Deeds heap more injury on families of abused

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IMAGINE, if you will, how you would feel were your child or sibling, or any other young loved one, sexually abused by a priest, say, or a teacher.

It is a hideously common story. It may even be yours.

Such people become the secondary victims of child sexual abuse, and they are being manipulated into silence through legal manoeuvring. This must stop in the name of justice and decency.

They also need and deserve support and compensation.

They'll never get peace – for that mongrel type of pain never ceases – but they can finally get a voice and a bit of justice.

It has been almost a decade since the Royal Commission into Institutional Responses to Child Sexual Abuse was established by then prime minister Julia Gillard.

The commission made far-reaching recommendations that have finally provided victims of institutional child abuse equal access to the courts and justice.

Secondary victims are often the parents of the primary victim. They have often been the first to hear their child's disclosure of abuse.

They are often the carer who has to watch their child become addicted to drugs or alcohol, watch them spiral into a life of pain and isolation. Agony all around.

Shell-shocked and unfamiliar with the situation they face, it is no surprise secondary victims also develop mental health issues as their ability to work and function in society crumbles.

The lifelong pain – which has led to far too many suicides – caused by institutional sexual assaults and rape of children is now well acknowledged, and finally our laws have been reformed to reflect such harm and trauma.

But there's a pernicious problem.

The practice of inserting "indemnity" clauses into settlement deeds continues to undermine the rights of victims to seek redress.

When a settlement is reached pre-trial, a primary victim of the institutional abuse is required to sign a deed of release. That deed will often include clauses that require the primary victim to agree to indemnify the offending institution against future litigation by a third party (secondary victim) relating to the same abuse.

Indemnity clauses are designed to prevent secondary victims making valid and viable claims; they effectively dissuade parents or family members of survivors from seeking compensation.

It is common and it is insidious.

The powerful, asset-rich institutions that allowed abusers to shield within their complex structures ought to have anticipated that the effects of the abuse would not be limited to just one person.

The effect of indemnity clauses is that should their claim be successful the primary victim is responsible for indemnifying the institution.

Most secondary victims will forego their rights to protect their loved ones from having their own settlements decimated. This is not OK. It is just more abuse.

Our firm represents survivors of institutional sexual and physical abuse in civil claims against institutions such as state governments, the Catholic Church and other non-government organisations.

We are now representing secondary victims, such as family members of the primary victims, in making claims against the offending institutions for psychiatric harm caused by the initial harm to the primary victim.

We have had to turn away broken parents who have watched their children being destroyed by the effects of the abuse.

Survivors may elect to have their cases heard by the courts to avoid such unfair legal tactics. Courts do not make survivors sign indemnity clauses.

As any survivor who has been through the justice system will tell you, however, seeking redress through the courts can be a brutal and demoralising experience.

Not only do the risks of adverse cost orders have to be considered, but also the destabilising and terrifying spectre of being cross-examined on the most intimate and horrific aspects of their abuse.

We know that most survivors already suffer from psychiatric injuries that are exacerbated during this process.

But there's hope. There is growing recognition by the courts of the rights of secondary victims.

It is reasonable to predict these types of claims will soon become more common in the landscape of institutional abuse law.

It is legally questionable that secondary victims should have their rights effectively eroded by the primary victim's settlement. It is morally and intellectually ridiculous.

In doing so, the law is giving its countenance to discrimination against people with recognised psychiatric conditions that would not have occurred but for their exposure to criminal acts.

The offending institutions are liable for the intergenerational harm caused to the family members of the victims.

They must be denounced and deterred from ever repeating the same behaviour and this can best be done when the law does not allow itself to be used to hurt those who have already been traumatised.

These institutions cannot continue to cower behind scandalous legal provisions to prevent secondary victims.

The more that the community becomes aware of this injustice, the sooner the change that must come will come.

The situation has been wrong in every way. It doesn't just add insult to injury, it adds injury to injury.

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