

Chapter 1

Introduction and background

Over the course of the royal commission, more than 16,000 individuals made contact with the commission and the commission has heard more than 8,000 personal stories. More than 1,000 survivors provided a written account...Now that those stories have been told, now that they are on the record, we must do everything within our power to honour those stories and to act. I am committed and my government is committed to doing everything possible to make sure that this national tragedy is never repeated.¹

Purpose of the bills

1.1 The focus of this inquiry by the Community Affairs Legislation Committee (committee) is to review the two bills currently before the Senate, which together establish a Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (Redress Scheme).

1.2 The Redress Scheme proposed by these bills would only include Commonwealth or territory institutions and participating non-government institutions (NGIs) operating in a territory.² The implementation of a national scheme which would include state government institutions and NGIs located in states—as opposed to territories—is discussed below in the 'bill as a first step' section.

1.3 The Redress Scheme will provide survivors of institutional child sexual abuse (survivors) with three key elements of redress, comprising:

- a monetary payment of up to \$150 000;³
- access to counselling and psychological services; and
- a direct personal response from the responsible institution.⁴

1.4 The two bills under review are the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill) and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Consequential Bill).

1 The Hon. Malcolm Turnbull, MP, Prime Minister of Australia, [House of Representatives Hansard](#), 8 February 2018, p. 1.

2 Department of Social Services, [Submission 27](#), [p. 1].

3 The Redress Scheme payment is proposed to be capped at \$150 000, lower than the Royal Commission recommendation of \$200 000. However, while the average payment recommended by the Royal Commission was \$65 000, the proposed average under the Redress Scheme is significantly higher at \$76 000 per survivor.

4 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, [Explanatory Memorandum](#) (Explanatory Memorandum), p. 1.

1.5 In introducing the bills, the Minister for Social Services, the Hon. Christian Porter, MP (Minister), stated:

Children placed in the trust of our society's institutions were some of the most vulnerable members in our community and the fact that must be confronted is that many children were sexually abused by the very people charged with their care and protection. No child should ever experience what we now know occurred. That is why it is time for all institutions and all governments to take responsibility for what has happened.

The establishment of the scheme is an acknowledgement by the Commonwealth government that sexual abuse suffered by children in institutional settings; operated by a number of governments state, territory and federal and by a number of non-government institutions was wrong, a shocking betrayal of trust; and simply should never have happened.⁵

Nature of proposed Redress Scheme

1.6 The Redress Scheme these bills seek to establish is not intended to replicate a civil law process, but is intended to provide an alternative pathway for people who are unable or do not wish to undertake a civil law pathway for a variety of reasons, such as:

- Some survivors have been unable to seek redress because of the nature and impact of their abuse.
- Many survivors take years, even decades, to disclose their experience of child sexual abuse, by which time the institution may no longer exist or the ability to pursue common law damages is not feasible or may no longer be available.
- The evidentiary burden of civil litigation can be high.
- The emotional and psychological toll of civil litigation can be traumatic.

1.7 The Redress Bill establishes General Principles for the Redress Scheme, which includes:

- Redress under the scheme should be survivor-focussed.
- Redress should be assessed, offered and provided so as to avoid further harming or traumatising the survivor.⁶

Report structure

1.8 In acknowledgement of the complexity and importance of the two bills establishing the Redress Scheme, this report is broken down into four chapters:

- Chapter one is an introductory chapter, providing an overview of the provisions in the bills, as well as background information on the development

5 The Hon Christian Porter MP, Minister for Social Services, [House of Representatives Hansard](#), 26 October 2017, p. 12128.

6 [Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017](#) (Redress Bill), Division 2, Clause 13.

of the Redress Scheme, the stakeholder consultations, and the proposed governance structure which will underpin the operation of the Redress Scheme, should the bills be passed.

- Chapter two discusses the administrative issues of the Redress Scheme, such as the use of delegated legislation, as well as the application process for the Redress Scheme and ongoing operational matters.
- Chapter three focuses on the three Redress Scheme elements of the payment, counselling and the institutional apology, discussing the concerns raised by submitters and witnesses with the nature of the redress elements.
- Chapter four provides the committee's views and recommendations.

Royal Commission

1.9 The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) was established in January 2013 in response to allegations of the sexual abuse of children in institutional settings, which had been emerging in Australia for many years. The Royal Commission worked for just under five years, heard more than 8000 personal stories in private sessions, and received over 1000 written accounts from survivors.⁷

1.10 The Royal Commission released its *Redress and Civil Litigation Report* in September 2015⁸ which formed the basis of the recommendations made in its December 2017 *Final Report* (Royal Commission Report).⁹ The Royal Commission report contained 409 recommendations, of which 84 relate to the Redress Scheme.

1.11 In discussing the Australian Government response to the Royal Commission Report, the Attorney-General, the Hon. Christian Porter, MP, outlined the number and nature of the Royal Commission Report recommendations, and the whole-of-government response being taken:

The breadth and scope of the royal commission report is enormous. If I can just, in that spirit of bipartisanship, offer some indication as to how we are progressing with those recommendations. There are 409 recommendations in total, with 189 new recommendations. Of those new recommendations, 67 are directed at the Commonwealth. We've established and provided for a task force inside my department which will coordinate the implementation and the responses from states and territories towards a consistent national response. It will report regularly and transparently via a website for all Australians to track our performance in this area.

7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Website homepage*, <https://www.childabuseroyalcommission.gov.au/> (accessed 5 March 2018).

8 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, September 2015.

9 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, December 2017.

Part of that, and critical, is the redress scheme. That itself addresses 84 of those 409 recommendations, so it is utterly critical.¹⁰

1.12 The Department of Social Services (Department) informed the committee that in drafting the bills, the Department has been mindful of the need to ensure the provisions of the bills reflect the recommendations and principles established by the Royal Commission:

[W]e have, to the best of our ability, stayed true to the recommendations of the royal commission about what redress is: about it being survivor focused, about it not being highly legalistic and about taking it on a lower evidentiary requirement than would occur in civil proceedings.¹¹

Bills as a 'first step' to a national redress scheme

1.13 The Commonwealth does not have the constitutional power to legislate for a national scheme.¹² The Department has noted the two bills are intended as a 'first step' towards the implementation of a truly national Redress Scheme, and is drafted in anticipation of the participation of state governments and NGIs located in states, should a referral of powers be achieved. The Department has submitted that:

If a state government agrees to provide a referral and participate in the Scheme from its commencement, the Commonwealth Bill will be replaced with a National Redress Scheme for Institutional Child Sexual Abuse Bill (National Bill) prior to the Scheme's commencement.¹³

1.14 The Prime Minister, the Hon. Malcolm Turnbull, MP, in making a statement on the Royal Commission Report to Parliament, stated:

[T]he scheme will fulfil its promise of justice only if we have maximum participation across all jurisdictions. For this to occur, the states must take urgent action and refer the appropriate power to the Commonwealth in order for them to participate from 1 July. We have been working closely with each jurisdiction to encourage their participation in the scheme. Unless the states agree to participate, institutions within their jurisdictions will not be able to join. Survivors deserve much better and I urge the premiers in all the jurisdictions to prioritise this work and join the redress scheme without further delay. I also urge the non-government institutions to commit now to joining the scheme.¹⁴

10 The Hon. Christian Porter MP, Attorney-General, *House of Representatives Hansard*, 8 February 2018, p. 788.

11 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, [Committee Hansard](#), 16 February 2018, p. 66.

12 A referral of powers from the states to the Commonwealth under section 51 (xxxvii) of the Australian Constitution would be required for the Australian Government to administer a national redress scheme.

13 Department of Social Services, *Submission 27*, p. [1].

14 The Hon. Malcolm Turnbull, MP, Prime Minister of Australia, *House of Representatives Hansard*, 8 February 2018, pp. 1–2.

1.15 The Department told the committee that negotiations with the states and NGIs are ongoing. At the committee's public hearing on 16 February 2016, the Department advised:

We have been working closely with state and territory governments to encourage their participation in the scheme, and, while no state has opted in, we remain hopeful they will take this step and that we'll be able to have a national redress scheme and a national bill introduced.¹⁵

1.16 The Department also acknowledged provisions within the Redress Bill may require some amendment, to reflect the continuing discussions with stakeholders on the nature of the Redress Scheme:

The bill before you requires some updates. The Commonwealth bill represents a point in time while detailed discussions continued with state and territory governments, non-government institutions and survivor groups. The best outcome, we recognise, for survivors is for the redress scheme to be national in its coverage, with maximum participation from all responsible institutions in all jurisdictions.¹⁶

1.17 On 9 March 2018, the New South Wales and Victorian Governments announced they will be joining a national Redress Scheme. However the exact details of the agreement between those states and the Commonwealth have not yet been made public, and there is still no agreement on the 'funder of last resort' provisions which ensure relevant governments will pay redress when the institution responsible for redress no longer exists or is insolvent.¹⁷

1.18 A more detailed discussion on progress with the states on referral of powers, and how that may impact the details of an amended bill, is found in chapter two.

Overview of bills

Redress Bill

1.19 The Redress Bill will establish the Redress Scheme with the following key elements:

A person will be eligible for redress under the Scheme if the person was sexually abused as a child in an institutional setting and a Commonwealth institution is primarily or equally responsible, or where it occurred in a Territory or outside Australia and a participating institution was primarily or equally responsible for the abuse. The sexual abuse must also have occurred prior to the 1 July 2018, the date of the Scheme's commencement.¹⁸

15 Ms Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 66.

16 Ms Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 66.

17 David Crowe, '[NSW, Victoria sign up to child abuse redress scheme, with bill to reach hundreds of millions of dollars](#)', Sydney Morning Herald, 8 March 2018.

18 Explanatory Memorandum, p. 1.

1.20 Redress will include three elements: a redress payment of up to \$150 000, access to counselling and psychological services, and a direct personal response.¹⁹

1.21 Additional elements of the Redress Scheme include:

- Survivors will be able to choose whether to accept one, two or all three of the components of redress.
- Eligibility for redress will be assessed on whether there was a reasonable likelihood the person suffered institutional sexual abuse as a child, and which occurred before the cut-off date of 1 July 2018.
- Non-sexual abuse in connection with the child sexual abuse will be taken into consideration as an aggravating factor.
- The amount of the redress payment will depend on the level of sexual abuse and related non-sexual abuse that a survivor suffered.
- Applications for redress are limited to one application per survivor. Survivors will be able to include multiple episodes of sexual abuse and related non-sexual abuse suffered in multiple institutions in the one application.
- A person who accepts an offer of redress must release the institution from civil liability for the abuse and related non-sexual abuse.
- Applicants must be an Australian citizen or Australian permanent resident, although the rules may provide for other persons to apply, such as former child migrants who no longer reside in Australia or children abused in Australian institutional settings outside Australia.
- Applicants will have access to legal advice services.
- Reviews of decisions made under the Redress Scheme are limited to internal review.
- Funding arrangements are based on the principle that the responsible entity pays.
- Any prior payments made by a participating institution in relation to the abuse suffered by a survivor that is within the scope of this Redress Scheme, will be deducted from the amount payable by that participating institution.
- The amount of the redress payment cannot be used to recover debts due to the Commonwealth and will not be subject to income tax.
- Redress Scheme Rules will set out additional requirements, and are proposed to include a bar on eligibility for persons convicted of sex offences, or sentenced to prison terms of five years or more for crimes such as serious drug, homicide or fraud offences.²⁰

19 Explanatory Memorandum, p. 4.

20 Explanatory Memorandum, pp. 1–7 and Parliamentary Joint Committee on Human Rights, [Report 2 of 2018](#), pp. 81–82.

Consequential Bill

1.22 The Consequential Bill supports the establishment of the Redress Scheme through proposed amendments to Commonwealth legislation relevant to the operation of the scheme.

1.23 The Consequential Bill is structured in three schedules, as follows:

- Schedule 1—proposes payments made under the redress scheme will be exempt from income tests for social security and veterans' payments;²¹
- Schedule 2—proposes payments made under the redress scheme will be excluded as property divisible among creditors for a bankrupt person;²² and
- Schedule 3—proposes decisions made in the Redress Scheme will be exempt from judicial review.²³

1.24 In his second reading speech, the Minister stated the amendments in Consequential Bill 'are essential to implement and maintain the integrity of the scheme' and further stated the Consequential Bill 'will ensure the scheme remains survivor focused and trauma informed by being a non-legalistic process for survivors'.²⁴

Consultations

1.25 The development of the Redress Scheme and the two bills to enact it have been the subject of extensive consultation with survivor groups, legal representatives, advocacy organisations, counselling services, relevant institutions and state and territory governments.

1.26 An Independent Advisory Council on Redress (Advisory Council) was established in December 2016 to provide expert advice on the policy and implementation considerations for the Redress Scheme. The 15 member Advisory Council included 'survivors of institutional abuse and representatives from support organisations, as well as legal and psychological experts, Indigenous and disability

21 [Commonwealth Redress Scheme for Institutional Child Sexual Abuse \(Consequential Amendments\) Bill 2017](#) (Consequential Bill), Schedule 1.

22 Consequential Bill, Schedule 2.

23 Consequential Bill, Schedule 3.

24 The Hon Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12136.

experts, institutional interest groups and those with a background in government'.²⁵ The Advisory Council has met formally on seven occasions.²⁶

1.27 The terms of reference for the Advisory Council are to provide advice on:

- the governing principles that underpin the scheme;
- elements of the scheme's design, that may include eligibility and the principles around the processes of application, assessment, psychological counselling and direct personal response;
- how to best encourage state, territory and non-government institution participation in the scheme; and
- how the Commonwealth scheme will interact with other redress schemes.²⁷

1.28 The provisions of the two bills were also subject to 'extensive consultations and workshops' with survivor groups,²⁸ and various drafts of the bills were provided at different times to relevant organisations to make comment.²⁹

Governance arrangements

1.29 The planned governance arrangements for the Redress Scheme ensure that continued consultation with survivors and their relevant representative groups is embedded in the implementation of the Redress Scheme.

1.30 Governance arrangements include a Ministerial Redress Scheme Board comprising Ministers from participating state and territory governments, which must agree to any legislative or key policy changes required over time. A Redress Scheme Committee will be established, including NGIs, which will provide the Redress Scheme operator with advice on operational and implementation matters.³⁰

25 Senator the Hon. George Brandis, QC, Attorney-General, '[Redress for survivors of institutional child sexual abuse: members of Independent Advisory Council announced](#)', Media release, 16 December 2016. The Independent Advisory Council on redress includes representatives from Alliance for Forgotten Australians, Ballarat Centre for Sexual Assault, Blue Knot Foundation, Care Leavers Australasia Network, Healing Foundation, knowmore legal service, Truth Justice and Healing Council and Uniting Care Queensland.

26 Department of Social Services, '[Answers to questions taken on notice](#)', 16 February 2018, p. 21 (received 2 March 2018).

27 'Redress for survivors of institutional child sexual abuse: members of Independent Advisory Council announced', *Media release*, 16 December 2016, p. 2.

28 Survivor groups were consulted on the text of the Bill via the Independent Advisory Council on Redress. See Department of Social Services, '[Answers to questions taken on notice](#)', 16 February 2018, p. 5 (received 2 March 2018).

29 Text of the Bill was sent to the Independent Advisory Council on Redress on 25 October 2017. All state and territory governments were provided with copies of the draft Bill on 19 July 2017, 22 September 2017 and 7 February 2018. Key non-government organisations were provided with copies of the draft Bill on 22 September 2017. See Department of Social Services, '[Answers to questions taken on notice](#)', 16 February 2018, p. 6 (received 2 March 2018).

30 Department of Social Services, *Submission 27*, [p. 2].

1.31 The Department has also presented evidence that policy and practice guidelines will be developed in consultation with stakeholders. Additionally, Redress Scheme data will be made public to allow for public scrutiny of the operation of the Redress Scheme.³¹

Financial impact

1.32 The Australian Government has committed \$33.4 million in the 2017–18 Budget to establish the Redress Scheme. The Explanatory Memorandum outlines that expenditure beyond 2017–18 was not for publication at the time of the 2016–17 Budget due to legal sensitivities, and that the financial impact of the bills over the forward estimates would be announced as part of 2017–18 Mid-Year Economic and Fiscal Outlook.³²

1.33 The Department informed the committee that the current estimate for the operation of the Redress Scheme was \$3.8 billion, which included both Redress Scheme payments and the administration costs.³³ The Department has also provided evidence that the total quantum of payments to be paid out by responsible governments and NGIs is not yet known, and will be dependent on:

- which states, territories and non-government institutions opt into the Scheme
- how many eligible survivors will apply for the Scheme
- the final policy parameters of the Scheme.³⁴

Reports of other committees

1.34 The Redress Bill and the Consequential Bill have been considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) and the Parliamentary Joint Committee on Human Rights (Human Rights committee).

1.35 The key concerns of the Human Rights committee include:

- The Redress Scheme is restricted to Australian citizens and permanent residents.
- There is a lack of detail in the primary legislation, which is intended to be provided for later in delegated legislation in the form of rules.
- Applicants must provide a waiver of future civil liability to participating institutions.
- The information sharing provisions raise privacy concerns.

31 Department of Social Services, *Submission 27*, [p. 2].

32 Explanatory Memorandum, p. 2.

33 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 70.

34 Department of Social Services, *Answers to questions taken on notice*, 16 February 2018, p. 4 (received 2 March 2018).

- The absence of external merits review and removal of judicial review.³⁵
- 1.36 The key concerns of the Scrutiny committee include:
- There is a lack of detail in the primary legislation, which is intended to be provided for later in delegated legislation in the form of rules. This does not facilitate proper scrutiny of the proposed scheme, nor allow for the usual parliamentary disallowance processes.
 - The standing appropriation does not allow for parliamentary approval and control of costs.
 - Protected information disclosure powers for the Redress Scheme operator are too broad.
 - The delegation of administrative powers is too broad.
 - The lack of merits review and limitations on judicial review.
 - Key information provided by the Minister to the Scrutiny committee is not included in the Explanatory Memorandum to assist with interpretation of the Bill.³⁶
- 1.37 Detailed discussions of these concerns are contained in chapters two and three.

Conduct of inquiry

1.38 On 26 October 2017, the Minister introduced the bills in the House of Representatives.

1.39 Pursuant to a resolution of the Senate, the provisions of the Bill were referred to the committee on 30 November 2017, for inquiry and report by 13 March 2018.³⁷ On 13 March 2018, the Senate granted an extension of time for reporting until 28 March 2018.³⁸

1.40 Information regarding the inquiry was placed on the committee's website.

Submissions

1.41 The committee wrote to relevant organisations and invited them to make a submission to the inquiry by 2 February 2018. Submissions continued to be accepted after this date.

35 Parliamentary Joint Committee on Human Rights, *Report 13 of 2017*, 6 December 2017, pp. 2–16.

36 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017*, 15 November 2017, pp. 8–36.

37 Selection of Bills Committee, *Report No. 14 of 2017*, pp. 3, 5–6.

38 Senate Community Affairs Legislation Committee, *Progress report: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017*, 13 March 2018.

1.42 The committee received 86 public submissions which were published on the committee's website. A further 6 submissions were accepted as confidential. A list of submissions received is at Appendix 1.

Witnesses

1.43 Public hearings for the inquiry were held on 16 February 2018 in Canberra and 6 March 2018 in Melbourne.

1.44 The committee heard evidence from 32 organisations and 13 individuals who identified as survivors. A list of witnesses is at Appendix 2.

Note on references

1.45 References to the *Committee Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcripts.

1.46 References to the Minister is to either to the Hon. Christian Porter, MP, who was Minister for Social Services at the time of the bills being introduced into the House of Representatives or to the Hon. Dan Tehan, MP, current Minister for Social Services. References to the Attorney-General refer to comments made by the Hon. Christian Porter, MP, in his current Ministerial role.

Acknowledgments

1.47 The committee would like to thank the organisations which made submissions to the inquiry and provided evidence at its public hearings. In particular, the committee would like to honour the bravery of all survivors who made submissions or appeared as witnesses at a hearing.

