

Chapter 1

Introduction and background

Purpose of the bills

1.1 The focus of this inquiry by the Community Affairs Legislation Committee (committee) is to review the provisions of two bills introduced in the House of Representatives which together establish a National Redress Scheme for Survivors of Institutional Child Sexual Abuse (National Redress Scheme, the Scheme).¹

1.2 The Scheme proposed by the bills will provide eligible survivors of institutional child sexual abuse (survivors) with three elements of redress:

- a monetary payment of up to \$150 000;
- access to counselling and psychological services; and
- a direct personal response from the responsible institution or institutions.²

1.3 The two bills under review are the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (National Redress Bill) and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (National Consequential Bill).

1.4 The introduction of these bills into the House of Representatives was triggered by the introduction of bills into the New South Wales (NSW) and Victorian Parliaments which will refer powers from each state for the purposes of section 51 (xxxvii) of the Australian Constitution (Constitution) and allow the Commonwealth to make laws about matters relating to redress for institutional child sexual abuse.³

Previous inquiry and the Commonwealth Redress Scheme bills

1.5 The Royal Commission into Institutional Child Sexual Abuse (Royal Commission) was established in January 2013 in response to allegations of the sexual abuse of children in institutional settings in Australia. The Royal Commission released its *Redress and Civil Litigation Report* in September 2015⁴ which formed the basis of the recommendations made in its December 2017 *Final Report* (Royal

1 House of Representatives, *Votes and Proceedings*, No. 109, 10 May 2018, p. 1519.

2 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, Explanatory Memorandum ([Explanatory Memorandum](#)), p. 3.

3 National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (NSW), [Explanatory Note](#), p. 1; National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (Vic), [Explanatory Memorandum](#), p. 2.

4 Royal Commission into Institutional Responses to Child Sexual Abuse, [Redress and Civil Litigation Report](#), September 2015.

Commission Report).⁵ The Royal Commission Report contained 409 recommendations, of which 84 related to the establishment of a redress scheme.

1.6 As the Commonwealth did not have the power to legislate a national scheme without one or more states first referring constitutional powers, a Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (Commonwealth Redress Scheme), to commence on 1 July 2018, was initially proposed as a 'first step' towards a single National Redress Scheme.⁶

1.7 Two bills intended to establish the Commonwealth Redress Scheme—the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Commonwealth Redress Bill) and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Commonwealth Consequential Bill)—were introduced into the House of Representatives on 26 October 2017.

1.8 The provisions of those bills for a Commonwealth Redress Scheme were referred to the committee for inquiry and report on 30 November 2017.⁷ The committee received over 90 submissions to that inquiry and heard evidence from 32 organisations and 13 individuals. The committee presented its report to the Senate on 28 March 2018, making 11 recommendations. Australian Labor Party Senators made a further ten recommendations, and the Australian Greens one.⁸

1.9 The consolidated submission from Australian Government Departments to the current inquiry states that in developing the National Redress Scheme, the government has agreed to ten of the committee's recommendations and partially agreed one. Furthermore, the government has agreed to four of the recommendations from Australian Labor Party Senators and to the Australian Green's recommendation.⁹ The Government's Response to these recommendations has been considered in the committee's assessment of the National Redress Scheme bills in Chapter 2.

1.10 In the previous inquiry, the committee noted that the Commonwealth Redress Bill represented a point in time while detailed discussions proceeded with state and

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

6 *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, Department of Social Services, *Submission 27*, p. [1].

7 *Journals of the Senate*, No. 75, 30 November 2018, pp. 2401–2402.

8 Senate Community Affairs Legislation Committee, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]* (Commonwealth Redress Scheme Bills Report), 28 March 2018.

9 Australian Government Departments, *Submission 1*, p. 3; *Australian Government response to the Senate Community Affairs Legislation Committee report: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions] and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, May 2018.

territory governments, non-government institutions and survivor groups. The Department of Social Services (Department) informed the committee that, if a state government agreed to provide a constitutional referral and participate in the Scheme, a new National Redress Bill would be introduced.¹⁰

States and territories opt-in to a National Redress Scheme

1.11 On 9 March 2018, the governments of NSW and Victoria announced their intentions to join a National Redress Scheme¹¹ and have since introduced legislation to refer necessary constitutional powers to the Commonwealth in anticipation of a 1 July 2018 commencement.

1.12 The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (NSW) was introduced into the NSW Legislative Assembly on 1 May 2018 and passed Parliament on 16 May 2018.¹² The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (Vic) was introduced into the Victorian Legislative Assembly on 8 May 2018 and passed Parliament on 6 June 2018.¹³

1.13 The Queensland Government announced its intention to join the National Redress Scheme on 30 April 2018,¹⁴ but will not introduce legislation in time for a 1 July 2018 commencement. It is therefore anticipated that Queensland will begin its participation in the Scheme in late 2018.¹⁵

1.14 The Tasmanian Government announced its intention to join the Scheme on 22 May 2018¹⁶ and the South Australian Government on 28 May 2018.¹⁷ Western

10 *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions], Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, Department of Social Services, *Submission 27*, p. [1].

11 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.

12 Parliament of New South Wales, *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 – Bill details*, <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3506> (accessed 12 June 2018).

13 Parliament of Victoria, *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018*, http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/96937d40d7578c00ca258287007bf1fd!OpenDocument (accessed 12 June 2018).

14 Sonia Kohlbacher, '[Queensland joins child sex abuse redress scheme](#)', Brisbane Times, 30 April 2018.

15 Queensland Department of Child Safety, Youth and Women, [Queensland participation in National Redress Scheme fact sheet](#), 2 May 2018.

16 Peta Carlyon and Rhiana Whitson, '[Tasmania allocates \\$70 million to join national sexual abuse redress scheme](#)', ABC News, 22 May 2018.

17 Leah MacLennan, '[South Australia signs up to national redress scheme for institutional child sexual abuse](#)', ABC News, 28 May 2018.

Australia became the last state to agree to join the Scheme on 13 June 2018.¹⁸ Each of these states will also need to introduce legislation to participate in the Scheme.

1.15 The governments of both the Australian Capital Territory¹⁹ and the Northern Territory²⁰ have announced their participation in the National Redress Scheme from 1 July 2018. The application of the National Redress Bill in the territories is based on the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for a government of a territory and does not require any referral of powers from the territories.²¹

1.16 Any state which has not referred constitutional powers for the National Redress Scheme before the commencement date will have two years from that date to do so and become a participating state.²²

1.17 However, at the commencement of the Scheme, survivors of abuse which occurred in non-participating states will still be eligible under the National Redress Scheme if a Commonwealth or participating territory institution was primarily responsible for that abuse.²³ Furthermore, the Department will accept applications from all survivors and will inform survivors that their applications will be held until the relevant state (or institution) joins the Scheme.²⁴

COAG Agreement

1.18 The *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement) was published by the Council of Australian Governments (COAG) on 1 May 2018.²⁵ This document sets out agreement between the Commonwealth and participating state and territory governments on certain aspects of the Scheme and affirms that:

The development and implementation of the Scheme is a shared responsibility of the Commonwealth and participating state and territory governments.²⁶

18 Louise Yaxley, ['Child sexual abuse survivors will receive national apology this year, as WA to join redress scheme'](#), ABC News, 13 June 2018.

19 Doug Dingwall, ['ACT child sex abuse survivors to have access to national redress scheme'](#), Canberra Times, 19 March 2018.

20 [The Hon. Dan Tehan, MP, Minister for Social Services, 'Queensland and Northern Territory to join National Redress Scheme', *Media Release*, 30 April 2018.](#)

21 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (National Redress Bill), sub cl. 174(4).

22 National Redress Bill, sub cl. 144(5).

23 National Redress Bill, cl. 61.

24 Ms Barbara Bennett, Deputy Secretary, Families and Communities, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 97.

25 [Council of Australian Governments, *Intergovernmental Agreement On The National Redress Scheme For Institutional Child Sexual Abuse \(Intergovernmental Agreement\)*, 1 May 2018.](#)

26 Intergovernmental Agreement, 1 May 2018, p. 2.

1.19 The commitments outlined in the Intergovernmental Agreement will commence for each participating state and territory as soon as it is signed by the relevant premier or chief minister.²⁷

Overview of the National Redress Scheme bills

1.20 The Australian Government consulted with a broad range of stakeholders to develop the National Redress Scheme and the bills to establish it.²⁸

1.21 The committee detailed the nature of these consultations, through to the development of the earlier Commonwealth Redress Scheme bills, in the report of its previous inquiry.²⁹

1.22 In introducing the bills for the National Redress Scheme, the Minister indicated that the current bills:

...[align] with the views of the Independent Advisory Council on Redress, which included many survivor groups, as well as the views of jurisdictions and non-government institutions.³⁰

National Redress Bill

1.23 The National Redress Bill will establish the National Redress Scheme, commencing on 1 July 2018.³¹ The Minister stated that:

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

It recognises the suffering survivors have experienced and accepts that these events occurred and that institutions must take responsibility for this abuse.³²

1.24 The National Redress Scheme will be survivor-focused and trauma-informed in its approach. It is intended to provide a means to access a 'sense of justice' for those survivors who are unable to pursue legal avenues and to be 'faster, simpler and less distressing for survivors' than civil litigation.³³

1.25 Redress offered under the Scheme will consist of three elements. A survivor can accept redress in the form of any or all of:

27 Intergovernmental Agreement, 1 May 2018, p. 3.

28 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 2.

29 Commonwealth Redress Scheme Bills Report, pp. 6–7.

30 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 2.

31 Subject to passage of the bills before that date. If the bills are passed after 1 July 2018, commencement will be on single day to be fixed by proclamation, or 6 months after assent. See: National Redress Bill, cl. 2.

32 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 1.

33 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 2.

- a monetary payment of up to \$150 000;
- access to counselling and psychological services, either through access to services funded by the Commonwealth for the Scheme, or through a lump-sum payment of up to \$5000; and
- a direct personal response from the responsible institution or institutions.³⁴

1.26 The National Redress Bill sets out provisions for the operation of the scheme, including:

- The establishment, operation and reporting of the Scheme, and the constitutional basis for the Scheme.³⁵
- Entitlement to and eligibility for redress under the Scheme, including special rules to deal with exceptional cases, such as following the death of an applicant or where an applicant has a serious criminal conviction or is subject to a security notice.³⁶
- The application and determination processes for claims for redress, including the application of assessment guidelines and the determinations of payments.³⁷
- How offers are made, the process for accepting or declining those offers, and provision of redress to applicants after an offer is accepted.³⁸
- The parameters for participating institutions and participating jurisdictions, including provisions for defunct institutions and groups of institutions.³⁹
- Financial matters, such as liability for funding, funders of last resort, and debt recovery.⁴⁰
- The application and provision of National Redress Scheme Rules.⁴¹
- Administrative provisions relating to reviews of determinations, the role of nominees, and protecting information.⁴²

34 National Redress Bill, cl. 4.

35 National Redress Bill, parts 2-1, 7-1 and 7-3.

36 National Redress Bill, parts 2-2, 3-1, and 3-2.

37 National Redress Bill, part 2-3.

38 National Redress Bill, parts 2-4 and 2-5.

39 National Redress Bill, chapter 5.

40 National Redress Bill, chapter 6.

41 National Redress Bill, part 7-2.

42 National Redress Bill, chapter 4.

National Consequential Bill

1.27 The National Consequential Bill supports the establishment of the National Redress Scheme through proposed amendments to other Commonwealth legislation relevant to the operation of the Scheme.

1.28 The National Consequential Bill is structured in five schedules:

- Schedule 1—proposes payments made under the National Redress Scheme will be exempt from income tests for social security and veterans' payments;⁴³
- Schedule 2—proposes payments made under the National Redress Scheme will be excluded as property divisible among creditors for a bankrupt person;⁴⁴
- Schedule 3—proposes decisions made in the National Redress Scheme will be exempt from judicial review;⁴⁵
- Schedule 4—proposes exemption of protected information in the National Redress Scheme from disclosure under Freedom of Information, and protection of information relating to the National Redress Scheme for the purposes of social security administration;⁴⁶ and
- Schedule 5—proposes exemption of the National Redress Scheme from age discrimination law.⁴⁷

Similarity to Commonwealth Redress Scheme bills

1.29 The National Redress Bill and the National Consequential Bill are significantly similar in content to the preceding Commonwealth Redress Bill and Commonwealth Consequential Bill.

1.30 As those preceding bills were examined in detail in a previous inquiry, the committee has limited its examination in this inquiry to provisions of the bills which are entirely new, have been subject to a significant change (i.e. more than a formatting or minor text change), or have been the subject of continued debate or concern among submitters.

Financial impact

1.31 The Australian Government committed \$33.4 million in the 2017–18 Budget to establish the National Redress Scheme. In the 2017–18 Mid-Year Economic and Fiscal Outlook, a further \$57.4 million was included over the forward estimates to support the operation of the Scheme, including funding for Redress Support Services

43 National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (National Consequential Bill), schedule 1.

44 National Consequential Bill, schedule 2.

45 National Consequential Bill, schedule 3.

46 National Consequential Bill, schedule 4.

47 National Consequential Bill, schedule 5.

to assist applicants to the Scheme. The remaining funding is not for publication due to legal sensitivities.⁴⁸

1.32 During the previous inquiry, the Department informed the committee that the then-current estimate for the total cost of operation for the Scheme was \$3.8 billion, which included both redress payments and the administration costs.⁴⁹

Reports of other committees

1.33 The National Redress Bill and the National Consequential Bill had not been considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) or the Parliamentary Joint Committee on Human Rights (Human Rights committee) before the reporting date.

1.34 The consideration of the previous Commonwealth Redress Scheme bills by the Scrutiny committee and the Human Rights committee was outlined and discussed in detail in the committee's report into those bills.⁵⁰

Structure of this report

1.35 This report is structured in two chapters:

- This chapter is an introductory chapter which provides an overview of the National Redress Scheme, including background information about the committee's previous inquiry into bills for a Commonwealth Redress Scheme, as well as administrative details.
- Chapter 2 discusses the operation and administration of the proposed National Redress Scheme; changes from the previously proposed Commonwealth Redress Scheme; and support for, and concerns raised about, the provisions of the bills.

Conduct of the inquiry

1.36 On 10 May 2018, the Minister for Social Services, the Hon. Dan Tehan MP, introduced the bills in the House of Representatives.

1.37 Also on 10 May 2018, pursuant to the adoption of the Selection of Bills Committee report, the bills were referred to the committee for inquiry and report by 15 June 2018, contingent on their introduction into the House of Representatives.⁵¹

1.38 The committee advertised the inquiry on its website and invited submissions by 1 June 2018. Submissions continued to be accepted after this date.

48 Explanatory Memorandum, p. 4; *Mid-Year Economic and Fiscal Outlook 2017–18*, p. 177.

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

50 Commonwealth Redress Scheme Bills Report, pp. 9–10.

51 Senate Selection of Bills Committee, *Report No. 5 of 2018*, p. 3 and Appendix 4.

1.39 The committee received 40 public submissions which were published on the committee's website. One further submission was accepted as confidential. Submissions received are listed at Appendix 1 of this report.

Acknowledgements

1.40 The committee would like to thank the organisations and individuals who have provided submissions to this inquiry. In particular, the committee acknowledges the bravery of those survivors who have made submissions.

