.

South Australia was the last to remove the limitation period in 2019.

## The Ellis Defence

The Ellis Defence was abolished in Victoria in July 2018, and was soon followed by other States.

Unfortunately, the Northern Territory and South Australia have yet to follow suit.

## Gap Deeds

If you signed your DOR in Victoria **after 2015**, when the Statute of Limitations was abolished, and before July 2018, when the Ellis Defence was still in play, you have what is called a "**gap deed**".

You may be able to have a gap deed set aside by a Court if you can show that it was unfair and unjust.

Please contact us if you would like to talk about your DOR.