## NATIONAL REDRESS SCHEME FOR INSTITUTIONAL CHILD SEXUAL ABUSE (COMMONWEALTH POWERS) BILL 2018

*Second Reading*

Resumed from 12 September.

**MS S.F. McGURK (Fremantle — Minister for Child Protection)** [10.04 am]: I rise to make a contribution to the second reading debate on this very important legislation. As a minister of the McGowan government, I am proud to support and see the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 before the house. In speaking today, I acknowledge the survivors of child sexual abuse—I use the word "survivors" very deliberately—who have not only endured terrible experiences, but have also had to live with those experiences, at times very privately and for a number of years, even decades, before recounting and reliving their trauma to effect change. I also want to acknowledge the meaningful work carried out by individuals and organisations that provide support and advocacy to survivors. I have met with Dr Philippa White and Mr Ron Love from Tuart Place, an organisation that provides support and activities for people who were previously in any form of out-of-home care in Western Australia. Tuart Place is a culturally safe and inclusive environment that works with and for survivors who are forgotten Australians, former child migrants and the stolen generations. I have also met with Leonie Sheedy, the CEO of Care Leavers Australasia Network, a national organisation that has a network of members across Australia who are care leavers.

In my meetings with Tuart Place, CLAN and others like them, I have been struck by the commitment that has been displayed to support, advocate and represent those who for too long have felt alone. The importance of their work has particularly resonated as I have received letters and calls from survivors and heard the explicit and confronting stories that have emerged from the Royal Commission into Institutional Responses to Child Sexual Abuse. The gravity of the circumstances and repercussions faced by these survivors has not gone unnoticed and has informed the findings and recommendations of the royal commission. On 27 June, the Premier and I spoke to the recommendations on that Royal Commission into Institutional Responses to Child Sexual Abuse, and the Premier made a historic and significant apology to those survivors. The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill is particularly timely, given that it was National Child Protection Week from 2 to 8 September, which was last week, and the theme this year was "stronger communities, safer children". Yesterday, members showed their united stance against child sexual abuse by wearing a White Balloon Day pin in Parliament. White Balloon Day is a day specifically focused on raising awareness of and preventing child sexual abuse. As legislators, we have a responsibility to ensure that keeping children safe, healthy and supported is paramount in our considerations. I thank members for wearing those pins as a gesture that indicates that the safety and wellbeing of children is at the forefront of our minds.

As I have already stated in this place, as harrowing as the findings of the royal commission are, the recommendations present us with a unique opportunity to put our system in the spotlight to look at what things we do well here in Western Australia, such as the working with children check, and what we can improve on. I am 100 per cent committed to doing what we can to respond to the historical abuse that has occurred, prevent further abuse from happening in the future, and ensure a swift response to abuse should it happen again. As the responsible minister, responding to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse is a high priority. The royal commission made 409 recommendations, with 310 of them applicable to the state government. In response, the state government has accepted or accepted in principle 289 of the 310 applicable recommendations. No recommendations have been rejected and the remaining 21 recommendations are undergoing further consideration.

Work is currently underway on a staged implementation plan that informs the relevant priorities and time frames. This, along with a progress report outlining our responses to the recommendations thus far, will be tabled in the Parliament in December. Areas of reform which have been identified as priorities and on which work has already begun include the adoption and implementation of child safe standards to promote child safe organisations; the development of mechanisms for independent oversight; and the prevention of harmful sexual behaviours.

Although the prevention of child sex abuse is a high priority, that does not take away the pain suffered by survivors of this form of abuse. Survivors have shared their experiences through more than 1 000 messages and nearly 4 000 narratives to the royal commission, and I encourage those members who have not read them to take the time to do so. These messages and narratives are accessible on the royal commission's website. Although it is not easy reading, it provides a stark reminder that the historic abuse experienced by many Australians needs to be acknowledged and reconciled in some way. For this reason, formal recognition and redress is required. Accordingly, this was a key recommendation of the royal commission, as demonstrated in the first 84 recommendations of the "Redress and Civil Litigation Report".

An important step towards redress was achieved with the proclamation of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act on 1 July—also known as the lifting of the statute of limitations.

This saw the removal of the limitations period for civil actions by victims of child sexual abuse. The change presented civil litigation as a more accessible avenue for survivors to pursue. It is important to note, however, that the costly and confronting nature of civil litigation may make it an unappealing or unviable option for survivors. A national redress scheme was recommended by the royal commission to provide an alternative, less traumatic, avenue of redress for survivors.

In this place on 27 June the Premier announced that WA would be joining the National Redress Scheme. I would like to thank the Attorney General for his tireless work with the former federal Minister for Social Services, Hon Dan Tehan, to make the National Redress Scheme a more equitable, fair and compassionate scheme, especially for survivors who were child migrants, survivors in custody and survivors with serious criminal records.

Western Australians were able to submit applications to the scheme as of 1 July 2018; however, processing of those applications cannot commence until the bill before the house is passed. I am aware that many Western Australians have already lodged applications for redress in anticipation of the formal commencement of the National Redress Scheme. Although I acknowledge that the redress offered will never truly make up for the suffering endured by survivors, it is my hope that the National Redress Scheme can provide some sort of solace and recognition to those who have demonstrated great strength and resilience within the personal contexts of loss, violation and trauma.

**MR J.R. QUIGLEY (Butler — Attorney General)** [10.13 am] — in reply: I rise to give my response to the second reading debate on the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018, and I thank all members for their contributions. As members have noted, this bill adopts the National Redress Scheme and I have been informed that the opposition wishes to go into consideration in detail. I want to make an explanation to the house for the benefit of members opposite.

After the commonwealth government announced the National Redress Scheme, falling from the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, it then drew and structured the scheme. We attended meetings and there was not a lot of room for negotiation with the commonwealth government, although Western Australia insisted upon two areas: the eligibility of prisoners and people convicted to apply, and responsibility for child migrants. Western Australia received the most child migrants of any jurisdiction in Australia.

That having been said, the commonwealth government then promulgated the rules under the legislation. This state legislation therefore did not come on earlier—that is, prior to the long winter recess—for the reason that we received the last copy of the rules only on 29 June 2018. Up until then, we were getting an updated draft almost every three or four days. The detail and applicability of the scheme to both institutions and survivors of child sexual abuse are to be found in the rules. I have provided the shadow spokesperson with a copy of those rules and the explanatory memorandum that went with them. I think it would be appropriate for me to table the national rules and the explanatory memorandum, which were presented to the federal Parliament and issued under the authority of the Minister for Social Services, who at that stage was Hon Dan Tehan. I will table both the rules and the explanatory memorandum to make it an official record of this Parliament, because those are the rules that we are adopting.

[See papers 1663 and 1664.]

**Mr J.R. QUIGLEY**: As I said, this morning I provided the opposition spokesperson in the Assembly with a copy of those rules. I have to say, it is nothing that we are keeping secret, because it is all on the commonwealth government's website anyway, but for convenience I wanted this morning to assist my parliamentary colleagues on the other side of the house by providing them with a hard copy printout in case they wanted to go through it. I have also provided a copy to the member for Scarborough, who expressed some interest in the process of consideration in detail.

Having said that, I also want to say that this bill is about institutional response, not individual response. The commonwealth legislation is about the victim obtaining redress from the institution rather than from the particular offender. In many cases, the offender will be a person without means. It might be a retired cleric or a volunteer for an organisation like the Salvation Army. The actual offender would have no means to offer redress. We have to focus on this point that this is all about the institutional response. This legislation is Western Australia joining the national scheme.

Let us just think about what happened and how it came to be. The federal government wished to initiate a national redress scheme. To do so, it needed a state to participate with it. New South Wales made a referral of powers to the commonwealth because the commonwealth did not have the constitutional powers. I think Victoria made a reference as well, but I might be wrong there. As soon as one state made the reference, the commonwealth then had the constitutional power to legislate the scheme. We are not making a reference except for one little bit. We come in now and adopt the scheme, which is what the bill before the chamber does; it adopts an already existing

national scheme. This morning I tabled the rules for that scheme and the explanatory memorandum for those rules. The only referral of power by the sovereign state of Western Australia to the commonwealth is the power to amend. In doing that, it is in the rules that the commonwealth cannot unilaterally amend the scheme or the rules in a way that would in any way increase the liability of a participating institution or state without the concurrence of all states to that change. It can make amendments to the scheme that would facilitate the better running of the scheme, but it cannot increase our liability or broaden the capture of victims without the concurrence of all states. At the time I introduced this legislation, the institutions, besides the state of Western Australia, that had already entered the national scheme were the Catholic Church in Australia, the Anglican Church, the Uniting Church, the Salvation Army and Scouts Australia. The commonwealth estimates that with those organisations—the Catholic, Anglican and Uniting Churches, the Salvation Army and Scouts Australia—and all states having joined the scheme, 93 per cent of survivors of institutional child sexual abuse in Australia will have access to the scheme. The commonwealth is currently working with some other institutions to join the scheme. As I said, I have tabled the rules and the explanatory memorandum for the benefit of this Parliament.

I should say at the outset broadly how the scheme will work, because we have survivors in Western Australia who want to access the scheme. I would like to say this early in my speech. How will they go about it? There are several support organisations that will help, and I will give the full names of those during consideration in detail. The primary one is Relationships Australia. There is also one in the Kimberley and Yorgum Aboriginal Corporation in the south west to help survivors make their application. The easiest thing for survivors to do is to ring the Commissioner for Victims of Crime at the Department of Justice, who will point them to one of those three supporting organisations that will assist them in making their application. Beyond that, the commonwealth is in the process of appointing operators. The application will go to an operator and that person will make the assessment as to whether the applicant is eligible for redress under the scheme. The government of Western Australia has been asked by the commonwealth to nominate half a dozen operators with varied experience, such as social service or legal experience. I asked the Department of the Premier and Cabinet to look around and we have nominated six or eight people. The commonwealth has not got back to us on its choices. There will be operators around Australia. It will not be, as a matter of certainty, that a Western Australian victim will have his or her application assessed by a Western Australian operator—that will not make much difference—but there will be Western Australian input into that so there is consistency across the commonwealth.

The rules provide that after a person is offered redress, they will have a couple of months within which to indicate whether they accept or reject the offer. As I stated yesterday by way of interjection to the member for Scarborough, the person who is the victim will also be able to go to knowmore, a legal organisation that will be assisting people with this. That organisation has been contracted by the federal government, at the rate of $1 000 per individual, to provide independent legal advice on the appropriateness of the award of redress. If a person is dissatisfied with the outcome of the operator's decision, they can appeal against that higher up the chain to the head operator in Canberra. I stress that no institution, including the state of Western Australia, will have a right of appeal. It is not as though the state or any of these participating institutions will be able to further traumatise the victims by taking an award on appeal; it is only the victim who has that right.

I know that we want to go into consideration in detail, but I would like to briefly address the comments made by members who participated in the debate. The Leader of the Opposition made the point that the government has been advised by Treasury that it estimates the cost of the scheme to the state of Western Australia, not to the other institutions, together with the cost to the state of anticipated actions brought against it since the lifting of the statute of limitations, will come to $640 million. That is a guesstimate. It is a good guesstimate, because we have reasonable vision of how many victims there are in Western Australia by reason of Redress WA and the country hostels redress. That has given us pretty good vision as to how many survivors there are, because most of them came forward. There are about 3 000. I have the number here, which I can give in consideration in detail. There is fairly good vision on that, but it is uncertain as to what the awards at common law will be. We note that the first award, which was a settlement that involved the state only tangentially, was the case of Mr Paul Bradshaw, in which the Christian Brothers settled for $1 million. The state of Western Australia was joined to that action as a party or second defendant, because the plaintiff alleged that that state, through its institutions, failed to properly supervise Mr Bradshaw, who was a ward of the state, while he was in the day-to-day care and control of the Christian Brothers. Therefore, even though a consent order has been made for $1 million, negotiations are still taking place about the state's contribution.

For these reasons, it is difficult to put a figure on the cost of the redress scheme with any exactitude. As I have said, the amount is currently $640 million. That figure will be updated in the half-yearly report, and I think it will continue to be updated in the budget as this process unfolds. As the member for Hillarys said, how long is a piece of string? I think I put it another way when I was asked by the media how much this would cost. I said that we cannot put a price on justice. We have had to make this decision, which is a leap of faith. However, we cannot put a ticket price on it, as we might be able to put a ticket price on an item of capital expenditure, and rightly so. If the government wants to build a school, Parliament wants to know in the budget how much that will cost. I am saying

that there is a measure of uncertainty about this. However, there is no doubt that the government has made a commitment. I do not want to stoop to being political about this issue, because we are dealing with victims, but ministers in the former government expressed concern about the unknown cost to government of lifting the statute of limitations, and, therefore, that did not go forward. Dr Graham Jacobs, the former member for Eyre, was a bit distressed that he could not get his redress bill up, because the former Attorney General was concerned about the unknown cost to the state of that bill. We have committed to not only lifting the statute of limitations, which the former Attorney General refused to do, but also implementing the redress scheme.

The Leader of the Opposition has said that the government has made this state's entry into the redress scheme contingent upon the sale of an asset—Landgate. That is not correct. The passage of this bill and this state's entry into the redress scheme is not contingent upon the commercialisation of the search facilities that are run by Landgate. However, because of the large impost of the redress scheme on the state's finances, at a time at which the finances are strained, as was recognised by the member for Hillarys in his speech, we want to give the public reassurance that this government has the financial capacity to lift the statute of limitations and ensure the scheme is properly funded. For that reason, the government has identified an aspect of the state's operations that can be commercialised. The funds that will be derived from that are expected to be north of the $640 million expected exposure of the state. Therefore, I can reassure the public that we are not doing this irresponsibly. We have identified a source of funding that will enable us to support this scheme. We will not be adding to the state's debt or to household debt. That would be a perilous course of conduct given this government's efforts on budget repair. We have had to freeze the wages of judges and members of Parliament for four years. Police officers and other government employees have been limited to wage increases of $1 000 a year. In light of all the sacrifices that are being made by the community, we want to reassure the community that our entry into the redress scheme will not result in a further impost on household charges. There will not be a rise in electricity or water charges by reason of this Parliament passing this legislation. We can reassure the public that the cost of implementing this bill will be paid out of funds that we will get from the commercialisation of a function of Landgate. We are certainly not selling Landgate.

As the member for Hillarys properly identified, this bill has three elements. The first is that participating institutions must offer the victim a sincere and personal apology. This is what Mr Paul Bradshaw wanted all along. He said, "I would have been satisfied years ago with a personal apology. I just wanted recognition for the wrongs that the Christian Brothers had done to me. But I could not even get a personal apology." The second is that a sum of $7 000 will be made available to victims to enable them to access personal psychological counselling and support services. When we initially discussed this with the commonwealth, it proposed that a sum of money would be set aside that people could draw from to pay for psychological support. The problem is that in states as large as Western Australia, Queensland and the Northern Territory, it is difficult to access psychological services in the regions. In a state such as Victoria, it is okay; those services are probably just down the road. The commonwealth therefore said that in addition to the amount that is assessed as the appropriate redress payment, a sum of $7 000 will be made available to victims to enable them access their own support services. That might be through their general practitioner, a psychologist, or wherever they want to go to access support services, and victims will be given assistance in enabling them to head in the right direction to access those services.

The third is that a redress payment of up to $150 000 will be made available to victims. It is banded at between $100 000 and $150 000 for the worst cases; between $50 000 and $100 000 for mid-range cases; and between zero and $50 000 for cases at the bottom end. The member for Hillarys noted that the royal commission recommended a redress payment of up to $200 000. The Western Australian government did not have a hand in setting that amount of $150 000. That amount was set by Hon Christian Porter when he was Minister for Social Services. We did not lobby to go below $200 000. We said we would see what scheme the commonwealth was offering, and that is what it came up with. We were prepared to go along with whatever the commonwealth thought was reasonable in the circumstances, and that is why the amount is $150 000.

Two schemes will be running, so there will be two courses of action for compensation. Now that we have lifted the statute of limitations, survivors can issue a writ out of the District Court registry and pursue that. No doubt their lawyers will advise them that in the District Court they will have to meet certain standards of proof, give evidence, and have witnesses to discharge the burden of proof to what we know as the civil standard—that is, that on the balance of probability the abuse happened as pleaded by the plaintiff. They will have to identify when and the times the abuse happened, and be prepared to be cross-examined on that. Mr Bradshaw was prepared to be cross-examined on that, but the Christian Brothers folded on the doorstep of the court. It could have done that years ago, by the way. It was only once it was in the precincts of the court that it reconsidered its position. Redress, on the other hand, will not be to that legal standard of proof; it will be whether it is reasonably likely that abuse occurred.

These people have carried the after-effects of the abuse for decades and probably cannot remember exactly in which classroom it happened, the dates it happened or the name of the particular teacher. They were kiddies at the time. It is widely known that some of them have self-medicated since then with alcohol or other drugs. As sad as

it is, it is a fact that that has happened, which has probably confused their memories as well. When the operator looks at the story victims tell, they will soon come to understand whether it is reasonably likely that the abuse happened, not on the balance of probability—that higher court standard.

During negotiations with the commonwealth, we were told that a matrix for operators was being developed. It will not be published so people do not fashion a false claim to fit within that matrix. For example, if a person says that they were abused at such and such a school by such and such a person in 1957, the matrix that the operators will be working off will ask whether there is evidence that the person went to that school and whether other complaints have come out about that school. If the person alleges that a particular master, brother, priest or social worker abused them, did that person work at the school at that time? Operators will have a matrix to measure the claim against, but it will not be on the balance of probabilities. Looking at all the factors in the matrix, without relying on a particular one, operators will conclude whether it is reasonably likely that the person was a victim, as they say in the application. If the operator is so satisfied, the award will be made. I think that is a very humane way. The attraction of going to redress rather than litigation will be that it will be fast and it will encompass an apology. I am not sure that Mr Bradshaw ever got an apology. He got his million dollars, but I do not know whether he ever got an admission.

**Mr P.A. Katsambanis**: I was going to ask you that in interjection—if you're aware.

**Mr J.R. QUIGLEY**: No, I am not. I am not even aware that there was an admission of liability. In these cases the party can make a settlement without an admission of liability.

When a victim decides whether to go with common law by way of a writ for damages or redress, no doubt they will factor in that it will be easier. They will not be cross-examined and go through that trauma. They will not have to explain sodomy, being eight years old and all those horrible things and be cross-examined on them in a public courtroom. They will be able to avoid that trauma. They will be able to just fill in the form, describe it and send it off to the operator. If the operator says yes, the institution will give them a full apology, the scheme will make support services available and, of course, they will receive the money. Mr Bradshaw said that earlier on he would have been happy with a modest amount with an apology, but everyone dug in their little toes and would not concede that he had been wronged. That is the attraction of the National Redress Scheme.

The member for Cottesloe also raised the point of linking it to Landgate. This legislation is not contingent upon the sale of Landgate. In fact, we are not selling Landgate. For a time—I forget the number of years—the search function will be commercialised, which will get north of $640 million. We have identified a source of funding and we will proceed to do that. The $640 million, as proposed, will not be a further impost upon Western Australian families.

I think the opposition would like to go into the consideration in detail stage. I thank all members for their contributions. Apart from the comments on Landgate, the contributions have not had a political element to them. All members of this chamber support this legislation and have collectively expressed their sorrow and regret that children in Western Australia have suffered in the way that they have. We are trying to do our best as a Parliament and as a state to make reparation. In closing, the bill is not very long, but it adopts commonwealth legislation and commonwealth rules. I will conclude where I started by saying that those rules and the legislation were not open to negotiation. During consideration in detail, where eligibility and all those other details come into play, I can do no further than go back to the proceedings in the federal Parliament that introduced the national scheme. I have made it available to my friends on the other side of the chamber. With that, I will resume my seat. I understand that we will now go into consideration in detail. I thank all members again.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clause 1: Short title —**

**Mr P.A. KATSAMBANIS**: I seek clarification on some of the comments made by the Attorney General in his summing up. I thank the Attorney General for the comments he made in the summing up and the responses he provided to some of the issues we raised during the second reading debate. He mentioned that there are between 3 000 and 4 000 known victims in Western Australia. I would like him to clarify whether, when he used those figures, he was referring to all victims of child sexual abuse in institutions across Western Australia or whether he was specifically referring to those victims in institutions for which the state had responsibility. If it is the latter, does he have any indication of the number of victims beyond that number who reside in Western Australia to whom the scheme may apply?

**Mr J.R. QUIGLEY**: I am able to assist there. It was estimated by the royal commission that there are about 60 000 victims across Australia. In Western Australia, as I said, we had fairly good vision from the earlier schemes. In direct answer to the question, approximately 2 400 victims are from state-run institutions and a further 3 300 victims are from non-government institutions. There may be cases in which, as the member will see under the rules, there is shared responsibility because although a victim might have been in a non-government institution, the operator might find that the Western Australian government should contribute to the redress by reason of the fact that it was meant to supervise the child in that institution. To clear that up again, 2 400 is the estimated figure of victims from government institutions with a further 3 300 from non-government institutions. I have a made a little mistake in the summing up and the second reading speech to do with the amount of the money that will be paid for psychological services but we can deal with that later.

**Mr P.A. Katsambanis**: When do you want to deal with that?

**Mr J.R. QUIGLEY**: I can do it right now. I will clear up the error I made in my second reading speech about counselling and psychological services. It is a tiered sum for psychological services and the amount will be $1 250, $2 500 or $5 000 based on the severity of the abuse. The state-based counselling services will be done according to national service standards as detailed in the intergovernmental agreement. That will be the way that works. I think I said $7 000, which is an error. I have corrected that for the record. I am sorry about that.

**Clause put and passed.**

**Clause 2: Commencement —**

**Mr P.A. KATSAMBANIS**: The commencement clause is a very standard clause. The act will come into operation on the day on which it receives royal assent. The Attorney General indicated very clearly that he hopes that the scheme will be in place by 1 January 2019. We all share that aspiration. If royal assent is given before 1 January 2019, does it necessarily mean that the scheme will come into operation for Western Australia before that time?

**Mr J.R. QUIGLEY**: There are three elements to my response. Firstly, the commonwealth has indicated that it will already receive applications but the formal assessments will not made until after the act is assented to. It is already receiving some applications. Secondly, non-government institutions will be part of the scheme from the date of assent. If that date is 3 December or whenever the Council finishes with the bill—maybe early November—non-government institutions will participate in this. The state has to attend to a number of things. We will commence formally from 1 January 2019 and assessments against the state can be made after 1 January.

**Mr P.A. KATSAMBANIS**: Just to clarify, has the state's aspect of the scheme been done with the agreement of the commonwealth? I know that it is likely to be only a small gap but is that part of the formal agreement between the state and the commonwealth?

**Mr J.R. QUIGLEY**: It was. It was part of the negotiations. We assured the commonwealth back in June that if we get the rules through Parliament, we will start on 1 January. The commonwealth was very pleased with that.

**Clause put and passed.**

**Clause 3:Terms used —**

**Mr P.A. KATSAMBANIS**: This is the definitions section or, as the drafters have called it, "Terms used". The definition of "express amendment" reads —

> ***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 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;

I want to focus on the part that it does not include. I will repeat it —

> …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;

If read strictly to the black letter of the law, this provision allows the commonwealth to unilaterally enact other provisions that may supersede or replace the provisions of the commonwealth's National Redress Scheme for Institutional Child Sexual Abuse Act 2018. I seek clarification from the Attorney General about how this explanation marries with the provisions made in the bill about how the act can be amended. I am sure the Attorney General would agree that the act is one part of the entire process. It is the whole scheme that is most important. It is the ability of victims to access the redress rather than the act itself. I seek an explanation about how it all fits in to avoid any unilateral commonwealth government action that may not necessarily touch the text of the commonwealth act but may either render the scheme inoperative or fundamentally change the operation of the scheme.

**Mr J.R. QUIGLEY**: The primary legislative provision that prohibits the commonwealth from unilaterally altering the scheme is to be found in clause 8, which we will come to. The member will recall in my second reading speech that I said that most of the bill adopts the commonwealth scheme, but it includes an amendment reference. Clause 8 says —

> **Requirements for agreement of the State**
>
> The amendment reference does not include the matter of making a law to the extent that that law would substantively remove or override a provision of the National Redress Act that requires the agreement of the State.

The commonwealth cannot go around introducing another law or amending this law so that it substantially alters the scheme.

**Clause put and passed.**

**Clause 4: Adoption of the relevant version of the National Redress Act —**

**Mr P.A. KATSAMBANIS**: Under clause 4, which is the commencement of part 2, the relevant version of the National Redress Act is adopted. It is fine that subclauses (1) and (2) appear to meet the generally understood requirements under section 51 of the commonwealth Constitution of states adopting acts and referring their powers. But subclause (3) says —

> Despite subsection (2), the adoption has effect for, and for no longer than, the period —
>
> (a) beginning when subsection (2) comes into operation; …

That is fine and good. So far it indicates that the adoption will have a start point and a finishing point. The start point is when the act comes into operation, and paragraph (b) states —

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

Paragraph (b) says that the adoption will end on a day that is fixed under this part. As far as I read it, there is no day fixed under this part; there are provisions for termination that may allow the Governor to fix a date. I seek clarification from the Attorney General about whether that interaction of the provisions or any other provisions meet the requirements of clause 4(3)(b) so that we are certain in what we are attempting to do. We will talk about clause 9 later—I raised it briefly in my second reading contribution—but does the Attorney General think that the wording in clause 4(3)(b) is sufficient to cover the operative provisions in clause 9?

**Mr J.R. QUIGLEY**: With the greatest respect for the member for Scarborough —

**Mr P.A. Katsambanis**: I am Hillarys.

**Mr J.R. QUIGLEY**: Hillarys, I am so sorry. It was a slip—a misstep. With the greatest respect for the member for Hillarys, we have drifted on a little. What we had before the chamber was clause 3, and I take the points that the member was taking about clause 4 and its interaction with clause 9 and I will come to those, but the actual issue that the member for Hillarys raised was the definition of express amendment.

**Mr P.A. Katsambanis**: No, we have moved on. We are on clause 4(3)(b).

**Mr J.R. QUIGLEY**: The day fixed for termination will be under clause 9, which we will come to, because we have not yet fixed the day upon which the adoption will terminate. There is a need to have flexibility with the termination because although the National Redress Act, the commonwealth legislation, contains a sunset section 193 that provides that the scheme will cease to have an effect at the end of the day that is the tenth anniversary of the scheme date, it also provides that before the tenth anniversary, the National Redress Scheme rules may prescribe a date that is after the tenth anniversary and the scheme will cease to operate on that date. That is in the commonwealth legislation. The commonwealth legislation provides that there can be an extension past the tenth anniversary. That would have to go through federal Parliament. What we are doing with the interaction of clauses 4 and 9 is making provision that subclause (3)(b), to which the member has referred, can end at the beginning of the day fixed under this part as the day upon which the adoption is to terminate. That is provided for in clause 9 so that we can mirror the end date of the commonwealth.

**Mr P.A. KATSAMBANIS**: I do not mind whether we continue with it now, because it is the interaction between clause 4(3)(b) and clause 9, or we wait until clause 9, because that raises a number of issues. But when we look at the way the clauses interact, we see that clause 9 allows the Governor to do any of three things.

**Mr J.R. Quigley**: With respect, I think we should deal with that discretely when we get to clause 9.

**Mr P.A. KATSAMBANIS**: All right, except that it does then apply to the paragraph that we are considering now. The issue there is that it contemplates one day. Subclause (3)(b) contemplates one day being fixed. The way that

I read clause 9 is that there could be different dates for the adoption to be terminated or for the amendment reference to be terminated. Is the wording of clause 4(3)(b) wide enough to cover possibilities that there could be up to three—really, in practice two—different dates of termination? That is because it clearly says "the day."

**Mr J.R. QUIGLEY**: The termination of the adoption date will be covered by clause 9. Clause 9 covers the adoption or amendment termination and clause 4(3)(b) deals with adoption only, so the adoption can be terminated on a day fixed under this part, and we go to clause 9. The amendment reference that we are making is dealt with under clause 5(3)(b) and the referral power can end at the beginning of the day fixed under this part as the day upon which the reference is to terminate. Clause 4 deals with the adoption termination and clause 5 deals with the reference termination. They can be proclaimed under clause 9. Clause 9 deals with termination of adoption or amendment reference, but clause 4 deals with the provisions for termination of adoption and clause 5 deals with termination of reference, so that we have covered it.

**Clause put and passed.**

**Clause 5 put and passed.**

**Clause 6: Amendment of National Redress Act —**

**Mr P.A. KATSAMBANIS**: We have spent a bit of time talking about how the national act will be amended. At the heart of it, the Attorney General tells us that there are agreements with the states that effectively nothing will be amended without the agreement of the states. I read operative provisions (a) and (b) of clause 6, particularly paragraph (b), which states —

> by provisions of instruments made or issued under the National Redress Act or under provisions referred to in paragraph (a).

That allows other instruments, including regulations, to be proclaimed by the commonwealth Parliament. Is it really the intention that every single regulatory change, including really minor ones, will need sign-off from all the states or is there some other provision in the agreement, which is not actually part of the bill but underpins the basis for this bill coming to our Parliament? Does the bill contain provisions that allow some minor amendments, particularly in regulations, to be made by the commonwealth Parliament? We do not want to get into that situation that we sometimes do with some of the legislation that comes through this place relating to family law matters, such as the provision of child support, where we delay good outcomes by the need, in that case, for specific legislative amendment. In the case of the act and the scheme that relies on the commonwealth act, we do not want to be in a situation in which good outcomes are delayed by the need to get together all nine Attorneys General across Australia—the federal Attorney-General, six from the states and two from the territories—and sign off on that.

**Mr J.R. QUIGLEY**: The member refers to child support. We have had this discussion a couple of times in the Legislative Assembly, and the member will remember that the last time we went through adopting changes to the child support legislation, I also included a power of referral.

**Mr P.A. Katsambanis**: They have not gone through yet.

**Mr J.R. QUIGLEY**: I know, because the other place does not like powers of referral. I also included in that bill powers of referral so we did not have to go back every time to update our child support provisions for children of ex-nuptial relationships. In this particular case, there is an intergovernmental agreement on the National Redress Scheme for institutional child sexual abuse. That agreement is between the commonwealth and each of the states and territories and is published online; it is a public document. The board members will have voting rights on the proposed amendments to primary legislation, the rules, policy guidelines and other matters defined in that term of reference. Unanimity will be required for changes culminating in increased participation costs to the states and territories and any major design decisions—for example, changes to the administration charge; changes to the maximum redress payment; changes to the assessment framework as set out in the scheme legislation which is used to work out the amount of redress payment and sharing of costs; changes to the funder of last resort policy; changes to the CPC model, which is the psychological support services; and changes to the scope of the redress covered by the scheme. Any of those changes that I have now outlined set out in the intergovernmental agreement will require unanimity between all the parties to the agreement, which I have previously stated. A two-stage voting process, as the intergovernmental agreement points out, will be required for changes to the key elements of the scheme unrelated to increased participation costs and major design decisions, where the subject matter does not require a unanimous vote. The following changes would require the two-stage vote: changes to the primary legislation, changes to the rule, changes to the government's agreement, and the appointment of independent decision-makers. Such changes require agreement of two-thirds of the parties on the board plus jurisdictions representing 75 per cent of financial liability according to the estimated liability. For more minor changes, unanimity will not be required, but for anything that is changing the central elements of the scheme, those six matters to which I first referred will require unanimous consent because they will affect the state's liability and institutions' liability in terms of the sum.

**Mr P.A. KATSAMBANIS**: It seems that these matters have been contemplated, but this place is being asked to consider a bill adopting the federal scheme and referring our powers of amendment. It would be useful for the procedures of the house—not for me; I can find the intergovernmental agreement, it does not worry me—and for the full information of the Parliament if that intergovernmental agreement could be tabled and become part of debate in this place. I seek the Attorney General's concurrence with that.

**Mr J.R. QUIGLEY**: I table it.

[See paper 1665.]

**Clause put and passed.**

**Clause 7: State redress mechanisms —**

**Mr P.A. KATSAMBANIS**: State redress mechanisms are defined both in relation to the Parliament or government of the state, being Western Australia, or an institution, whether governmental or non-governmental or other entity. Are there any currently operating state redress mechanisms that this clause would apply to in relation to both the government and non-government entities and have there been any in the past that have ceased?

**Mr J.R. QUIGLEY**: I mention first clause 7(1)(a)(i), which refers to the Parliament or government of the state. We do not have a current redress scheme. Both of those are closed; there was the Country High School Hostels Authority and Redress WA. In relation to clause 7(1)(a)(ii), the Catholic Church had its own redress scheme that people could go to. I do not know whether it is still current. People were not generally happy with it, but it had one.

**Mr P.A. KATSAMBANIS**: If someone has accessed those redress schemes in the past, in particular those people who accessed them, as the Attorney General pointed out, not because they were happy with it—they were quite unhappy—but because it was the only thing available to them apart from instituting civil proceedings, and we have discussed in all our contributions how difficult and in some cases how impossible that may be, and people have accessed redress through those state mechanisms, how would that previous access, either through the closed government schemes or any schemes that institutions operated under, interact with the National Redress Scheme? Would individuals be able to apply or would they be precluded from applying? Would any payments made under those previous schemes be discounted against the award that they may get under the redress scheme? I would just like some clarity around how the rules of the scheme will operate in these matters.

**Mr J.R. QUIGLEY**: I should have also said that under clause 7(1)(b) it also includes the jurisdiction of a court or tribunal to grant compensation. That would also include criminal injuries compensation. However, under the schemes of the prior payments policy, a victim might have received a prior payment. Those prior payments will be netted out when calculating the amount to be paid under redress. The prior relevant payments could include, but are not limited to—we are just thinking what payments there could be—the Redress WA payments, the Country High Schools Hostels Ex-Gratia Payment Scheme and out-of-court settlements. Even though there was a statute of limitations, a person might have settled out of court, and that will be deducted from the redress. Settlements by way of consent judgements will be netted out because the situation with the statute of limitations, or the Ellis defence in Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis & Anor in New South Wales, might have accepted a lesser sum, so that can be netted out. Criminal injuries compensation will be netted out. When the payment is broken down into components—that is, the previous payment is broken down into components comprising some for compensation generally and some for what we would call special damages for medical and legal expenses, for example—only the component paid in respect of the harm will be deducted. Medical expenses will not be deducted from the redress scheme, only prior payments made for the actual harm component. Some payments will not be deducted from the scheme. They are workers' compensation payments that have been made for loss of income, Department of Veterans' Affairs payments, and also payments that have been made for medical or dental expenses. They will not be netted out, but prior awards for compensation for the actual harm done will be deducted from the redress.

**Clause put and passed.**

**Clause 8 put and passed.**

**Clause 9: Termination of adoption or amendment reference —**

**Mr P.A. KATSAMBANIS**: I have the same questions for clauses 9 and 10, and this is something that I alluded to in my second reading contribution. I think the clauses as drafted appear to be drafted correctly; I do not have an issue with the drafting. Essentially, we are adopting federal legislation and then referring an amendment power to the commonwealth. As I pointed out in my second reading contribution, I am not aware of any circumstance of that reference; the adoption is probably slightly different. I can accept that even the High Court would probably fall down on the side of saying that if a state adopts federal legislation, it can un-adopt it; that is, the state can terminate the adoption. I think it would be a complete and utter repudiation of our federal system of government if it was found otherwise. However, I am not sure whether a referral matter has ever been litigated and therefore if

there is any definitive answer on whether a reference by a state once made can ever be terminated or brought back into a state's jurisdiction. It does not apply only to this; it applies to many matters. I am not sure whether the Attorney General wants to express any commentary around this. The Western Australian state government recently attempted to clawback a reference to parts of the Corporations Act that may have assisted in an earlier settlement of the Bell litigation than would otherwise have been the case, but that did not go well at all.

**Mr J.R. Quigley**: Don't mention Bell. I am sliding under the table with depression!

**Mr P.A. KATSAMBANIS**: I am sorry. Outside of this place, one day, perhaps down at the Marmion Angling and Aquatic Club we might have a discussion about that particular period of the Bell litigation.

Focusing on clawing back a power referred to the federal government, I seek the Attorney General's clarification on whether he is aware of any circumstance when it has happened not by agreement, but it has happened without the express consent or agreement of the commonwealth, because it may give rise to future litigation in these sorts of areas.

**Mr J.R. QUIGLEY**: I think that the member has raised the situation regarding the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill. Members of the chamber who were here in the last Parliament will recall that in the Bell finalisation bill the government of Western Australia sought to claw back distribution provisions in the Corporations Act. The litigation brought by the liquidators and joined by the commonwealth of Australia challenging the Bell finalisation bill found on a different point—a section 109 inconsistency—involving issues around the Australian taxation legislation. I followed that transcript carefully. The argument in that particular case, as I recall, of the then commonwealth Solicitor-General, Mr Gleeson, QC, advocating on behalf of the commonwealth regarding the termination of the referral, did not turn upon whether the state could clawback or repeal a reference; that was taken as a given. That legislation sought to claw back the distribution reference for only one company—Bell. The member will remember that the government then had to race through an amendment.

**Mr P.A. Katsambanis**: I remember it. Now I am going under the chair!

**Mr J.R. QUIGLEY**: They had to bring in an amendment during the hearing of the case to include JN Taylor, because that was also a vehicle of Bell Group that had not been included in the list of companies. It was common ground between all counsel that there could be a termination of the reference. The argument was: can it be done in relation to one particular entity? We will leave the reference with the commonwealth in respect of all other companies in Australia, except for Bell Group and its associated entities. Then Chief Justice French's comments seemed to indicate that the court would have a big problem with clawing the reference back, but only in relation to one entity; not clawing back that distribution clause—I think it is 574—generally, but only in relation to one entity. The court thought that was problematic, but did not have to decide even that point, so we are comfortable. Also, the Credit (Commonwealth Powers) Act 2010 has an amendment referral that can be clawed back. The state of Western Australia is comfortable that we give them the reference and we can take it back. I do not think we could take it back in relation to Bell. We could not say we are taking it back in relation to a particular named institution or in relation to a particular named victim but leave the reference in place for all other victims or all other institutions—in other words, breaking the reference down. I do not think that would be acceptable to the High Court, but we could certainly claw back the entire reference.

**Mr P.A. KATSAMBANIS**: I would like that interpretation to be the case and I take the Attorney General's commentary around the comments of then Chief Justice French, the respected jurist for whom I think all of us have great respect.

**Mr J.R. Quigley**: It wasn't a ruling.

**Mr P.A. KATSAMBANIS**: It was not a ruling; it was really more a commentary of where he was particularly aggrieved about the clawing back in relation to one company. I guess I probably come from the mindset of someone who has previously described himself as a states' rights person—someone who truly believes in our federal system of government. I always have the concern that any jurisdictional matter before the High Court between a state and the commonwealth is far more likely to fall on the side of the commonwealth than the state. In this particular case, I am comforted by the fact that I simply do not see any issue around terminating the adoption. We adopt it, we can terminate it; that is up to us. Whether there is an existing, unterminated amendment reference is likely to be completely irrelevant to the people of Western Australia anyway, so I take a level of comfort from that.

**Clause put and passed.**

**Clauses 10 and 11 put and passed.**

**Clause 12: Information sharing —**

**Mr P.A. KATSAMBANIS**: The Attorney General mentioned earlier that there were some operators. When are we likely to know all the operators that will apply in Western Australia?

**Mr J.R. QUIGLEY**: We have to turn now to section 6 of the commonwealth National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018, being number 45 of 2018. Section 6 defines "Operator" as —

> ***Operator*** (short for National Redress Scheme Operator) means the person who is the Secretary of the Department, in the person's capacity as Operator of the scheme (as referred to in section 9).

The department referred to is the Department of Social Services, so we know who the scheme's operator is, from time to time: it is the secretary of the Department of Social Services. Under the commonwealth legislation, the operator—being the secretary of the Department of Social Services—may delegate his or her powers to independent decision-makers. The federal minister has not yet advised Western Australia of that list of independent decision-makers. If the bill before the chamber were to receive royal assent in November or December and an applicant went to Relationships Australia for some help with putting something in, at the moment, at the very minimum, the operator would make the decision, or would delegate the decision to a decision-maker. I am advised that some decision-makers have been delegated or appointed by the secretary of the Department of Social Services, but we have not yet been advised of a Western Australian person; we put our list in only in the last 10 or 14 days; maybe a bit longer. I can remember signing the letter, but it was not that long ago that we were invited. We have not had a decision-maker appointed from Western Australia yet. There is an operator, there are decision-makers, and we will soon have some Western Australian decision-makers appointed.

**Mr P.A. KATSAMBANIS**: The operator is the CEO of a commonwealth government department. To use other commonwealth government departments as an example, the head of the Department of Home Affairs or of Australian Border Force delegates to individual officers the power to make decisions on that person's behalf. That is how that system works. Is it likely that the delegates of the operator—the decision-makers with delegated authority—are going to be staff of that department, or is it envisaged that they would be individuals? Is it envisaged that they may be some other outside body of any type?

**Mr J.R. QUIGLEY**: There will be individuals appointed, not organisations. Individuals will be appointed as decision-makers who have mixed experience: some in law, some in social welfare and the like. They are given a delegated authority and are then under contract for payment. It is provided under the national legislation that they can act contrary to any direction by the operator—the department—so that there can be not just the perception of, but actual, independence from the government. Having said that, if the decision-maker makes a decision that the victim thinks is adverse, the victim can appeal to the operator. They can go back to the secretary and say that the decision-maker did not give them enough. But the decision-maker is not at the direction of the operator; they are truly independent.

**Mr P.A. KATSAMBANIS**: If there is an aggrieved applicant, will these decisions fall into the realm of administrative decisions that are then able to be taken to the federal Administrative Appeals Tribunal to seek redress, or is the only redress to apply back to the operator?

**Mr J.R. QUIGLEY**: The decision of an independent decision-maker, who I have said are people WA has nominated—the Department of the Premier and Cabinet looked for people in the community—can be appealed to the operator. The commonwealth government's legislation specifically outed the Australian Administrative Appeals Tribunal to make it a low-burden process. If the Administrative Appeals Tribunal was in there, an institution could appeal to the Administrative Appeals Tribunal against the operator's decision. We could have a victim being given an award by a decision-maker and, thinking it is inadequate, appealing to the operator and the operator lifting that award. If that matter could be taken to the Administrative Appeals Tribunal, an institution could appeal and the poor old victim would then find himself before the Federal Court. We wanted to avoid that. It is a low-burden process. There will be no appeals to the Administrative Appeals Tribunal and only applicant victims, not an institution, have a right of appeal to the operator.

**Mr P.A. KATSAMBANIS**: I think I smirked when the Attorney General talked about a low-burden jurisdiction, because I am certainly old enough to know, and the Attorney General, being around the same age as me, is probably old enough to know, that when the federal administrative appeals system was implemented, that was going to be the low burden–type of jurisdiction. Words such as "quick", "legal", "efficient" and "cheap" were used by several federal Attorneys-General over the course of time to describe those jurisdictions. I agree with the Attorney General that it has changed significantly over the last 40 or 50 years and it is no longer a low-cost and low-burden jurisdiction at all, which is probably quite a pity. Access to that system then opens up the doors for further appeals up the chain and into the Federal Court system, which is quite burdensome.

In relation to the delegates, the Attorney General indicated that the state government has had some involvement in the nomination of appropriate persons to be considered for appointment. How many decision-makers is it envisaged there will be initially in Western Australia? Without naming the individuals, how many names has the state government put forward to the commonwealth in relation to appointing these decision-makers?

**Mr J.R. QUIGLEY**: We have nominated eight and we expect those eight to be appointed. As the scheme grows and they get busy, we might have to nominate a few more.

**Mr P.A. KATSAMBANIS**: We are all burdened by our previous lives. I spent six years on two federal tribunals. I know how quickly work can escalate. With the potential for almost 6 000 applications to this scheme to be made from Western Australia and also with significant community recognition that this scheme is coming into effect, the likelihood is that the majority of those almost 6 000 applications could occur earlier rather than later. On what basis was eight determined to be the right number? So that we are not taking up too much time, I also ask: what would the Attorney General consider to be an appropriate time frame from application to initial determination of the application within this scheme?

**Mr J.R. QUIGLEY**: In relation to the number of decision-makers, there is an initial pool. All states were invited to nominate eight. That number could grow. I cannot tell the member how long the process will take, because there will be information gathering. As I said, there will be a matrix. They will have to say, "Was there a teacher at that school at that time?" yadda yadda yadda. I cannot give a time. No doubt questions will be asked on how that time line is going through questions without notice or questions on notice as the scheme progresses. The commonwealth invited us to nominate some people. It is its scheme. We have nominated.

**Mr P.A. KATSAMBANIS**: The only reason I raise that is that, from experience, I know that people have applied to various decision-makers, particularly at the commonwealth level—this scheme is also being administered by the commonwealth—and have waited upwards of two to three years for a determination. A lot of them end up in our electorate offices with things such as spouse cases in what used to be the department of immigration but is now called something else. The applications may be sitting just with the initial decision-maker for over two years and sometimes up to three or three and a half years and the like. The resourcing of this scheme and the resourcing of decision-makers is critical to processing these applications in a timely manner, which is why I asked the Attorney General whether he would like to reflect on what he thinks would be an appropriate time frame. I recognise that each case is different and that they have to go through the matrix of proofs in order to get through that system. If an applicant got all their paperwork in, would the Attorney General envisage a determination within a month, three months or six months, or is it likely to be longer than that?

**Mr J.R. QUIGLEY**: We do not know. Our expectation is that it will hopefully be within six months. As the member said, the number of applicants will affect that, but then we will appoint more decision-makers. This scheme started on 1 July in other states. In New South Wales or Victoria, there have already been a couple of payments made. That is within two months. It could slow down with the number of applicants. If that happens, we can get more decision-makers. These people have waited long enough. We do not want to see this going longer than 12 months at the outside. Hopefully, it will be more like six months. Sorry; I should have said that the ones in Victoria have received offers, but they have six months to accept that offer.

**Mr P.A. KATSAMBANIS**: Like the Attorney General said, we do not want to see people waiting around for a long time in this matter. They have waited long enough. They deserve the redress and they deserve the process to be done as quickly as possible. My only other question in this area is: who will determine that more decision-makers are needed, and what input into the process will the state government of Western Australia have? We can see a situation down the track of cases unfortunately mounting up. It is quite clear that the best way to deal with that is to have more decision-makers. Is it a case that the commonwealth and the operator will be making the decisions on the actual number of decision-makers? They may decide, for many other operational reasons, that they do not want to put any on. I seek some clarification of that: what input will the state have in getting more decision-makers so that offers can go out in a more timely manner?

**Mr J.R. QUIGLEY**: The intergovernmental agreement sets out the input the state will have in appointing the operators. It is a commonwealth scheme, so ultimately the commonwealth will control the process for the appointment of operators. There will also be a 12-month, a two-year and an eight-year report on how the scheme is going. Therefore, at the end of 12 months, after the first report, the member will have a very good idea about how the scheme is going, and then again one year later after the second report. That will give us all a pretty good vision of how this scheme is operating and we will be able to urge the commonwealth to appoint more decision-makers if that becomes necessary.

**Clause put and passed.**

**Mr P.A. KATSAMBANIS**: Would the Attorney General be happy to deal with part 4 of the bill, clauses 13 to 16, in totality? I think that would make more sense.

**Mr J.R. QUIGLEY**: Absolutely.

Leave granted for clauses 13 to 16 to be considered together.

**Clauses 13 to 16 —**

**Mr P.A. KATSAMBANIS**: Part 4 of the bill deals with the interaction between the national redress act and the Criminal Injuries Compensation Act 2003. Essentially, it makes redress the primary way in which to seek financial payment for historic child sex abuse. I said during the second reading debate that I think it is appropriate in cases in which a non-government institution is a participant in the scheme and was responsible, either primarily or vicariously, or a combination of both, for the abuse, that it provide the financial payment. The taxpayers of this state should not have to bear the burden of paying the appropriate monetary sum through the redress scheme in those circumstances. It makes absolutely good sense to do that. However, the first question that arises is whether a person who is claiming more regular or systemic abuse can make an application to the National Redress Scheme in respect of some of the circumstances of that abuse and make another application to the criminal injuries compensation scheme.

**Mr J.R. QUIGLEY**: That is something that we have discussed, and I will discuss it again with the assessor. Do not forget that a claim for criminal injuries compensation is made not against an institution, but against an individual offender. If the person has a criminal injuries compensation application on foot and then makes an application under the redress scheme for payment for abuse within an institution, the criminal injuries compensation application will be suspended pending the outcome of that application. If the person accepts the redress payment, that is the end of the criminal injuries compensation application. However, if the application under redress is refused—in other words, the decision-maker refuses the application against the institution—the person can then enliven the application they had on foot before the criminal injuries compensation assessor.

A person who obtains an award under redress will have six months within which to accept or reject that award. Under these provisions, if a person refuses an award made under redress, they can enliven their application before the assessor. The person will have the option of seeing the amount they are offered under redress, and they can decide, "No. Five different people abused me, and I want to make a criminal injuries compensation claim against each one of those five. There might be a higher standard there, so I will refuse redress." That would then open the pathway to criminal injuries compensation and the person would run the gamut of that process. However, I believe it is unlikely that that will happen. If we look at historical sexual abuse claims, the criminal injuries compensation awarded was quite low. At the beginning of the operation of the Criminal Injuries Compensation Act, the amount awarded was about $2 000. It is unlikely that a person would knock back a claim under redress in order to enliven a $2 000 claim. However, the bill provides that if a person does not like what they are offered under redress, they can simply reject it, and the award will then be deemed to have been refused and the person can make an application for criminal injuries compensation.

**Mr P.A. KATSAMBANIS**: I thank the Attorney General for that clarification. That is very helpful, and it has answered some questions that have been raised with me. In the ordinary course of events, the maximum amount awarded under criminal injuries compensation by an assessor is about half the maximum amount that can be awarded under redress. That is because the burden of proof for criminal injuries compensation is higher than it appears will be the case under the National Redress Scheme. Therefore, for most victims, the National Redress Scheme pathway is likely to be simpler and, hopefully, also quicker, although I have to say that from my experience, the assessor of criminal injuries compensation is doing a good job in getting assessments out quickly. If a person takes the redress pathway, they will be able to access a higher rate of payment, and they will also have a lower burden of proof. I think that is good. However, to refer to the example raised by the Attorney General, a victim might be able to identify three or more individual perpetrators and may think that if they could get the maximum criminal injuries compensation payment in each of those cases, the payment would be higher than any payment they would receive under the National Redress Scheme. Would a person be able to completely opt out of redress, or would they have to go through the process of the redress scheme before they could make the decision to reject the redress payment that is offered and then enliven the criminal injuries compensation application?

**Mr J.R. QUIGLEY**: No; the latter. The person has to tick the boxes on their redress application, reject whatever they are awarded, and then enliven their criminal injuries compensation application.

**Mr P.A. KATSAMBANIS**: That is where the issue we talked about a few moments ago around the timeliness of decisions in the redress scheme becomes critical. Effectively, a person who has a claim for child sex abuse that took place within an institution, whether state or non-state, and who wishes to pursue the criminal injuries compensation pathway, will need to make an application and then choose to reject any offer made under the National Redress Scheme. If the redress scheme takes months or even, unfortunately, years—we cannot predict what will happen in the future—it is a commonwealth scheme so we as a state government cannot resource it to make decisions quicker. People who want to make the right claim and believe in their hearts that the right claim for them will be under the criminal injuries compensation scheme could be unduly delayed for a long time.

**Mr J.R. QUIGLEY**: I have two things to say in response to that. Right up until this point, nothing would have acted as a prohibition to those people already starting a criminal injuries compensation claim. Over these years, they could have already started a criminal injuries compensation claim. The advent of this legislation means that it will be suspended until this has happened. I take the member's point, but if they have not made a claim over the years under the criminal injuries compensation scheme, which they have been quite eligible to do, it is hard in reality to envisage that this will present them with much of an impediment because they have not made a criminal injuries compensation claim to date. All they will be told is, "You want to start one now? We have the redress scheme, so go down that path first and then come to us." With an aspirational time for redress decisions of six to 12 months at the outside, we do not see that this will be much of an impediment to a criminal injuries compensation claim for historical offences that has not been made to date.

**Mr P.A. KATSAMBANIS**: I accept that people could have made these applications at any time. However, a lot of victims are suffering in silence and have been for a long time. The publicity around the royal commission, its recommendations and subsequently the National Redress Scheme will alert people that some form of redress is available to them. It may well be that once they find out about the scheme, individuals might seek advice. It is only at that stage that it might crystallise for them that they could have made a claim under the criminal injuries compensation regime. We know that scheme exists and practitioners know that it exists, but if a poll were conducted in the Hay Street Mall or at Hillarys marina, I am not sure that more than about 10 per cent of the population would, unaided, be able to say that such a scheme exists or who may be eligible to apply for it. I take the Attorney General's point and note his aspiration that the national scheme will determine these things quickly. For that small minority of people for whom criminal injuries compensation would clearly be a better pathway, the cumbersome nature of going through the National Redress Scheme as a tick-a-box exercise that adds no value to their process seems to be excessive. I ask whether an alternative was contemplated or whether it can be incorporated in the future.

**Mr J.R. QUIGLEY**: We had to arrive at a policy decision on this. We did that with the assessor, who is with us at the ministerial table today. I will go back through some of the ceilings under the criminal injuries compensation scheme. When the scheme was introduced in 1971, the ceiling was only $2 000. For offences prior to 1971—there will certainly be people applying for redress for incidents prior to 1971—we did not have criminal injuries compensation. From 1971 to 1976, the ceiling was only $2 000 for an indictable offence and $300 for a simple offence. From 1976 to 1982, it was $7 500. We are talking about $150 000 under the redress scheme. From 1983 to 1985, the ceiling was $15 000, which is one-tenth of what people get under the redress scheme. From 1986 to 1991, it was $20 000. From 1991 to 2003, it was $50 000. Even as recently as 2003, it was $50 000, which is only one-third of what people could get under the redress scheme. In 2004, the ceiling went up to $75 000, and if a person could show multiples, it could be aggregated up to $150 000.

We sat down with the assessor, whose main focus is on compensating victims of crime, and after trying to come up with a fair scheme, this is what we came up with. Having regard to those earlier limitations, we thought that everyone would go for redress over criminal injuries compensation. We wanted to put in the legislation that people would have to go there first for the very reason that the member enunciated when he first got to his feet; that is, for non-state institutions, why should the criminal injuries compensation scheme pay for it?

**Mr P.A. KATSAMBANIS**: I note all the intentions and aspirations and I support them. I am looking at a few people who may be unduly hindered. If this becomes an issue—I am not suggesting it will—can the state unilaterally amend part 4 or would it need the commonwealth's agreement? That is a critical factor for me.

**Mr J.R. QUIGLEY**: Part 4 is us. It is not interlaced with any commonwealth legislation. Part 4 is us and we can amend this at will.

**Clauses put and passed.**

**Clause 17 put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

Bill read a third time, on motion by **Mr J.R. Quigley (Attorney General)**, and transmitted to the Council.