



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**BILLS**

**National Redress Scheme for Institutional  
Child Sexual Abuse Bill 2018**

**Second Reading**

**SPEECH**

**Thursday, 10 May 2018**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

<b>Date</b>	Thursday, 10 May 2018	<b>Source</b>	House
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<b>Questioner</b>		<b>Responder</b>	
<b>Speaker</b>	Tehan, Dan, MP	<b>Question No.</b>	

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**Mr TEHAN** (Wannon—Minister for Social Services) (09:32): I move:

That this bill be read a second time.

This bill will establish legislation for a national redress scheme (the scheme) for survivors of institutional child sexual abuse.

Children placed in the trust of our institutions were some of the most vulnerable members in our community. That any were sexually abused by the very people charged with their care and protection is a disgrace. No child should ever experience what they did. That is why it is time for all institutions and governments to take responsibility for what happened.

The establishment of the scheme is an acknowledgement by the Australian government and participating governments that sexual abuse suffered by children in institutional settings was wrong. It was a betrayal of trust. It should never have happened.

It recognises the suffering survivors have experienced and accepts that these events occurred and that institutions must take responsibility for this abuse.

The government acknowledged the need to provide public recognition of the suffering experienced by survivors and investigate the inadequate responses provided by institutions through the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse (the royal commission).

The royal commission's *Redress and civil litigation report* recommended the establishment of a national redress scheme for survivors of institutional child sexual abuse. All governments and individual institutions were directed to make amends and take responsibility.

The royal commission estimates that almost 20,000 survivors were sexually abused in state and territory government institutions. The royal commission identified more than 4,000 institutions where sexual abuse took place.

The royal commission has clearly demonstrated that thousands of vulnerable children were subject to horrendous sexual abuse in institutions throughout Australia.

The psychological, physical and emotional injuries can affect a survivor for the rest of their life. In spite of the severity of these injuries, many survivors have not sought or obtained any kind of acknowledgement or redress for this harm.

I have met many in my time as Minister for Social Services.

The establishment of a national redress scheme acknowledges the abuse that occurred. It is the most significant step in addressing the wrongs of the past and providing a just response to survivors.

It is also an important step towards healing. It ensures governments and institutions take steps to safeguard against these crimes being repeated in the future.

This bill responds to the royal commission's redress recommendations and the Commonwealth government's commitment to establish the foundation for a nationally consistent redress scheme.

I commend the governments of New South Wales, Victoria and the Australian Capital Territory for their leadership in being the first jurisdictions to sign up for the scheme.

Should the bill pass, the participation of these governments will mean that, from 1 July 2018, the scheme will be available for over 9,000 people who were sexually abused in New South Wales government institutions, 5,000 people in Victorian government institutions, 200 people in Australian Capital Territory institutions and 1,000 people in Commonwealth government institutions.

Detailed negotiations with other state and territory governments and non-government institutions are continuing.

The establishment of a national redress bill will mean that these government and non-government institutions can be part of the scheme into the future.

The scheme will provide survivors with three elements of redress, comprising:

a monetary payment of up to \$150,000;

access to counselling or psychological services; and

a personal response from the responsible institutions.

The scheme will adopt a survivor-focused and trauma-informed approach; access to redress will be simple, and support will be available throughout the application and acceptance processes.

The scheme is not intended to replace legal avenues to seek justice. It is intended to provide a survivor with a means to access a sense of justice, through monetary redress and through restorative supports.

It is intended to be faster, simpler and less distressing for survivors and to provide governments and institutions with the means to deliver justice to their survivors.

We consulted with, and listened to, a broad range of stakeholders in developing the scheme and this bill.

The bill aligns with the views of the Independent Advisory Council on Redress, which included many survivor groups, as well as the views of jurisdictions and non-government institutions.

Under this bill, redress will be available for survivors of child sexual abuse that occurred in Commonwealth and any participating state or territory government or non-government institutions.

For the Commonwealth, this includes situations where the minors were employed and where the Commonwealth delivered state functions in the Australian Capital Territory and the Northern Territory prior to self-government.

Should the bill pass, the scheme will commence accepting applications from survivors of institutional child sexual abuse for which the Commonwealth and other participating governments and institutions are responsible from 1 July 2018.

The scheme will run for 10 years, with all applications to be finalised by 30 June 2028. The scheme can be extended if there is a need to do so.

For a person to be eligible for redress they must have suffered sexual abuse where a participating institution is responsible and it occurred when the person was a child before the scheme's commencement on 1 July 2018.

A person must also be an Australian citizen or permanent resident at the time they apply for redress, although it will be possible to deem additional classes of people eligible for redress.

While a person must have suffered sexual abuse to be eligible, the scheme will also acknowledge related non-sexual abuse, for example physical abuse. Sexual abuse rarely occurs in isolation and it is important to deal with the whole of the survivor's experience.

Applications for redress under the scheme are limited to one application per survivor, whether or not that person suffered sexual abuse in more than one institution.

This will ensure that survivors will only need to complete one form to cover all instances of child sexual abuse experienced in institutional contexts during their childhood, something the royal commission recommended to achieve equal or fair treatment between survivors.

Survivors providing the story of their experience in full will ensure the scheme can consider the totality of their experience.

In order to maintain integrity and public confidence in the scheme, there will be some limitations for people who have committed the most serious of crimes, such as homicide.

However, to ensure the scheme retains flexibility and is able to meet prevailing community standards, there will be a special assessment of applicants with serious criminal convictions.

If a person is convicted of an offence which received a custodial sentence of five or more years, the operator may determine that the person is entitled to redress if providing redress to the person would not bring the scheme into disrepute or adversely affect public confidence in the scheme.

When making this determination, the operator must take into account any relevant information such as advice given by relevant attorneys-general and the nature of the offence.

People will not be able to make an application for redress if they are in jail. However, the operator will have power to provide exemptions.

This restriction is necessary as the scheme will not be able to deliver many aspects of the scheme to incarcerated survivors.

People must be 18 years of age before the scheme sunset day to make an application for redress under the scheme. If a child who will turn 18 years of age before the scheme sunset day makes an application for redress, there will be a special assessment process.

For those eligible survivors, the amount of the monetary payment will be determined by looking closely at the circumstances of each person and applying consistent criteria. The maximum amount of redress payment available under the scheme will be \$150,000.

The expected average payment will be around \$76,000—\$11,000 higher than that estimated by the royal commission.

The payment will not reduce the income support payments of survivors, will not be divisible property for bankruptcy and will be exempt from Commonwealth debt recovery.

A legislative instrument that details the different tiers of payments and how they work together will be publicly available and declared as an instrument to the legislation.

Eligible survivors will be provided with access to counselling or psychological services in addition to the assistance already provided by the Commonwealth through Medicare.

Depending on the residence of a survivor, they will receive either a lump sum payment to access counselling and psychological services privately, or will be given access to state or territory based services. States and territories will elect for survivors residing in their jurisdiction to either receive the lump sum payment or whether they will deliver counselling and psychological services to those survivors. Survivors residing outside Australia will receive the lump sum payment.

Responsible participating institutions will be liable for the same amount to support the delivery of counselling and psychological services. This will either be paid directly to the survivor or to the applicable jurisdiction delivering services to survivors.

These services are in addition to the redress support services and legal support services that will be available to applicants to the scheme.

Survivors will also have the opportunity to receive a direct personal response from the participating institution or institutions responsible for the abuse. A direct personal response is a statement of acknowledgement, regret or apology and will be delivered to survivors by the relevant participating institution after the survivor has accepted the offer of redress.

The response may be delivered through a range of mechanisms including a face-to-face meeting with an appropriate representative of the institution or through written engagement with the survivor.

The direct personal response will give the survivor the chance to be acknowledged and tell their personal story of what they experienced and how it has impacted them.

The aim of the redress scheme is to provide an avenue for survivors of child sexual abuse who have not been able to pursue, or have not been successful in pursuing, their common-law rights in order to obtain compensation for the damage and loss they have suffered.

Many survivors cannot successfully pursue their common-law rights because they do not have access to the necessary evidence, or because going through litigation processes would be overly traumatic for them.

Before a survivor receives redress, the survivor must accept their offer by signing an acceptance document. Accepting an offer of redress has the effect of releasing the responsible participating institution or institutions, and their associates and officials, from any future liability for all instances of sexual abuse and related non-sexual abuse of the person within the scope of the scheme.

This means that the survivor cannot bring or continue any civil claim against the responsible participating institution or institutions, and their associates and officials, in relation to the specific abuse once they accept the offer of redress.

The release will not release the perpetrators of abuse themselves, provide release in relation to any other abuse outside the scope of the scheme, nor preclude any criminal liabilities of the institution or alleged perpetrator.

The release from civil liability is an important incentive for institutions as without it, institutions may be required to pay compensation through civil litigation in addition to providing redress under the scheme. It will ensure greater coverage for survivors.

Any relevant prior payments made by participating institutions in relation to the abuse for which an institution is responsible will be adjusted to acknowledge inflation and then will be subtracted from the redress payment.

In essence, these survivors would receive a 'top-up' payment. If a survivor's monetary payment is reduced to nil as a result of past redress payments, they will still be entitled to access counselling and psychological services and the direct personal response under the scheme.

The rules will also specify that where a court has previously ordered a participating institution to pay a person compensation or damages for abuse, then that person will not be eligible under the scheme for that abuse.

Where a survivor has been successful in civil litigation, a court has already applied the higher legal liability test of the 'balance of probabilities' and found that the institution is liable to pay the survivor damages.

A survivor can still apply to the scheme for any other abuse they have experienced.

The scheme is based on the principle of 'responsible entity pays', a key recommendation of the royal commission. A participating responsible institution will be expected to pay for redress for their survivors, along with a proportionate share of the administration costs of the scheme. This is the best way to ensure fairness and justice for survivors.

For a participating institution to be responsible, the abuse must have occurred in circumstances where the institution was primarily or equally responsible for the abuser having contact with the person.

The scheme will have agreed categories of cases where responsible governments will share responsibility with an institution, as set out in the national redress scheme rules.

If a case falls into an agreed category, the relevant government will automatically be determined to be equally responsible and therefore liable for redress.

Participating governments have agreed to be responsible where abuse occurs in connection with a non-government institution, the state or territory government had parental responsibility of the child or the child was a state ward, and was responsible for the placement of the child in that institution.

In cases where a government is determined to be equally responsible, they may be determined to be the funder of last resort. This will only occur when the other equally responsible institution is a defunct non-government institution.

Where a funder-of-last-resort arrangement exists, the government that shares responsibility will pay the full amount of redress. The purpose of the funder-of-last-resort policy is to pick up shortfalls in funding where an institution no longer exists. It is not intended to pick up liability for institutions that have the capacity to opt in and choose not to.

In cases where a person has suffered multiple cases of child sexual abuse which occurred across multiple institutions, the scheme operator will decide what was the responsible institution in each case. Each responsible institution will contribute a share of the redress for the survivor. The redress contribution will be apportioned in accordance with the severity and impact of each instance of abuse.

The scheme will facilitate flexible arrangements to support the different structures of institutions opting in to the scheme. This is necessary as many institutions we think of as one institution can actually consist of different institutions and entities. It is in the interest of survivors for all of these institutions to opt in and participate as a single group. This will allow larger institutions to provide the funding for their lower level institutions that may not have their own financial sources to cover redress.

The scheme will allow two or more institutions to form a participating group, who will be 'associates' of one another. To be able to form a participating group, associates must have a sufficient connection with each other, appoint a representative, and have that representative be jointly and severally liable with each associate for funding contributions.

The bill includes provisions for the use and disclosure of information under the scheme. Information-sharing protocols have been balanced against the need for the scheme to have transparency and flexibility, with a survivor's rights to privacy and the need to protect children against future abuse. This will ensure all aspects of the scheme's ability to share and gather information is underpinned by law.

Information received by the scheme will be confidential and will not be able to be further disclosed or used for an unspecified purpose. Participating institutions will also be restricted in the ways that they can use protected information provided to them from the scheme operator. Misuse or unauthorised disclosure of scheme information may constitute an offence under legislation, with appropriate jail time or fines.

To support the scheme, the government has committed \$52.1 million over three years to establish redress support services to assist survivors. Redress support services will be available to all applicants, including specialised support for Indigenous people, people with disability, and people from culturally and linguistically diverse backgrounds.

Support services will be available nationally, and use face-to-face, telephone, online and outreach services to ensure coverage.

The scheme will appoint experienced, independent assessors, known as independent decision-makers. Independent decision-makers will provide advice to the scheme operator on applications made to the scheme, and will not report or be answerable to government.

Independent decision-makers will be supported in their decision-making by a dedicated redress recommendation team.

In line with feedback from institutions, survivors and the Independent Advisory Council on Redress following the royal commission's recommendation, the scheme will provide survivors with access to independent and impartial internal review without subjecting them to potential retraumatisation.

The scheme will be reviewed after the second and eighth anniversaries of the commencement of the scheme to provide recommendations on all aspects of the future operation of the scheme.

Since taking on the responsibilities of Minister for Social Services, I've had the opportunity to meet with survivors of institutional child sexual abuse.

Hearing their compelling testimony, their stories, has made me more determined than ever to make this bill a reality.

It has meant that the passage of this bill has been my number one priority since I became minister.

As a nation, we owe the survivors who fought so hard and so long for truth to pass this bill and have the scheme operational by 1 July this year.

Debate adjourned.