



## HIGH COURT OF AUSTRALIA

9 April 2025

DZY (A PSEUDONYM) v TRUSTEES OF THE CHRISTIAN BROTHERS  
[2025] HCA 16

Today, the High Court dismissed an appeal from the Court of Appeal of the Supreme Court of Victoria.

The appellant ("DZY") entered into two deeds with the respondent ("the Trustees") between 2012 and 2015. Under the first deed, DZY agreed to release the Trustees from liability for a claim that DZY was sexually assaulted in the 1960s while he was a student at a school operated by the Congregation of Christian Brothers. Under both deeds, DZY agreed not to bring any further claim for damages arising from the alleged sexual assaults. Both deeds recorded that DZY did not allege that he suffered any economic loss by reason of the alleged sexual assaults. At the time DZY entered into the deeds, any claim for damages resulting from the alleged sexual assaults was likely to face at least one of two significant legal obstacles: (1) a defence under the *Limitation of Actions Act 1958* (Vic) ("the limitation defence"); and (2) difficulties associated with suing an unincorporated association ("the *Ellis* defence"). By legislative amendment, the Victorian Parliament later abolished both the limitation defence and the *Ellis* defence and introduced a mechanism, ss 27QD and 27QE of the *Limitation of Actions Act*, to set aside settlement agreements of child abuse claims made before 1 July 2018 if it is "just and reasonable" to do so.

In July 2021, DZY applied under s 27QD of the *Limitation of Actions Act* to set aside both deeds on the basis that it was "just and reasonable" to do so. The primary judge ordered that both deeds be set aside in their entirety, including the economic loss components of the deeds. The Trustees appealed that part of the decision that set aside the economic loss components of the deeds. The Court of Appeal of the Supreme Court of Victoria allowed the appeal. The Court of Appeal held that the limitation defence and the *Ellis* defence are central to the determination of whether it is "just and reasonable" to set aside a settlement under s 27QE of the *Limitation of Actions Act* such that it is doubtful that it would be just and reasonable to set aside a settlement agreement unless one of those defences materially influenced the claimant's decision to settle. The Court of Appeal held that it was just and reasonable to set aside the deeds of settlement only insofar as they related to the non-economic loss components of the deeds.

The High Court held that the power to set aside a settlement agreement under s 27QE of the *Limitation of Actions Act* is not limited to circumstances where the limitation defence or the *Ellis* defence had a material impact on the claimant's decision to settle. However, the High Court held that the Court of Appeal correctly identified that the evidence did not allow the Court to be satisfied that it was just and reasonable to set aside the deeds of settlement insofar as they released the Trustees from an economic loss claim.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*