

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

EXPLANATORY MEMORANDUM

Overview of the Bill

On 27 June 2018, the Premier, Attorney General and Minister for Child Protection; Community Services announced that the Western Australian Government would opt in to the National Redress Scheme for survivors of institutional child sexual abuse (the Scheme). Participation in the Scheme will provide eligible applicants with three elements of redress: a monetary payment, access to counselling and psychological care and a direct personal response from responsible institutions.

By opting in to the Scheme, the Government is addressing the redress related recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) in its *Redress and Civil Litigation Report*, which was tabled in the Commonwealth Parliament on 14 September 2015.

All jurisdictions have agreed to join the Scheme. In order to participate, states must either refer powers to the Commonwealth Parliament or adopt the relevant Commonwealth law, in accordance with the Commonwealth Constitution.

The objectives of the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 are to:

- Enable the Scheme to operate in Western Australia by adopting the relevant Commonwealth law and referring power to amend the Commonwealth law from time to time within certain prescribed constraints; and
- Introduce a framework to enable appropriate information sharing by Western Australian agencies for the purposes of the National Scheme.

Part 1 - Preliminary

Clause 1 – Short Title

Clause 1 provides that the Bill, once enacted, will be known as the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*.

Clause 2 – Commencement

Clause 2 provides that the Act will come into operation on the day on which it receives the Royal Assent. This is to ensure that there is no delay between enactment of the Act and commencement of its provisions.

Clause 3 – Terms Used

Clause 3 sets out the key definitions to apply throughout the Act.

Part 2 – Adoption and referral

Clause 4 – Adoption of the relevant version of the National Redress Act

Clause 4 provides for the adoption of the Commonwealth's *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the National Redress Act).

It also provides for the period of time for which the adoption has effect.

Clause 5 – Amendment reference

Clause 5 provides for the referral of the amendment reference to the Commonwealth Parliament to provide for express amendments to the National Redress Act.

It also provides for the extent to which the amendment reference has effect and the period of time for which the amendment reference has effect.

Clause 6 – Amendment of National Redress Act

Clause 6 provides detail regarding the manner in which the National Redress Act can be amended. Specifically it outlines when the National Redress Act may be expressly amended, or have its operation otherwise affected, by provisions of Commonwealth Acts and provisions of Commonwealth instruments.

Clause 7 – State redress mechanisms

Clause 7 provides that the amendment reference does not include certain matters relating to State redress mechanisms.

Clause 7(1) defines 'State redress mechanism' to mean a scheme, program or arrangement established by State Parliament, State government or other government or non-government institution or entity for or in respect of persons who have suffered institutional child sexual abuse in the State, whether specifically or as part of any class of victims of crime. It also defines 'State redress mechanism' to mean the jurisdiction of a court or tribunal to grant compensation or support for or in respect of victims of crime, including crime relating to institutional child sexual abuse.

Clause 7(2) provides that the amendment reference does not include the making of a law to the extent that it would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism.

Clause 7(3) provides that clause 7(2) does not cover any matter to which the adoption relates; the release or discharge of civil liability under the Scheme; the disclosure or use of evidence or other information provided or obtained in connection with the Scheme; or the making, enforcement or protection of payments under the Scheme.

Clause 8 – Requirements for agreement of the State

Clause 8 provides that 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. A matter requiring the agreement of the State could include, for example, declaring a State institution to be a participating institution.

Clause 9 – Termination of adoption or amendment reference

Clause 9 provides for the termination of the adoption or amendment reference. Specifically, this clause provides that the Governor may, at any time, by proclamation, fix a day as the day on which the adoption or the amendment reference or both are to terminate. It further provides that the Governor may also, by proclamation, revoke a termination proclamation and outlines the circumstances in which a revoking proclamation will have effect and its impacts.

Clause 10 – Effect of termination of amendment reference before adoption

Clause 10 clarifies the effect of terminating the amendment reference before terminating the adoption. Specifically, clause 10 makes it clear that in these circumstances, the termination of the amendment reference does not affect:

- laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
- the continued operation in Western Australia of the National Redress Act as in operation immediately before that termination or as subsequently amended or affected by:
 - laws previously made under the amendment reference that come into operation after its termination; or
 - provisions of Commonwealth Acts or instruments which are not affected by the termination.

Part 3 – Agreement and information

Clause 11 – How agreement of the State is given, withdrawn and evidenced

Clause 11 authorises the regulations or (subject to any relevant provisions of the regulations) the Minister to give directions as to how the agreement of the State is to be given or withdrawn or may be evidenced for the purposes of, and consistently with, the National Redress Act and the National Scheme.

Clause 12 – Information sharing

Clause 12 provides that :

- a State participating institution may give information to the Operator under the National Redress Scheme in response to a relevant request of the Operator; and
- a State agency may provide information to another State agency for the purpose of assisting any participating State institution to comply with such a request.

The information may be provided despite any law of the State unless the law is prescribed by the regulations.

Definitions of the terms Operator and State Agency are provided for the purposes of Clause 12.

The Operator of the National Redress Scheme is the Secretary of the Commonwealth Department of Social Services.

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

Clause 13 – Terms used

Clause 13 sets out the key terms used in Part 4.

Abuse means abuse as defined in section 6 of the National Redress Act that is within the scope of the Scheme.

Section 6 of the National Redress Act defines "abuse" as sexual or non-sexual abuse; "sexual abuse" of a person who is a child as including any act which exposes the person to, or involves the person in, sexual processes beyond the person's understanding or contrary to accepted community standards; and "non-sexual abuse" as including physical abuse, psychological abuse and neglect.

Section 14 of the National Redress Act relevantly provides that the abuse of a person is within the scope of the Scheme if:

- (a) it occurred when the person was a child; and
- (b) it occurred before the Scheme start day (being 1 July 2018); and
- (c) it occurred inside a participating State, inside a Territory, or outside Australia (that is, it did not occur inside a State that is not participating in the Scheme).

Assessor has the meaning given in section 3 of the *Criminal Injuries Compensation Act 2003*.

Section 3 of the *Criminal Injuries Compensation Act 2003* defines assessor as the Chief Assessor of Criminal Injuries Compensation or an assessor appointed under that Act.

Compensation application has the meaning given in section 3 of the *Criminal Injuries Compensation Act 2003*.

Section 3 of the *Criminal Injuries Compensation Act 2003* defines compensation application as an application for criminal injuries compensation made under Part 2 of that Act.

Offence has the meaning given in section 3 of the *Criminal Injuries Compensation Act 2003*.

Section 3 of the *Criminal Injuries Compensation Act 2003* defines an offence as an alleged offence or a proved offence.

An alleged offence means a crime, misdemeanour or simple offence of which no person has been convicted. A proved offence means a crime, misdemeanour or simple offence of which a person has been convicted.

Redress application means an application for redress made under the National Redress Act.

Redress offer means an offer of redress made under the National Redress Act.

Redress payment has the meaning given in section 6 of the National Redress Act.

Section 6 of the National Redress Act defines redress payment as a payment payable under section 48 or section 60 of the National Redress Act.

Section 48 of the National Redress Act provides that the National Redress Scheme Operator must pay the redress payment to a person as soon as practicable if:

- a) a person is entitled to redress under the Scheme; and
- b) that person wishes to be paid the redress payment.

Section 60 of the National Redress Act relates to the National Redress Scheme Operator's determinations about entitlement to a redress payment, in circumstances where it is payable for a deceased person.

Clause 14 – No entitlement to compensation under the *Criminal Injuries Compensation Act 2003* if redress payment accepted

Clause 14 provides that a person is not entitled to receive an award of compensation under the *Criminal Injuries Compensation Act 2003* in relation to an offence if the offence is or involves abuse and the person has accepted the redress payment component of a Scheme offer in relation to the abuse.

Clause 15 – Deferral of compensation application if redress application not made in relation to abuse

Clause 15 provides that a criminal injuries compensation assessor must defer an application by a person for criminal injuries compensation if:

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

In these circumstances, the criminal injuries compensation application must be deferred pending the making of a Scheme application.

Clause 16 – Effect on compensation application if redress application made

Clause 16 deals with the effect of making a Scheme application on a *Criminal Injuries Compensation Act 2003* application.

A criminal injuries compensation assessor must defer consideration of a criminal injuries compensation application in either of the following circumstances:

1. Where a person has made application to the Scheme and subsequently makes a criminal injuries compensation application in relation to an offence, and:
 - (a) the offence in relation to which the person makes the criminal injuries compensation application is or involves abuse; and
 - (b) the Scheme application has not yet been determined.

2. Where a person has made a criminal injuries compensation application in relation to an offence and subsequently makes a Scheme application, and:
 - (a) the offence in relation to which the person made the criminal injuries compensation application is or involves abuse; and
 - (b) the criminal injuries compensation application has not yet been determined.

Clause 16(2) requires the criminal injuries compensation assessor dealing with the compensation application to be deferred pending the outcome of the Scheme application.

Clause 16(3) provides that if the person accepts the redress payment component of a Scheme offer, the criminal injuries compensation application is taken to be refused.

If the person is found not to be eligible or entitled to a payment under the Scheme, or the person declines the redress payment component of a redress offer, then the criminal injuries compensation application would proceed and be dealt with in the usual way.

Part 5 – Regulations

Clause 17 – Regulations

Clause 17 enables the Governor to make regulations, not inconsistent with the Bill, for or with respect to any matter that is required or permitted to be prescribed by the Bill or that is necessary or convenient to be prescribed for carrying out or giving effect to the Bill.