

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## RWQ v The Catholic Archdiocese of Melbourne & Ors [2022] VSC 483

Supreme Court of Victoria, McDonald J, 4 August 2022

Could a secondary victim claim under the Legal Identity of Defendants (Organisational Child Abuse) Act 2018 for nervous shock.

**Key words:** Liability, Victoria, Nervous Shock, Legal Identity of Defendants (Organisational Child Abuse) Act 2018, Secondary Victim

1. The Catholic Archdiocese of Melbourne (Archdiocese) is an unincorporated non-government organisation. P was formerly the Archbishop of Melbourne.
2. RWQ was informed of P's alleged abuse of his son AAA by Victoria Police investigating matters arising from the Betrayal of Trust Report 2015, and suffered nervous shock for which he made a claim at common law pursuant to Part XI of the [Wrongs Act 1958](#) (Vic).
3. RWQ argued that by reason of P's position as Archbishop, the Archdiocese was directly liable for the alleged abuse of his son and the injury to RWQ.
4. Further, RWQ contended that the Archdiocese was vicariously liable for the alleged abuse of AAA by reason of the alleged abuse occurring in the course of P's role as Archbishop.
5. The Archdiocese denied that the claim made by RWQ was a claim founded on or arising out of child abuse which it could be sued for and liable for, and that the [Legal Identity of Defendants \(Organisational Child Abuse\) Act 2018](#) (the Act) did not apply.
6. The two questions before the Court were:
  - (a) On the proper construction of s 4(2) to the Act, did the Act apply to the plaintiff's claims against the Catholic Archdiocese of Melbourne? and

(b) On the proper construction of s 7 of the Act, would a proper defendant nominated by the Catholic Archdiocese of Melbourne incur any liability arising from the plaintiff's claims against the Catholic Archdiocese of Melbourne?

7. The Act was designed to overcome the decision in *Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565 where the NSW Court of Appeal held that the Archdiocese could not be liable, as it was unincorporated and could not be sued. The court also held that the trustees could not be sued. The fact that the trustees held and managed property for and on behalf of the Catholic Church did not make them liable for legal claims associated with church activities. The court was unable to identify a proper defendant and the case was dismissed.

8. The Court considered s 4(2) of the Act which includes:

...a plaintiff commences or wishes to commence a claim against an NGO founded on or arising from child abuse; and the following words which appear in ss 7(4) and (5) being:

...capable of being sued and found liable for child abuse in respect of the claim.

9. The Court found on the principle of consistent usage, which requires a consistent meaning to be given to a particular phrase wherever it appears in a suite of statutory provisions, and the s 7 phrase 'founded on or arising from child abuse', that those words must be construed consistently with the construction of that phrase where it appears in s 4(2).

10. The Court found that the words 'founded on or arising from child abuse' were used repeatedly throughout the Act, pointing strongly to the conclusion that the application of the Act to NGOs is not confined to claims by primary victims of child abuse.

11. Further, the plain meaning of the words in s 4(2) is that the Act applies to an NGO if a plaintiff commences a claim against an NGO founded on or arising from child abuse. This included a claim for nervous shock by a plaintiff whose claim is founded on or arises from alleged child abuse of the plaintiff's child.

12. This meant that the Archdiocese might nominate a proper defendant pursuant to s 7(1) of the Act to incur any liability arising from this claim on behalf of itself. A proper defendant nominated by the defendant under s 7(1) will incur any liability arising from the plaintiff's claim against the first defendant.

13. The Court answered 'yes' to both questions asked of it.

## IMPLICATIONS



The Court decided that the ability to sue unincorporated bodies under the Act is not reserved only for the actual victims of sexual abuse, but also for secondary victims.

Nervous shock is a term used to denote a psychiatric illness or injury caused to a person by events, due to the negligence of another person. For a claim of nervous shock, the illness must be recognised as a psychiatric disorder. The types of psychiatric illnesses that are likely to form the basis of claims include post-traumatic stress disorder, depressive disorders, adjustment disorders and anxiety disorders. However, a person who suffers from extreme grief and sorrow, but falls short of a recognised psychiatric illness, is not able to recover damages, as one is expected in law to be able to deal with grief and sorrow.

This is a civil proceeding. The related criminal proceedings against P were dismissed on appeal by the [High Court of Australia](#) on 7 April 2020. The High Court held that P's convictions should be quashed and judgments of acquittal be entered in their place, stating that 'there is a significant possibility that an innocent person has been convicted' (at [127]).

## VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2022/483.html>

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