



## A victory for secondary victims of childhood sexual abuse

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Childhood sexual abuse leaves a devastating trail of physical and psychological injuries and trauma on its survivors. However, the abuse of the victim can also lead to psychological injuries for their loved ones. These are known as secondary victims of childhood abuse.

In this blog, we review a recent and significant case in Victoria's Supreme Court brought on to determine if secondary victims are entitled to claim compensation for nervous shock related to [child sexual abuse](#) of their loved ones.

### Who are secondary victims of child abuse?

Secondary victims are family or friends who have suffered psychological harm as a result of the childhood sexual abuse of their loved ones. Whether secondary victims have any course of action under recent changes to the legislation (see details under "The original Court application" below) has been a contentious issue between institutions where abuse occurred and the families of the survivors.

The August 2022 case of [RWQ v Catholic Archdiocese of Melbourne & Ors \[2022\] VSC 483](#) and the subsequent application for appeal (*The Catholic Archdiocese of Melbourne v RWQ* [2023]VSCA 197) has shed light on this issue in the Victorian jurisdiction.

### The circumstances that led to psychological injury of a secondary victim to child sexual abuse

The plaintiff in this matter, RWQ (a pseudonym), was a father who suffered nervous shock as a result of learning about the alleged sexual abuse of his son by Cardinal George Pell and his son's subsequent death attributed to the child abuse.

RWQ alleged that his son had turned to illicit substances at the age of 14 following the abuse, which occurred between July and December 1996. The plaintiff alleged his son consistently used drugs since the abuse and subsequently died of a heroin overdose in April 2014.

## The original Court application

The issue in the original matter was as to the interpretation and application of the recently introduced *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* ('the Act').

The Act sought to prevent unincorporated non-government organisations ('NGOs') - such as some church organisations – from raising a defence that they were not the correct entity to be sued, therefore escaping liability. To mitigate this, the Act provided a mechanism for a proper defendant to be nominated by, for example, a church, to incur liability in respect of claims which were '*founded on or arising from*' child abuse.

Specifically, the Court needed to interpret sections 4 and 7 of the Act.

Section 4 provided the Act to apply to '*any proceeding for a claim founded on or arising from child abuse*'. Section 7 allowed for NGOs to nominate a proper defendant to incur liability in relation to '*any claim founded on or arising from child abuse*'.

The Catholic Archdiocese of Melbourne argued that the Act only applied to claims by primary victims of child abuse, being the victims who alleged abuse.

## The Court's decision

The Court held that the words '*founded on or arising from*' should be given their ordinary meaning. In this case, the plaintiff's nervous shock claim was '*founded on or arising from*' the child abuse of his son.

The Court found that the Act's purpose supports the interpretation that it applies to claims by secondary victims and that in this case, the Act applied to the plaintiff's claim for nervous shock due to the sexual abuse of his son when in the care of the Catholic Church.

The Court found that a proper defendant nominated by the Catholic Archdiocese of Melbourne would incur liability arising from the plaintiff's claim if it was proved successful in Court.

## Appeal by the Catholic Archdiocese of Melbourne

On 8 August 2023, the Catholic Archdiocese of Melbourne sought leave to appeal the Supreme Court's decision. The Victorian Supreme Court of Appeal handed down its judgement on 25 August 2023.

The Court of Appeal refused the defendant's leave to appeal, maintaining the decision of the judge, finding that the Act considered as a whole, '*clearly and unequivocally*' applies to the secondary victim's claim of RWQ.

The Court of Appeal further held the use of the words '*arising from*' in the Act suggests a concept of a less proximate relationship between the abuse and the claim, therefore giving it a broader scope for causation.

## What does this mean for secondary victims of childhood abuse?

The RWQ decision and the Court of Appeal's refusal to grant leave to the Catholic Church to appeal are a significant victory for secondary victims of child sexual abuse.

This decision means that victims who are friends, parents, siblings or other family members of abuse victims can now bring claims for psychological injury/nervous shock against the organisations that were responsible for the abuse of their loved ones. This is a major step forward in the fight to hold these organisations accountable for their actions.

The RWQ decision is also a reminder of the devastating impact that child sexual abuse can have on victims and their families. The father, in this case, suffered severe psychological injuries as a result of learning about his son's abuse. The Court's decision will hopefully help to ensure that other secondary victims of child sexual abuse receive the compensation and support they need to heal.

## Get help from a lawyer experienced in abuse law

As the circumstances of each case of abuse are different and the potential secondary victims will vary, careful instructions must be taken. At Guardian Injury Law, we take a trauma-informed approach and take the time to listen to our clients.

Abuse compensation claims are, by their nature, painful and difficult for survivors and secondary victims. If you have experienced childhood abuse or know of a loved one who has, we will ensure that you receive the respect and empathetic approach to any compensation you wish to pursue that you deserve.

## Contacting Guardian Injury Law

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