

# **National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018**

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**Defined terms**

Western Australia

LEGISLATIVE ASSEMBLY

**National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018**

**A Bill for**

**An Act —**

- **to adopt the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Commonwealth) as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the day on which this Act receives the Royal Assent for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and**
- **to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and**
- **for related matters.**

The Parliament of Western Australia enacts as follows:

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## **Part 1 — Preliminary**

### **1. Short title**

This is the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*.

### **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

### **3. Terms used**

In this Act —

***adoption*** means the adoption under section 4(2);

***amendment reference*** means the reference under section 5(1);

***assent day*** means the day referred to in section 2;

***express amendment*** of the National Redress Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the National Redress Act;

***National Redress Act*** means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Commonwealth);

***National Redress Scheme*** means the National Redress Scheme for Institutional Child Sexual Abuse as established by the National Redress Act and as in force from time to time;

***participating State institution*** means a participating State institution within the meaning of the National Redress Act;

***State institution*** means a State institution within the meaning of the National Redress Act.

**Part 2 — Adoption and referral**

**4. Adoption of the relevant version of the National Redress Act**

(1) In this section —

*relevant version of the National Redress Act* means the National Redress Act as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the assent day.

(2) The relevant version of the National Redress Act is adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth.

(3) Despite subsection (2), the adoption has effect for, and for no longer than, the period —

(a) beginning when subsection (2) comes into operation; and

(b) ending at the beginning of the day fixed under this Part as the day on which the adoption is to terminate.

**5. Amendment reference**

(1) Matters relating to a redress scheme for institutional child sexual abuse are, except as provided by sections 7 and 8, referred to the Parliament of the Commonwealth, but only to the extent of making laws with respect to those matters by making express amendments of the National Redress Act.

(2) The amendment reference has effect only —

(a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth); and

(b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

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- 1 (3) Despite subsection (1) and subject to section 10(2), the  
2 amendment reference has effect for, and for no longer than, the  
3 period —  
4 (a) beginning when subsection (1) comes into operation;  
5 and  
6 (b) ending at the beginning of the day fixed under this Part  
7 as the day on which the reference is to terminate.

8 **6. Amendment of National Redress Act**

9 It is the intention of the Parliament of the State that the National  
10 Redress Act may be expressly amended, or have its operation  
11 otherwise affected, at any time after the commencement of this  
12 Act —

- 13 (a) by provisions of Commonwealth Acts the operation of  
14 which is based on legislative powers that the Parliament  
15 of the Commonwealth has apart from under the  
16 amendment reference; and  
17 (b) by provisions of instruments made or issued under the  
18 National Redress Act or under provisions referred to in  
19 paragraph (a).

20 **7. State redress mechanisms**

21 (1) A *State redress mechanism* is —

- 22 (a) a scheme, program or arrangement (temporary or  
23 otherwise) established (before or after the  
24 commencement of this Act) by —  
25 (i) the Parliament or government of the State; or  
26 (ii) an institution (whether governmental or  
27 non-governmental) or other entity,  
28 for or in respect of persons who have suffered  
29 institutional child sexual abuse in the State (whether  
30 applying only to any such persons or applying to any  
31 class of victims of crime) and any associated matters; or

- 1           (b) the jurisdiction of a court or tribunal to grant  
2           compensation or support for or in respect of victims of  
3           crime (including crime relating to institutional child  
4           sexual abuse) and any associated matters.
- 5       (2) The amendment reference does not include the matter of making  
6       a law to the extent that that law would operate to prevent or  
7       limit the power to establish, or to prevent or limit the operation  
8       of, any State redress mechanism, whether or not the mechanism  
9       deals with the same or similar subject-matters as those dealt  
10      with in any aspect of the National Redress Scheme.
- 11      (3) Subsection (2) does not cover any of the following matters (if  
12      they would otherwise be covered by the amendment  
13      reference) —
- 14           (a) any matter to which the National Redress Act as  
15           originally enacted relates;
- 16           (b) the matter of the release or discharge, in connection with  
17           the operation of the National Redress Scheme, of  
18           relevant civil liability of institutions or officials;
- 19           (c) the matter of the disclosure or use of evidence or other  
20           information provided or obtained in connection with the  
21           operation of the National Redress Scheme;
- 22           (d) the matter of the making, enforcement or protection (for  
23           example, protection against the operation of orders in  
24           the nature of garnishee orders) of payments in  
25           connection with the operation of the National Redress  
26           Scheme.

27      **8. Requirements for agreement of the State**

28           The amendment reference does not include the matter of making  
29           a law to the extent that that law would substantively remove or  
30           override a provision of the National Redress Act that requires  
31           the agreement of the State.

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**9. Termination of adoption or amendment reference**

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which —
- (a) the adoption and the amendment reference are to terminate; or
  - (b) the amendment reference is to terminate; or
  - (c) the adoption is to terminate (if the amendment reference has been previously terminated).
- (2) The Governor may, by proclamation (a *revoking proclamation*), revoke a proclamation published under subsection (1).
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) If a revoking proclamation has effect the revoked proclamation is taken never to have been made for the purposes of sections 4(3) and 5(3).
- (5) A revoking proclamation does not prevent the making of a further proclamation under subsection (1).

**10. Effect of termination of amendment reference before adoption**

- (1) If the amendment reference terminates before the adoption, the termination of the amendment reference does not affect —
- (a) laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
  - (b) the continued operation in the State of the National Redress Act as in operation immediately before that termination or as subsequently amended or affected by —
    - (i) laws referred to in paragraph (a) that come into operation after that termination; or
    - (ii) provisions referred to in section 6.



***National Redress Scheme for Institutional Child Sexual Abuse  
(Commonwealth Powers) Bill 2018***

Adoption and referral

**Part 2**

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- 1       (2) Accordingly, the amendment reference continues to have effect  
2       for the purposes of subsection (1) unless the adoption is  
3       terminated.

**Part 3 — Agreement and information**

**11. How agreement of the State is given, withdrawn and evidenced**

(1) The regulations may make provision for or with respect to, or (subject to any relevant provisions of the regulations) the Minister may give directions as to, how the agreement of the State is to be given or withdrawn and may be evidenced for the purposes of, and consistently with, this Act and the National Redress Scheme.

(2) Without limitation —

(a) the regulations or directions may authorise a person to give agreement on behalf of the State; and

(b) the agreement of the State to State institutions participating in the National Redress Scheme may be given in respect of —

(i) one or more particular State institutions; or

(ii) a class of State institutions, however described.

**12. Information sharing**

(1) In this section —

**Operator** means the Operator within the meaning of the National Redress Act;

**State agency** means the whole or part of a body (whether or not incorporated) established for a public purpose by or under a law of the State, whether or not it is a State institution or participating State institution, and includes a body or class of bodies prescribed by the regulations as being within this definition, but does not include a body or class of bodies prescribed by the regulations as not being within this definition.

(2) A participating State institution may give information to the Operator for the purpose of complying with a request made by the Operator to the participating State institution under the

- 1           National Redress Act to give information in relation to an  
2           application under the National Redress Scheme.
- 3       (3)   A State agency may give information to another State agency  
4           for the purpose of assisting any participating State institution to  
5           comply with a request made by the Operator to the participating  
6           State institution under the National Redress Act to give  
7           information as referred to in subsection (2).
- 8       (4)   Nothing in a law of the State prevents —
- 9           (a)   a participating State institution from giving information  
10           to the Operator as referred to in subsection (2); or
- 11           (b)   a State agency from giving information to another State  
12           agency as referred to in subsection (3),
- 13           unless that law is prescribed by the regulations under this Act.
- 14       (5)   A reference in this section to a participating State institution is a  
15           reference to a participating State institution that is, is part of or  
16           is connected with the State.

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1       **Part 4 — Interaction between the *Criminal Injuries***  
2       ***Compensation Act 2003* and the National Redress Act**

3       **13.       Terms used**

4               In this Part —

5               ***abuse*** means abuse as defined in the National Redress Act  
6               section 6 that is within the scope of the National Redress  
7               Scheme;

8               ***assessor*** has the meaning given in the *Criminal Injuries*  
9               *Compensation Act 2003* section 3;

10              ***compensation application*** has the meaning given in the  
11              *Criminal Injuries Compensation Act 2003* section 3;

12              ***offence*** has the meaning given in the *Criminal Injuries*  
13              *Compensation Act 2003* section 3;

14              ***redress application*** means an application for redress made  
15              under the National Redress Act;

16              ***redress offer*** means an offer of redress made under the National  
17              Redress Act;

18              ***redress payment*** has the meaning given in the National Redress  
19              Act section 6.

20       **14.       No entitlement to compensation under the *Criminal Injuries***  
21       ***Compensation Act 2003* if redress payment accepted**

22              A person is not entitled to an award of compensation under the  
23              *Criminal Injuries Compensation Act 2003* in relation to an  
24              offence if the offence is or involves abuse and the person has  
25              accepted the redress payment component of a redress offer in  
26              relation to the abuse.

**15. Deferral of compensation application if redress application not made in relation to abuse**

(1) This section applies if —

- (a) a person has made a compensation application in relation to an offence; and
- (b) the offence for which the compensation application is made is or involves abuse; and
- (c) the person has not made a redress application; and
- (d) the assessor dealing with the compensation application by or on behalf of a person is of the opinion there is a reasonable likelihood that the person is eligible for redress under the National Redress Scheme.

(2) The assessor must defer the compensation application pending the making of a redress application.

**16. Effect on compensation application if redress application made**

(1) This section applies if —

- (a) after a person has made a redress application the person makes a compensation application in relation to an offence and —
  - (i) the offence in relation to which the person makes the compensation application is or involves abuse; and
  - (ii) the redress application has not been determined;
- or
- (b) after a person has made a compensation application in relation to an offence the person makes a redress application and —
  - (i) the offence in relation to which the person made the compensation application is or involves abuse; and

#### Part 4 Interaction between the Criminal Injuries Compensation Act 2003 and the National Redress Act

- (ii) the compensation application has not been determined.
- (2) The assessor dealing with the compensation application by or on behalf of a person must defer the compensation application pending the determination of the redress application.
- (3) If the person accepts the redress payment component of a redress offer, the compensation application is taken to be refused.

**Part 5 — Regulations**

**17. Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Defined terms

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
abuse .....	13
adoption .....	3
amendment reference .....	3
assent day .....	2, 3
assessor .....	13
compensation application .....	13
express amendment .....	3
National Redress Act .....	3
National Redress Scheme .....	3
offence .....	13
Operator .....	12(1)
participating State institution .....	3
redress application .....	13
redress offer .....	13
redress payment .....	13
relevant version of the National Redress Act .....	4(1)
revoking proclamation .....	9(2)
State agency .....	12(1)
State institution .....	3
State redress mechanism .....	7(1)