

The Senate

Community Affairs
Legislation Committee

National Redress Scheme for Institutional Child
Sexual Abuse Bill 2018 [Provisions]

National Redress Scheme for Institutional Child
Sexual Abuse (Consequential Amendments)
Bill 2018 [Provisions]

June 2018

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Secretariat

Ms Jeanette Radcliffe (Committee Secretary)

Ms Hannah Dibley (Senior Research Officer)

Ms Kathleen McGarry (Acting Senior Research Officer)

Ms Carol Stewart (Administrative Officer)

PO Box 6100
Parliament House
Canberra ACT 2600

Phone: 02 6277 3515

Fax: 02 6277 5829

E-mail: community.affairs.sen@aph.gov.au

Internet: www.aph.gov.au/senate_ca

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45th Parliament

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ABBREVIATIONS

CECFW	Centre for Excellence in Child and Family Welfare
COAG	Council of Australian Governments
Committee	Community Affairs Legislation Committee
Commonwealth Consequential Bill	Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017
Commonwealth Redress Bill	Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017
Commonwealth Redress Scheme	Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse
Commonwealth Redress Scheme Bills Report	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]'
Constitution	Australian Constitution
Department	Department of Social Services
Explanatory Memorandum	National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, Explanatory Memorandum
Government Response	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]
Human Rights Committee	Parliamentary Joint Committee on Human Rights
Intergovernmental Agreement	Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse
National Consequential Bill	National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018
National Redress Bill	National Redress Scheme for Institutional Child Sexual Abuse Bill 2018

National Redress Scheme	National Redress Scheme for Survivors of Institutional Child Sexual Abuse
NSW	New South Wales
Operator	National Redress Scheme Operator
Royal Commission	Royal Commission into Institutional Child Sexual Abuse
Royal Commission Report	Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report'
SASS	Sexual Assault Support Service
Scheme	National Redress Scheme for Survivors of Institutional Child Sexual Abuse
Scrutiny committee	Senate Standing Committee for the Scrutiny of Bills
Senate Budget Estimates	Budget Estimates 2018–19
Survivors	Survivors of institutional child sexual abuse
VACCA	Victorian Aboriginal Child Care Agency
VALS	Victorian Aboriginal Legal Service

LIST OF RECOMMENDATIONS

Recommendation 1

2.166 The committee recommends these bills be passed.

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.

Chapter 2

Key issues

2.1 This chapter outlines the provisions of 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) in more detail, discusses concerns raised by submitters, and presents the views of the Community Affairs Legislation Committee (committee).

2.2 As discussed in Chapter 1, the bills under examination are significantly similar to the preceding Commonwealth Redress Scheme bills—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).

2.3 The committee notes that the changes in the National Redress Bill from the previous Commonwealth Redress Bill can largely be categorised as follows:

- (a) New provisions and minor updates to existing provisions reflecting the now-national nature of the Scheme proposed, including provisions relating to participating jurisdictions and the referral of constitutional powers from the states.
- (b) New provisions and minor updates to existing provisions relating to the psychological and counselling services available under the scheme, reflecting the introduction of a psychological and counselling services payment as an alternative access mechanism to these services for survivors.
- (c) Other new provisions, or provisions otherwise significantly altered from the Commonwealth Redress Bill, relating to:
 - (i) the eligibility of survivors for redress, including those survivors with criminal convictions or who are subject to security notices;
 - (ii) the participation of institutions in the Scheme, including groups of institutions and defunct institutions;
 - (iii) timeframes for production of documents, acceptance of offers and requests for review;
 - (iv) the role of nominees;
 - (v) funding and financial matters, including funders of last resort; and
 - (vi) other administrative aspects of the Scheme, including the National Redress Scheme Rules, annual reporting and reviews.
- (d) Changes in chapter, part or section numbers following reordering of existing, or inclusion of new, provisions in the bill, and minor text changes related to this reordering.

- (e) Other minor text changes which do not change the intent or operation of a provision, such as restructuring a paragraph into bullet points or updating the title of the bill.

2.4 The committee also notes that the National Consequential Bill is identical to the previous Commonwealth Consequential Bill except for the addition of two new schedules (schedules 4 and 5) and minor text changes to reflect the new bill title.

2.5 The committee has focused its examination largely on those parts of the National Redress Bill and the National Consequential Bill which are entirely new, have been subject to a significant change or have otherwise been subject of continued debate or concern among submitters since their introduction in the previous Commonwealth Redress Scheme bills.

Establishing the National Redress Scheme

2.6 The National Redress Scheme will commence on 1 July 2018¹ and will be operated by the Department of Social Services (Department), with the Secretary of the Department acting as the Scheme Operator (Operator).²

2.7 At the committee's Budget Estimates 2018–19 (Senate Budget Estimates) hearing on 1 June 2018, the Department told the committee that all aspects of service delivery are in place for this commencement date, pending the Commonwealth Parliament passing the legislation. Furthermore, the Department noted that any changes to the bills proposed would require renegotiation with states and territories, as well as non-government organisations, and would prevent the Scheme commencing on 1 July 2018.³

2.8 The National Redress Bill sets out several guiding principles for the actions of the Operator and other officers of the Scheme. These include that:

- redress should be survivor-focused; and
- redress should be assessed, offered and provided:
 - with appropriate regard to:
 - what is known about the impact and nature of child sexual abuse, particularly institutional child sexual abuse;
 - the cultural needs of survivors; and
 - the needs of particularly vulnerable survivors;
 - in a way that avoids, as far as possible, further harm or trauma to the survivor; and

1 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.

2 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (National Redress Bill), cl. 2 and 9.

3 Ms Kathryn Campbell CSC, Secretary, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 80–81.

- in a way that protects the integrity of the Scheme.⁴

2.9 Submissions made to the committee were broadly positive and supportive of the establishment of a National Redress Scheme and its survivor-focused intent. While some organisations have raised concerns regarding aspects of the bills, most have expressed views that the Scheme is an important step towards reparation for the abuse suffered by children while in the care of institutions.⁵

2.10 The committee notes the significant updates, discussed below, which have been made to the bills for the National Redress Scheme in order to better meet the Scheme's guiding principles and to enable the Scheme to commence on time.

Participating institutions, groups and jurisdictions

2.11 The role of participating states, territories, and institutions is crucial to the provision of redress to survivors under the National Redress Scheme and underpins much of its function.

2.12 Chapter 5 of the National Redress Bill sets out how institutions and jurisdictions participate in the Scheme. Since the introduction of the Commonwealth Redress Bill, the provisions of this chapter have been amended to reflect the now-national application of the Scheme. The provisions relating to the opt-in of states to the Scheme were discussed in Chapter 1 of this report.

2.13 For a survivor to be eligible for redress under the Scheme, a participating institution must be responsible for their abuse. All institutions participating in the Scheme will fall into, and will be subject to rules made for, one of the following categories: Commonwealth institutions, participating state institutions, participating territory institutions, and participating non-government institutions.⁶ An institution becomes a participating institution, or ceases to be a participating institution, by declaration by the Minister; however, all Commonwealth institutions are participating institutions automatically.⁷

2.14 The National Redress Bill includes new provisions setting out the participation of defunct institutions,⁸ lone institutions (non-government institutions not participating as part of a group),⁹ and groups of institutions.¹⁰

4 National Redress Bill, sub cl. 10. The final principle, relating to integrity, was not included in the Commonwealth Redress Bill.

5 For example: Australian Lawyers Alliance, *Submission 2*; Victorian Aboriginal Legal Service (VALS), *Submission 3*; Anglicare Australia, *Submission 6*; Centre for Excellence in Child and Family Welfare (CECFW), *Submission 10*; Australian Human Rights Commission, *Submission 23*; Bravehearts Foundation, *Submission 33*; among others.

6 National Redress Bill, cl. 108–114.

7 National Redress Bill, cl. 115, 116.

8 National Redress Bill, cl. 117–123.

9 National Redress Bill, cl. 124–131.

10 National Redress Bill, cl. 132–141.

Participating and non-participating defunct institutions

2.15 Submitters raised a small number of concerns about the new provisions governing defunct institutions.

2.16 The National Redress Bill provides that a defunct institution can participate in the Scheme, and that a nominated representative for that institution is subject to any obligation or liability imposed on the institution under the Scheme.¹¹ However where an institution is defunct and does not have a representative, it may instead be listed as a defunct institution for one or more jurisdictions. If a jurisdiction's government institution is equally responsible with the defunct institution for the abuse of a survivor, that jurisdiction is subject to funder of last resort provisions,¹² detailed further in this chapter.

2.17 Submitters have raised concerns about survivors whose abuse in a defunct institution was not the equal responsibility of a jurisdiction, noting that these survivors will not be eligible under the Scheme as written.¹³ The submission from Australian Government Departments explained that the National Redress Bill 'provides a clear mechanism to allow existing institutions to take responsibility for defunct institutions, therefore maximising participation in the Scheme'.¹⁴ Furthermore, the Australian Government response to the committee's previous inquiry (Government Response) noted in response to a recommendation from Australian Labor Party Senators about defunct institutions:

The Commonwealth, state and territory governments have agreed that the 'funder of last resort' arrangements should only apply where the respective government had some very real responsibility for the abuser having contact with the child. The Australian Government does not have power to act as 'funder of last resort' for non-government institutions where there is no level of responsibility or link to a constitutional limb.¹⁵

Encouraging institutions to join the Scheme

2.18 At the date of reporting, six major non-government organisations had announced their commitment to join the National Redress Scheme: the Catholic

11 National Redress Bill, cl. 117–123.

12 National Redress Bill, cl. 164.

13 CECFW, *Submission 10*, [p. 2]; Maurice Blackburn Lawyers, *Submission 29*, p. 10; knowmore legal service, *Submission 20*, p. 8; Alliance for Forgotten Australians, *Submission 13*, p. 2; Victorian Aboriginal Child Care Agency (VACCA), *Submission 40*, pp. 4, 11.

14 Australian Government Departments, *Submission 1*, p. 11.

15 *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]* (Government Response), May 2018, p. 10.

Church, the Anglican Church, the Uniting Church, the Salvation Army, YMCA and Scouts Australia.¹⁶

2.19 Several submissions recommended that non-government institutions be given greater encouragement to join the National Redress Scheme.¹⁷ The Australian Lawyers Alliance recommended that the charitable status of non-government institutions be linked to their participation in the Scheme,¹⁸ while the Law Council of Australia recommended that a right of review for participating institutions may '[enhance] institutional faith in the integrity of the Scheme';¹⁹ this recommendation is discussed later in this chapter.

2.20 In its *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]* Report (Commonwealth Redress Scheme Bills Report), the committee also recommended that:

...the Australian Government should consider reducing the two-year deadline for institutions to opt in to the Redress Scheme, and should consider options to encourage greater participation in the Redress Scheme...²⁰

2.21 The Australian Government responded to this recommendation with partial agreement, noting that non-government institutions are being encouraged to participate and that the two-year deadline for participating institutions:

...balances the need to provide survivors certainty that institutions are participating in the Scheme, with the need to provide non-government institutions adequate time to ensure they have the appropriate processes in place to be able to participate in the Scheme.²¹

2.22 The committee commends those non-government organisations which have joined the National Redress Scheme to date, and encourages other non-government organisations to join the Scheme.

16 Department of Social Services, *National Redress Scheme for people who have experienced institutional child sexual abuse*, <https://www.dss.gov.au/national-redress-scheme-for-people-who-have-experienced-institutional-child-sexual-abuse> (accessed 31 May 2018).

17 Anglicare Australia, *Submission 6*, p. 4; Australian Lawyers Alliance, *Submission 2*, p. 6; Law Council of Australia, *Submission 18*, p. 14.

18 Australian Lawyers Alliance, *Submission 2*, p. 6.

19 Law Council of Australia, *Submission 18*, p. 14.

20 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, p. 91.

21 Government Response, p. 4.

Entitlement, eligibility and scope

2.23 Part 2-2 of the National Redress Bill makes provisions for entitlement and eligibility for redress under the National Redress Scheme, as well as defining when abuse is within the scope of the scheme and when institutions are responsible for abuse. While this part of the bill is largely unchanged from the Commonwealth Redress Bill, the following amendments have been made:

- (a) Clarification about what abuse is in the scope of the Scheme, reflecting its new national nature.²²
- (b) Clarification of what redress is provided to a person, reflecting the introduction of a payment for psychological and counselling services.²³
- (c) The introduction of two new eligibility criteria which require that the redress which would be payable under the Scheme's assessment framework for the kind of abuse be more than nil;²⁴ and that one or more participating institutions are responsible for the abuse.²⁵
- (d) The introduction of new provisions that person is entitled or not entitled to redress, or that their abuse is within scope or not within scope of the Scheme, if prescribed by rule.²⁶ These provisions mirror existing provisions about prescription of rules relating to eligibility²⁷ and are discussed below.
- (e) A new clause relating to the responsibility of institutions for abuse, which has been significantly updated from the Commonwealth Redress Bill²⁸ and is also discussed below.

2.24 Additionally, Chapter 3 of the National Redress Bill sets out special rules to deal with entitlement and eligibility in exceptional cases. While provisions relating to circumstances where an applicant dies before a determination is made or an offer accepted²⁹ are mostly unchanged from the Commonwealth Redress Bill, new clauses have been introduced which:

22 National Redress Bill, sub cl. 14(1).

23 National Redress Bill, sub cl. 16(1) and (3).

24 National Redress Bill, para. 13(1)(c).

25 National Redress Bill, para. 13(1)(d). See also: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Commonwealth Redress Bill), para. 17(d).

26 National Redress Bill, sub cl. 12(3) and (4); 14(2) and (3).

27 National Redress Bill, sub cl. 13(2) and (3).

28 National Redress Bill, cl. 15. See also: Commonwealth Redress Bill, cl. 21.

29 National Redress Bill, cl. 58, 59 and 60.

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- (a) Make survivors whose abuse occurred in a non-participating state eligible for redress if a Commonwealth or participating territory institution is responsible.³⁰
 - (b) Apply special assessment for survivors with serious criminal convictions.³¹
 - (c) Make survivors not entitled to redress if they are subject to a security notice currently in force from the Home Affairs or Foreign Affairs Minister.³²

2.25 The new provisions relating to criminal convictions and security notices are also discussed in detail below.

Kinds of abuse and excluding non-sexual child abuse

2.26 The exclusion of other forms of non-sexual child abuse—such as physical, psychological, emotional and cultural abuse—from the Scheme was raised in the previous inquiry³³ and remained a key theme through a number of submissions to this inquiry.³⁴

2.27 In introducing the National Redress Scheme bills into the House of Representatives, the Minister explained that:

While a person must have suffered sexual abuse to be eligible, the scheme will also acknowledge related non-sexual abuse, for example physical abuse. Sexual abuse rarely occurs in isolation and it is important to deal with the whole of the survivor's experience.³⁵

2.28 The committee refers to its discussion of this issue in its Commonwealth Redress Scheme Bills Report³⁶ and wishes to reiterate its comments. The committee acknowledges the concerns of members of the Forgotten Australians and Stolen Generations, as well as other survivors of physical, psychological, emotional and cultural abuse in care, about their ineligibility for redress under the proposed National Redress Scheme.

2.29 The committee is strongly supportive of the establishment of the National Redress Scheme to address historic cases of institutional child sexual abuse and remains of the view that the impacts of non-sexual abuse, although not addressed by

30 National Redress Bill, cl. 61.

31 National Redress Bill, cl. 63.

32 National Redress Bill, cl. 64–71.

33 Commonwealth Redress Scheme Bills Report, 28 March 2018, pp. 31–34.

34 See: Alliance for Forgotten Australians, *Submission 13*; CECFW, *Submission 10*; Tuart Place, *Submission 14*; Ryan Carlisle Thomas, *Submission 16*; Care Leavers Australasia Network, *Submission 31*; Ms Ellen Bucello, *Submission 30*; Mr Frank Golding, *Submission 9*.

35 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3.

36 Commonwealth Redress Scheme Bills Report, p. 34.

the Scheme, still require thought and focus from all levels of government and Australian society in general.

Rules to determine entitlement and eligibility

2.30 Clauses 12, 13 and 14 of the National Redress Bill each include provisions that allow entitlement, eligibility or scope to be determined by rule respectively.

2.31 A number of submitters to this inquiry, as well as witnesses and submitters to the previous inquiry, have criticised the use of rules in the National Redress Scheme.³⁷ Submitters either expressed concern that the rules are not currently available for scrutiny,³⁸ or otherwise recommended that all matters to be contained in rules should be included in the primary legislation.³⁹

2.32 The committee made a recommendation in its Commonwealth Redress Scheme Bills Report that:

...the Department should ensure that planned consultations on the rules of the Redress Scheme include survivors' representative groups, and ensure information on rules is communicated as it becomes available.⁴⁰

2.33 The Government agreed with this recommendation, noting in its response that both the Government and the Department have consulted with representatives of survivor groups in developing the National Redress Bill and rules.⁴¹

2.34 The submission from Australian Government Departments explained that the rules cannot be tabled before the National Redress Bill passes the Parliament and receives assent.⁴² However, in response to this recommendation and noting concerns about the content of the rules, the Department has developed a 'fact sheet' explaining how the rule making powers in the National Redress Bill are intended to be exercised. This fact sheet was provided in the submission from Australian Government Departments and outlines the key policies proposed for the rules.⁴³

2.35 Additionally, the Explanatory Memorandum for the National Redress Bill (Explanatory Memorandum) notes that the use of rules allows for flexibility and timeliness in the operation of the Scheme:

The need to respond quickly to survivor needs is a key feature of the Scheme as many survivors have waited decades for recognition and justice. The use of rules rather than regulations provides the necessary flexibility to

37 Australian Human Rights Commission, *Submission 23*; Law Council of Australia, *Submission 18*; CECFW, *Submission 10*; Relationships Australia, *Submission 15*. See also: Commonwealth Redress Scheme Bills Report, pp. 23–27.

38 Australian Human Rights Commission, *Submission 23*; Relationships Australia, *Submission 15*.

39 Law Council of Australia, *Submission 18*, p. 11.

40 Commonwealth Redress Scheme Bills Report, p. 92.

41 Government Response, p. 4.

42 Australian Government Departments, *Submission 1*, p. 4.

43 Australian Government Departments, *Submission 1*, Attachment A.

respond more quickly to unforeseen factual matters as they arise, because rules can be adapted and modified more quickly than regulations or Acts. Prescribing in the Bill or rules that a person is eligible under the Scheme confers a benefit on a survivor to receive redress quickly...There may be classes of survivors that the Scheme has not, or could not, envisage [sic] to include in the Bill, whom can be accommodated via this rule making power. This ensures participating institutions are able to provide redress to all survivors of abuse for which the institution is responsible.⁴⁴

Rules for non-citizens and child migrants

2.36 One of the criteria for eligibility for the Scheme is that the survivor is either an Australian citizen or an Australian permanent resident. Some submitters to the inquiry were concerned that this will mean that former child migrants, who may not be Australian citizens, or children who were abused in Australian immigration detention centres, are excluded from the Scheme.⁴⁵ These concerns were discussed in the Commonwealth Redress Scheme Bills Report.⁴⁶

2.37 The Explanatory Memorandum states that rules may be prescribed to allow people with other citizenship status, including former child migrants who are no longer residing in Australia, or children abused in Australian institutional settings outside Australia who are not citizens or permanent residents, to apply.⁴⁷

2.38 In response to the recommendation by Australian Labor Party Senators in the previous inquiry that all survivors, including those who do not live in Australia, be eligible for redress, the Government clarified that:

With regard to the eligibility of survivors who do not live in Australia, only people who are Australian citizens or permanent residents will be able to apply for redress. This is in line with other government entitlements. Non-citizens and non-permanent residents will be ineligible to ensure the integrity of the Scheme.⁴⁸

2.39 The committee notes submitters' concerns about the use of delegated legislation to determine eligibility and entitlement for redress under the National Redress Scheme. However, the committee is satisfied that the prescription of rules is appropriate to achieve flexibility and timeliness in the Scheme.

44 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, Explanatory Memorandum ([Explanatory Memorandum](#)), p. 21.

45 Australian Human Rights Commission, *Submission 23*, p. 6; Australian Lawyers Alliance, *Submission 2*, pp. 7–11; Law Council of Australia, *Submission 18*, p. 10; Maurice Blackburn Lawyers, *Submission 29*, pp. 3–4.

46 Commonwealth Redress Scheme Bills Report, pp. 34–37.

47 Explanatory Memorandum, pp. 7–8.

48 Government Response, p. 9.

When is an institution responsible for abuse?

2.40 During the committee's inquiry into the Commonwealth Redress Scheme bills, several submitters raised concerns about how institutions would be found to be responsible for abuse under the Scheme.⁴⁹

2.41 Clause 15 of the National Redress Bill sets out when an institution participating in the Scheme is responsible for abuse. An institution is responsible for a survivor's abuse (whether participating in the Scheme or not) if it was primarily responsible or equally responsible for an abuser having contact with that survivor.

2.42 This clause is substantially similar to the corresponding clause in the Commonwealth Redress Bill, but has been updated as follows:

- (a) 'Primarily responsible' and 'equally responsible' have now been more clearly defined.⁵⁰
- (b) The circumstances that might be relevant for determining the institutions responsibility are more detailed in relation to responsibility for care, custody, legal guardianship and placement of the child into the institution.⁵¹

2.43 Additionally, the Explanatory Memorandum sets out a number of circumstances where the Operator will determine by rule that an institution is responsible, or not responsible, from the start of the Scheme. These include situations where a government institution had parental responsibility for the child, or the child was a state ward, and the abuse occurred while the child was in the care of a non-government institution; where a survivor's abuse was connected with their membership of a defence cadet unit provided for by Commonwealth legislation; or where the only connection between a government institution and a survivor's abuse was that it regulated or funded the responsible institution, or that the responsible institution was established by or under the law of the relevant government.⁵²

2.44 The Explanatory Memorandum notes that the rule-making power in this clause will ensure that institutions that should be responsible are held responsible, but that institutions are not found responsible in unreasonable circumstances.⁵³

Special assessment for survivors with serious criminal convictions

2.45 During the committee's inquiry into the Commonwealth Redress Scheme bills, the Australian Government had indicated that applicants with criminal convictions may be excluded from the Scheme by way of rule. The committee

49 Commonwealth Redress Scheme Bills Report, pp. 18–20.

50 National Redress Bill, sub cl. 15(2) and (3).

51 National Redress Bill, para. 15(4)(a)–(c). See also: Commonwealth Redress Bill, para. 12(3)(c).

52 Explanatory Memorandum, pp. 24–25.

53 Explanatory Memorandum, p. 25.

received a wide range of evidence from submitters and witnesses relating to this proposed exclusion and made a detailed consideration in its report,⁵⁴ recommending:

...in finalising the position on the exclusion of serious criminal offenders from the Redress Scheme, the Australian, state and territory governments should consider the value of the Redress Scheme as a tool for the rehabilitation of offenders, and that excluding criminal offenders can have the unintended consequence of institutions responsible for child sexual abuse not being held liable.⁵⁵

2.46 The Australian Government agreed with this recommendation.⁵⁶

2.47 The National Redress Bill introduces a new special assessment for applicants with serious criminal convictions. A person is not entitled to redress if they have been sentenced to imprisonment for 5 years or longer for an offence against a state, territory, Commonwealth or foreign law, unless the Operator determines otherwise.⁵⁷ The Minister described that this limitation is in order to 'maintain integrity and public confidence in the Scheme', but noted that a special assessment of survivors with these convictions would 'ensure the scheme retains flexibility and is able to meet prevailing community standards'.⁵⁸

2.48 Where the Operator becomes aware of a survivor's sentence, they must seek advice from a relevant Attorney-General or other nominated official about that offence and whether providing that survivor with redress would not:

- (a) bring the Scheme into disrepute; or
- (b) adversely affect public confidence in, or support of, the Scheme.⁵⁹

2.49 The Operator may then determine that a survivor is not prevented from being entitled to redress if they are satisfied that providing the survivor with redress would not result in either of the above conditions. The Operator must take into consideration the nature of the offence, length of sentence, length of time since the offence, the survivor's rehabilitation, any other relevant information and, with a greater weight, advice from the relevant jurisdiction.⁶⁰

2.50 Submissions received in this inquiry have criticised the limitations placed on survivors with criminal convictions accessing the Scheme, with many organisations making similar arguments to those raised in the previous inquiry about the relationship

54 Commonwealth Redress Scheme Bills Report, pp. 38–46.

55 Commonwealth Redress Scheme Bills Report, Recommendation 9, p. 94.

56 Government Response, p. 7.

57 National Redress Bill, sub cl. 63(1) and (2).

58 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3.

59 National Redress Bill, sub cl. 63(3) and (4).

60 National Redress Bill, sub cl. 63(5), (6) and (7).

between abuse and later criminality.⁶¹ However, a number of submitters have also praised the Government's approach in these provisions, supporting assessment of individual cases by the Operator and Independent Decision Makers.⁶²

2.51 The Department has confirmed that assessment of applicants with a serious criminal conviction is:

...a decision of all governments and balances the need for the scheme to recognise the impact that childhood abuse can have on a person's life with the need to ensure the scheme is not brought into disrepute.⁶³

Survivors subject to security notices

2.52 The National Redress Bill also introduces restrictions on entitlement for redress where a survivor is subject to a security notice from either the Home Affairs Minister (where a person's visa has been cancelled on security grounds, where a redress payment may be used to prejudice the security of Australia or a foreign country) or the Foreign Affairs Minister (where the minister refuses to issue, or cancels, an Australian travel document for reasons relating to harmful conduct).⁶⁴

2.53 The National Redress Bill sets out some administrative provisions relating to these security notices, including that:

- (a) Notices should be given to the Operator and to the Secretary of the Human Services Department, are in force until revoked, will be subject to annual review, and may be revoked by written notice.⁶⁵
- (b) Where a survivor becomes subject to a security notice:
 - (i) after making an application and before an offer has made, the application is taken to be withdrawn;
 - (ii) after an offer is made but before an offer is accepted, declined or withdrawn, the offer is taken to be withdrawn.⁶⁶

2.54 The Explanatory Memorandum notes that restricting entitlement to redress in this way ensures that people:

...assessed to be engaged in politically motivated violence overseas, fighting or actively supporting extremist groups, or...likely to engage in

61 VALS, *Submission 3*; Sexual Assault Support Service (SASS), *Submission 11*; Blue Knot Foundation, *Submission 12*; VACCA, *Submission 40*; National Aboriginal and Torres Strait Islander Legal Service, *Submission 39*; Waller Legal, *Submission 38*; People With Disability Australia, *Submission 28*; Australian Psychological Society, *Submission 17*; Royal Australian and New Zealand College of Psychiatrists, *Submission 21*; among others.

62 See, for example, Relationships Australia, *Submission 15*, p. 5.

63 Ms Campbell, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 81.

64 National Redress Bill, cl. 65, 66.

65 National Redress Bill, cl. 67, 68, 69, 70.

66 National Redress Bill, cl. 71.

conduct that might prejudice the security of Australia or a foreign country, would not be entitled to redress under the Scheme.⁶⁷

2.55 Some submitters told the committee that while they note the security risk of providing monetary redress to certain people, these security risks do not negate the impact of abuse, and that non-monetary aspects could still be made available to these survivors.⁶⁸ Relationships Australia further proposed that access to counselling and psychological services could include countering violent extremism.⁶⁹

2.56 The submission from Australian Government Departments explained that 'not every person whose passport or visa has been refused or cancelled would lose access to redress', but that the provisions would apply in cases where justified on security grounds, and that these arrangements align with Australia's existing counter-terrorism legislative framework, mirroring legislation relating to social security payments.⁷⁰

2.57 The committee is satisfied that these provisions, as well as those relating to survivors with criminal convictions, which have been proposed and agreed by the state, territory and Commonwealth governments, will balance the need for fair and equitable access to redress for all survivors while maintaining public confidence in the Scheme.

Applying for and accepting offers of redress

2.58 The National Redress Bill sets out a number of provisions which outline how to obtain redress under the Scheme, how redress is determined, how offers of redress are made and accepted, the provision of redress, and reviews of determinations.

Applications for redress

2.59 The committee notes that the application process set out in the National Redress Bill differs from the process provided in the Commonwealth Redress Bill in a number of respects.

2.60 Clause 19 sets out the requirements that must be included in an application for redress. These requirements are substantially similar to the previous bill, but now also include a requirement that an application specifies where the person lives. Some submitters have observed that the new requirement that an application specify 'where the person lives',⁷¹ if requiring a residential street address, may have unintended impacts on the ability for homeless survivors to apply to the Scheme.⁷²

67 Explanatory Memorandum, p. 55.

68 Australian Human Rights Commission, *Submission 23*, p. 11; Relationships Australia, *Submission 15*, p. 6.

69 Relationships Australia, *Submission 15*, p. 6.

70 Australian Government Departments, *Submission 1*, p. 10.

71 National Redress Bill, para. 19(2)(b).

72 knowmore legal service, *Submission 20*, p. 3; VALS, *Submission 3*, [p. 2]; Bravehearts Foundation, *Submission 33*, [p. 2].

2.61 Clause 20 is new to the National Redress Bill and provides that an application cannot be made to the Scheme if the survivor has already made an application to the Scheme, is subject to a security notice, or is a child who will not turn 18 before the Scheme sunset date. An application also cannot be made if the survivor is in gaol or if it is made in the 12 months before the Scheme sunset date, but the Operator may determine in those instances that there are exceptional circumstances justifying an application being made.

Single application to the Scheme

2.62 A number of submitters reiterated their concerns from the previous inquiry that only allowing a single application to the Scheme could have unintended negative consequences for survivors, particularly where a survivor applies before all responsible institutions sign up to the Scheme, or the survivor later recalls abuse which they did not include in their application.⁷³

2.63 The Australian Government did not agree to the recommendation by Australian Labor Party Senators in the previous inquiry that the number of applications survivors are permitted to submit be reconsidered. The Government Response explained that with only a single application permitted:

...a survivor will only need to disclose their experiences of child abuse in one application, it will provide the opportunity for the survivor to receive closure after a potentially traumatic, but singular, application process. The Royal Commission recommended that survivors should not have to make multiple applications if they were abused in multiple institutions, to achieve equal or fair treatment between survivors.⁷⁴

2.64 Additionally, at Senate Budget Estimates, the Department informed the committee that in order to support a single application from each survivor, applications will be accepted even if an organisation has yet to opt into the Scheme and that the survivor will be contacted 'by a real person' to explain the status of their application. Applicants will also be contacted and supported at each step of the process.⁷⁵

Incarcerated survivors

2.65 Submitters to the inquiry have disagreed with introduction of a new restriction on incarcerated survivors being able to apply Scheme.⁷⁶ However, the Minister noted

73 knowmore legal service, *Submission 20*; Blue Knot Foundation, *Submission 12*; Relationships Australia, *Submission 15*. See also: Commonwealth Redress Scheme Bills Report, pp. 44–46.

74 Government Response, p. 10.

75 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 86, 87, 97.

76 VALS, *Submission 3*; SASS, *Submission 11*; Blue Knot Foundation, *Submission 12*; Australian Human Rights Commission, *Submission 23*; knowmore legal service, *Submission 20*; Tuart Place, *Submission 14*; Shine Lawyers, *Submission 19*; among others.

that such a restriction is necessary as it will not be possible 'to deliver many aspects of the scheme to incarcerated survivors'.⁷⁷

2.66 The submission from Australian Government Departments further explained that there are 'risks associated with the confidentiality of applicants in a closed institutional setting such as a prison which may lead to health and safety risks to vulnerable people'.⁷⁸

2.67 Operator discretion to accept an application from an incarcerated person in exceptional circumstances, such as if the applicant is likely to remain in gaol until after the Scheme sunset date, has been positively received by submitters.⁷⁹

Child applicants

2.68 The Commonwealth Redress Bill allowed all children to apply to the Scheme, however during the committee's previous inquiry, as well as during Australian Government consultation with jurisdictions, concerns were raised that legal protections for these child applicants were not sufficient, that a child may not fully understand their rights, and that the full impact of a child's abuse may not be realised until much later in their life.⁸⁰

2.69 The National Redress Bill now provides that only those child survivors who turn 18 before the Scheme sunset date are able to make an application to the Scheme. It also allows the Operator to make rules about the process for those applications. The Explanatory Memorandum explains how the application process will operate for this cohort:

Children who will turn 18 throughout the life of the Scheme may apply for redress; however, their application will not be determined until they reach 18 years of age. This will allow the Scheme to request information from the responsible institution(s) at the time of the application to ensure the information is current, especially in the circumstance where the responsible institution may go defunct before the claim can be determined. Once the child reaches 18, the survivor can choose to proceed with their application, withdraw their application and reapply, or withdraw their application completely. Those child survivors who are waiting for their redress application to be determined will have access to the Scheme's support services throughout this period.⁸¹

2.70 The Explanatory Memorandum notes that for child survivors who will not turn 18 before the Scheme sunset date, those children and their families will still be

77 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3.

78 Australian Government Departments, *Submission 1*, p. 8.

79 Relationships Australia, *Submission 15*, p. 5; knowmore legal service, *Submission 20*, pp. 3–4.

80 Australian Government Departments, *Submission 1*, p. 7; Commonwealth Redress Scheme Bills Report, pp. 77–78.

81 Explanatory Memorandum, p. 29.

able to access the Scheme's legal support services 'in order to consider the child's legal rights, particularly if civil litigation may be a viable alternative'.⁸²

2.71 The committee welcomes the updates to the National Redress Scheme to protect children who wish to apply to the Scheme. The committee also notes that the provisions relating to child applicants, as well as applicants in gaol, will be subject to review, as discussed later in this chapter.

Obtaining information for the purpose of determining an application

2.72 A number of concerns were raised during the committee's previous inquiry about the 14-day timeframe for producing information requested by the Operator for the purpose of determining an application.⁸³ The committee made a recommendation in its Commonwealth Redress Scheme Bills Report, part of which recommended that:

...in developing the minimum timeframes in the Redress Scheme, for the provision of documents...the Department should consider the special circumstances of survivors in remote communities, those with functional communication barriers and survivors experiencing trauma or mental health episodes linked to their abuse.⁸⁴

2.73 Clauses 24 and 25 in the National Redress Bill provide that the production period for documents must be at least four weeks if the Operator considers the application urgent, or eight weeks otherwise. The person or institution subject to the request may also request to extend this production period.⁸⁵ This update to the timeframe for production of documents has been praised by submitters.⁸⁶

2.74 The Commonwealth Redress Bill contained a provision where a refusal or failure to comply with a request for the production of documents would have attracted a civil penalty and there had been concerns raised in the previous inquiry this could have unintended negative consequences for survivors.⁸⁷ The committee notes that this provision has been removed from the National Redress Bill.

2.75 Furthermore, the National Redress Bill now makes clear that the Operator is not required to make a determination until information is received from an applicant, but that an application may be progressed or a determination made if information is not provided, or not provided on time, from a participating institution.⁸⁸ This clarification was previously contained in the Explanatory Memorandum, but not the provisions, of the Commonwealth Redress Bill.⁸⁹

82 Explanatory Memorandum, p. 27.

83 Commonwealth Redress Scheme Bills Report, pp. 46–51.

84 Commonwealth Redress Scheme Bills Report, p. 94.

85 National Redress Bill, cl. 24(6),(7) and 25(5)–(8).

86 Law Council of Australia, *Submission 18*, p. 6; knowmore legal service, *Submission 20*, p. 4.

87 Commonwealth Redress Bill, cl. 71; Commonwealth Redress Scheme Bills Report, pp. 49–50.

88 National Redress Bill, cl. 26.

89 Commonwealth Redress Scheme Bills Report, p. 48.

2.76 The National Redress Bill also introduces a new civil penalty for providing false or misleading documents, information or statements to the Scheme. The Explanatory Memorandum states that:

This civil penalty is justified to ensure that Scheme is adequately protected against the risk of fraudulent applications. Large volumes of false claims from organised groups could overwhelm the Scheme's resources and delay the processing of legitimate applications....Should the Scheme not safeguard against potential fraud, institutions may choose not to participate, or may seek to leave the Scheme, leaving legitimate survivors unable to access redress from those institutions. The level of the penalty is sufficiently high to support the principle of deterrence, and ensure that applications made to the Scheme are legitimate and appropriate.⁹⁰

2.77 However, some submitters have raised concerns about whether this provision, and the implication that there is going to be organised fraud in the Scheme, could make survivors nervous about making applications and not being believed and may not meet the Scheme's goal of being survivor focused.⁹¹

2.78 The committee is satisfied that the provisions for requesting supporting documents under the Scheme are proportionate and sensitive to the needs of survivors, while ensuring that the Operator and Independent Decision Maker have sufficient detail to make an informed determination.

Approving applications and making determinations

2.79 Clause 29 of the National Redress Bill provides that the Operator must make a determination whether to approve, or not approve, an application for redress and sets out a comprehensive list of requirements if there is a reasonable likelihood that an applicant is eligible for redress. This clause has been subject to a number of updates since the Commonwealth Redress Bill and now includes the following new provisions:

- (a) Determination of whether the psychological and counselling services component of redress will consist of a payment or of access to services provided under the Scheme and, if it will consist of a payment, the amount of that payment.
- (b) Where responsible institutions are part of a participating group, determination of the associates of the responsible institution.
- (c) Where the institution identified in an application is defunct and a participating government institution in the same jurisdiction is equally responsible for the abuse, determine the participating government institution as the funder of last resort.

90 Explanatory Memorandum, pp. 30–31.

91 Blue Knot Foundation, *Submission 12*; knowmore legal service, *Submission 20*; Tuart Place, *Submission 14*.

(d) Requirements for revoking a determination.⁹²

2.80 Specific concerns raised by submitters are considered below.

Revoking an offer of redress

2.81 Clause 29 of the National Redress Bill now includes provisions allowing for rules that may require or permit the Operator to revoke a determination. Some submitters have raised concerns about the provisions, including:

(a) that the clause does not require the Operator to give a reason for revoking a determination;⁹³ and

(b) whether, if a determination is revoked and therefore 'taken never to be made', a survivor would be permitted to make a new application.⁹⁴

2.82 The Department's 'fact sheet' on the types of rules which are proposed for the Scheme notes that rules relating to the revocation of determinations:

... will allow a determination to be revoked where the Operator receives new information that affects the determination, and requires a determination to be revoked where that information was about a payment made after the determination. The Operator will be required to make a new determination taking into account the new information.⁹⁵

Length of time for making a determination

2.83 Submitters observed that, while determinations are to be made 'as soon as practicable', there is no specific time limit for determinations to be made in the National Redress Bill.⁹⁶

2.84 At Senate Budget Estimates, the Department explained its anticipated timeframe for most offers of redress would be 'around 10 to 12 weeks' and that this would be reduced if the application was 'triaged because the person is elderly or frail'. Furthermore, the Department expected that 'even the most complex applications would be able to [be] processed within a 12-month period'.⁹⁷

Contents and availability of assessment framework

2.85 The National Redress Bill sets out the method for determining the amount and sharing of costs of the redress payment and psychological and counselling component for a person. This determination will be made in accordance with the assessment framework, a legislative instrument to be declared by the Minister. The Explanatory

92 National Redress Bill, cl. 29.

93 Law Council of Australia, *Submission 18*, p. 15; knowmore legal service, *Submission 20*, p. 5.

94 Bravehearts Foundation, *Submission 33*, [p. 3].

95 Australian Government Departments, *Submission 1*, p. 17.

96 For example: Law Council of Australia, *Submission 18*, p. 7.

97 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 99.

Memorandum notes that this legislative instrument will not be subject to disallowance:

... so that the method or matters to be taken into account for the purpose of working out the amount of redress payment for a person are certain for applicants to the Scheme and decision-makers. This declaration would ordinarily be of an administrative character and would not be a legislative instrument without this provision. However, in order to ensure certainty and transparency it is appropriate to make this declaration a legislative instrument.⁹⁸

2.86 Additionally, the National Redress Bill introduces a new provision that the Operator may take into account assessment framework policy guidelines when applying the assessment framework. Unlike the framework, these guidelines will not be a legislative instrument. The Explanatory Memorandum sets out the reason for this distinction:

These guidelines are of an administrative character, the content of which will not be provided in a legislative instrument. The reason for omitting detailed guidelines is to mitigate the risk of fraudulent applications. Providing for detailed guidelines would enable people to understand how payments are attributed and calculated, and risks the possibility of fraudulent or enhanced applications designed to receive the maximum redress payment under the Scheme being submitted. The Scheme has a low evidentiary threshold and is based on a 'reasonable likelihood' test. These aspects of the Scheme are important and provide recognition and redress to survivors who may not be able or may not want to access damages through civil litigation.⁹⁹

2.87 While several submitters were critical that the framework is not currently publicly available,¹⁰⁰ the Department explained that it will be declared as an instrument once the National Redress Bill passes and that it is currently being tested by communications experts based on 'developmental research...undertaken with survivors and their families and advocates'.¹⁰¹

The amount of redress payment

2.88 It was discussed in detail in the Commonwealth Redress Scheme Bills Report that the average anticipated payment to survivors is \$76 000 (before prior payments are taken into account). This proposed figure for the Scheme is \$11 000 more than the average proposed by the Royal Commission.¹⁰²

98 Explanatory Memorandum, p. 38.

99 Explanatory Memorandum, p. 38.

100 Anglicare Australia, *Submission 6*; Law Council of Australia, *Submission 18*; CECFW, *Submission 10*; Maurice Blackburn Lawyers, *Submission 29*; Shine Lawyers, *Submission 19*; Blue Knot Foundation, *Submission 12*; among others.

101 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 81, 84.

102 Commonwealth Redress Scheme Bills Report, pp. 57–67.

2.89 The National Redress Bill provides that the maximum amount of redress payment is \$150 000 in total, regardless of the number of responsible institutions.¹⁰³ This payment will go towards acknowledging and recognising the trauma and pain of most extreme survivor cases.¹⁰⁴ However, it is important to recognise that most recipients of redress will not be eligible for the maximum amount. The committee notes it is important that all official communications relating to the National Redress Scheme should focus on the average payment amount and not the maximum amount.

2.90 The Australian Government has agreed with the committee's previous recommendation that 'communication should reference the average payment amount rather than focusing on the maximum redress payment'.¹⁰⁵ This recommendation followed observations in the previous inquiry that focus on the maximum payment raises expectations of survivors which may unintentionally lead to further trauma.¹⁰⁶

2.91 Many submitters continue to advocate for a maximum payment of \$200 000 for survivors,¹⁰⁷ while others reiterated an opinion that the Scheme should have a minimum or universal payment.¹⁰⁸

2.92 The Australian Government explained, in its response to a recommendation from Australian Labor Party Senators that \$200 000 should be the maximum payment, that a \$150 000 maximum is supported by states and territories and that it:

...balances the need to provide a payment that provides a tangible means of recognising the wrongs suffered by survivors, while encouraging institutions to opt in to the Scheme.¹⁰⁹

2.93 Submitters have also reiterated concerns about the indexation of prior payments, particularly as many survivors have poor financial literacy and may not understand why it is occurring, and because average and maximum payments are not subject to inflation over the lifetime of the Scheme.¹¹⁰

2.94 Although several of these submitters have recommended that indexation of prior payments be removed from the National Redress Bill, the submission from Australian Government Department noted:

103 National Redress Bill, sub cl. 30(2).

104 Australian Government Departments, *Submission 1*, p. 12.

105 Government Response, p. 5.

106 Commonwealth Redress Scheme Bills Report, pp. 60, 92.

107 Australian Lawyers Alliance, *Submission 2*; VALS, *Submission 3*; CECFW, *Submission 10*; Bravehearts Foundation, *Submission 33*; Maurice Blackburn Lawyers, *Submission 29*; Alliance for Forgotten Australians, *Submission 13*; Shine Lawyers, *Submission 19*; Restorative Justice International, *Submission 5*; among others.

108 knowmore legal service, *Submission 20*; Alliance for Forgotten Australians, *Submission 13*; Maurice Blackburn Lawyers, *Submission 29*; CECFW, *Submission 10*.

109 Government Response, p. 8.

110 knowmore legal service, *Submission 20*; Alliance for Forgotten Australians, *Submission 13*; Maurice Blackburn Lawyers, *Submission 29*; CECFW, *Submission 10*.

In light of the recommendations by the Royal Commission that the Scheme should adjust relevant payments for inflation, it is likely that a number of key institutions would choose not to participate in the Scheme if relevant payments were not adjusted to account for inflation.¹¹¹

The amount of counselling and psychological component

2.95 In the previous inquiry, many submitters raised concerns about how the counselling and psychological component of redress would be funded and operate.¹¹² The National Redress Bill now provides that the Operator must apply the assessment framework to work out the amount of counselling and psychological component for a survivor and that this amount must not be more than \$5000.¹¹³

2.96 While not specified in the National Redress Bill, the *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement) sets out three tiers of counselling and psychological component agreed by participating jurisdictions: \$1250, \$2500 or \$5000, based on the severity of the sexual abuse. This money will either go directly to the survivor to assist them in accessing services privately, or to the participating state or territory where the survivor lives. That state or territory will then have the responsibility to deliver counselling and psychological services in accordance with National Service Standards included in the Intergovernmental Agreement.¹¹⁴

2.97 The delivery of counselling and psychological services by states and territories, as well as the perceived adequacy of the counselling and psychological payment, will be discussed later in this chapter.

Offers and acceptance of redress

2.98 A major concern raised in the previous inquiry was that the timeframe for accepting an offer of redress, set at 'at least 90 days' in the Commonwealth Redress Bill, was inadequate time for a survivor to properly consider that offer,¹¹⁵ and the committee made a recommendation that the government consider changing the period of acceptance from 90 days to six months.¹¹⁶ The National Redress Bill has increased the acceptance period to 'at least 6 months, starting on the date of the offer'.¹¹⁷

2.99 Although some submitters have recommended that this acceptance period be extended further to 12 months,¹¹⁸ the Government Response to the recommendation

111 Australian Government Departments, *Submission 1*, p. 16.

112 Commonwealth Redress Scheme Bills Report, pp. 67–71.

113 National Redress Bill, cl. 31.

114 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement), p. 13.

115 Commonwealth Redress Scheme Bills Report, pp. 54–56.

116 Commonwealth Redress Scheme Bills Report, Recommendation 8.

117 National Redress Bill, cl. 40.

118 Maurice Blackburn Lawyers, *Submission 29*; knowmore legal service, *Submission 20*; Law Council of Australia, *Submission 18*.

from Australian Labor Party Senators on this matter in the previous inquiry notes that the Independent Advisory Council on redress, jurisdictions and institutions determined that 12 months was 'too long for operational realities of the Scheme' and that survivors will be able to request extensions in certain circumstances.¹¹⁹

2.100 The clause which sets out what an offer of redress must contain has also been updated to reflect changes to the counselling and psychological component of redress and the types and responsibilities of participating institutions.¹²⁰

Deeds of release and liability for institutions and officials

2.101 Under clause 42 of the National Redress Bill, a person who accepts an offer of redress will be required to release responsible participating institutions, and associates and officials of that institution, from liability for the abuse for which redress is being provided.¹²¹ This deed of release will prevent the survivor, either as an individual or within a group, from bringing or continuing any civil claim against those responsible institutions relating only to that abuse.¹²²

2.102 When the bills for the Commonwealth Redress Scheme were first introduced, the then Minister for Social Services, the Hon. Christian Porter, MP, stated that:

The deed of release is perhaps the most important feature in terms of encouraging those critical institutions to opt in to the scheme and thus it is a mechanism by which we can ensure greater coverage for survivors as without it institutions may be exposed to paying compensation through civil litigation in addition to providing redress under the scheme and so might decline to opt in to the scheme. The release will never preclude any criminal liabilities of the institution or alleged perpetrator, nor provide release in relation to any other abuse outside the scope of the scheme.¹²³

2.103 However, in the inquiry into those bills, the committee received evidence that there was confusion about the operation of the deed of release provisions and whether a deed of release sufficiently considers matters of future liability, particularly in relation to individuals, and abusers, associated with the responsible institution.¹²⁴

2.104 Clause 42 in the National Redress Bill contains significant updates from the associated clauses in the Commonwealth Redress Bill and now clearly identifies that the following institutions, associates and individuals will be released from liability when an offer of redress is accepted:

119 Government Response, p. 8.

120 National Redress Bill, cl. 39.

121 Explanatory Memorandum, p. 3.

122 National Redress Bill, cl. 42.

123 The Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12131.

124 Commonwealth Redress Scheme Bills Report, pp. 82–83.

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- (a) participating institutions determined by the Operator to be responsible for the abuse of the person;
 - (b) participating institutions determined by the Operator to be associates for those responsible institutions; and
 - (c) all officials of those responsible institutions and associates, but not an officer who is an abuser of the person.¹²⁵

2.105 Furthermore, Clause 43 now specifies that a deed of release does not release or discharge any other institution or person from civil liability for the abuse and does not prevent the survivor from bringing or continuing civil proceedings against another institution or person in relation to that abuse.¹²⁶ Additionally, a released institution or official is also released from liability to make a contribution to another institution or person for damages payable after civil proceedings brought or continued by the survivor about their abuse; in such an instance, the damages payable to the survivor are reduced by the contribution amount for the released institution or official.¹²⁷

Reviews of determinations

2.106 Survivors can apply for an internal review of the determination of their application for redress. The Explanatory Memorandum explains that:

The internal review processes will enable applicants to seek review of determinations on applications for redress. The person conducting the review must have had no involvement in the original decision and may affirm, vary or substitute the original decision.¹²⁸

2.107 The committee examined review provisions in detail in its report into the Commonwealth Redress Scheme bills,¹²⁹ however there have been a number of small changes to these provisions in the National Redress Bill, including:

- (a) In line with the updated timeline for acceptance of a redress offer, the time by which an applicant can apply for an internal review of a determination has been extended to no longer than 6 months.¹³⁰
- (b) Clarification that the review determination, if it varies or sets aside the original determination, is taken to be the determination made by the Operator,¹³¹ and that if the original determination is upheld and the person had been given an offer of redress following that determination,

125 National Redress Bill, cl. 42.

126 National Redress Bill, sub cl. 43(c).

127 National Redress Bill, sub cl. 43(d).

128 Explanatory Memorandum, p. 10.

129 Commonwealth Redress Scheme Bills Report, pp. 83–89.

130 National Redress Bill, cl. 34.

131 National Redress Bill, cl. 76.

the acceptance period for the original offer must then be extended by an additional 2 months.¹³²

2.108 Some submitters to this inquiry echoed concerns from the previous inquiry about a lack of external review for the National Redress Scheme.¹³³ However, the Explanatory Memorandum states that:

This follows the recommendation of the Independent Advisory Council on redress, appointed by the Prime Minister, which included survivors of institutional abuse, representatives from support organisations, legal and psychological experts, Indigenous and disability experts, institutional interest groups and those with a background in government. The Independent Advisory Council considered that providing survivors with external review would be overly legalistic, time consuming, expensive and would risk further harm to survivors.¹³⁴

New clauses for notifications to institutions

2.109 In the previous inquiry, concerns were raised by submitters about the level of transparency in the decision-making process for redress applications and communication with participating institutions through that process.¹³⁵ The National Redress Bill introduces a number of new clauses which clarify the process of notifying participating institutions about the progress of a survivor's application through the Scheme. These notices are now to be sent to institutions when:

- an application has been withdrawn, if the Operator has requested documents relating to that application from the institution;¹³⁶
- an application has been determined and the institution is specified in that determination as either responsible or not responsible for the abuse, or as the associate of the responsible institution, or as the funder of last resort;¹³⁷
- an offer is made to a survivor and that offer refers to the institution¹³⁸ and if that offer is declined;¹³⁹ and

132 National Redress Bill, cl. 78.

133 Australian Human Rights Commission, *Submission 23*; Law Council of Australia, *Submission 18*; Maurice Blackburn Lawyers, *Submission 29*.

134 Explanatory Memorandum, p. 10.

135 *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, Truth Justice and Healing Council, *Submission 79*, p. 13; Scouts Australia, *Submission 35*, p. 3; Anglican Church of Australia, Salvation Army and Uniting Church in Australia, *Submission 30*, p. 2.

136 National Redress Bill, cl. 23.

137 National Redress Bill, cl. 35.

138 National Redress Bill, cl. 41.

139 National Redress Bill, cl. 46.

- an application for review is made, withdrawn or determined in relation to a determination which specified the institution.¹⁴⁰

2.110 These provisions are in addition to the existing provision which sets out that notice will be given to an institution specified in an offer of redress when that offer is accepted.¹⁴¹

2.111 Submitters have also recommended that an institution also be provided with a copy of a survivor's application when it is made.¹⁴² The Department explained that while 'there will be core and basic information that needs to be confirmed' by institutions, those institutions will not be provided with the full application, nor will those institutions be able to reject an application.¹⁴³

Receiving redress

2.112 Survivors who accept an offer of redress may elect to receive one, two or all three components of redress which are offered. If that survivor elects to receive a component of redress, the Operator must pay the redress payment to the person and provide the person with access to, or a payment for, the counselling and psychological component of redress. The responsible institutions for the abuse must also take reasonable steps to provide the survivor with a direct personal response.¹⁴⁴

2.113 The parts of the National Redress Bill relating to the redress payment remain mostly unchanged from the Commonwealth Redress Bill, except in relation to insurance, while the parts relating to the counselling and psychological component and direct personal responses have been subject to more significant updates. These are discussed below.

Redress payments and institutions' insurance

2.114 During the inquiry into the Commonwealth Redress Scheme bills, several organisations raised concerns about responsible institutions, those institutions' insurance policies and the capacity of the institutions to meet their obligation to pay redress to survivors.¹⁴⁵

2.115 The National Redress Bill specifies that nothing in the bill prevents a liability insurance contract from treating a redress payment as being a payment for compensation or damages. The Explanatory Memorandum notes that:

This subclause facilitates the insurers of participating non-government institutions to treat redress payments as compensation or damages under liability contracts. This allows non-government institutions to be assisted by

140 National Redress Bill, cl. 79.

141 National Redress Bill, cl. 44.

142 Queensland Law Society. In: Law Council of Australia, *Submission 18*, p. 16.

143 Ms Bennett, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 87.

144 National Redress Bill, cl. 47.

145 Commonwealth Redress Scheme Bills Report, pp. 28–29.

insurers to meet their liability for redress under existing insurance contracts.¹⁴⁶

Counselling and psychological component

2.116 The counselling and psychological component of redress will be provided to a survivor either as access to services (if the survivor lives in a participating jurisdiction which has been declared a provider of counselling and psychological services) or as a counselling and psychological component payment.¹⁴⁷ The National Redress Bill also introduces new provisions which protect the counselling and psychological component payment and which mirror similar provisions relating to the redress payment.¹⁴⁸

2.117 Participating jurisdictions may notify the Minister of their arrangements to deliver counselling and psychological services under the Scheme and request to become a declared provider of these services; and the Minister may make declarations, by notifiable instrument, about a jurisdiction becoming, or ceasing to be, a declared provider of these services. At 1 June 2018, the Australian Capital Territory, New South Wales and Victoria had all indicated that they would become providers under the Scheme.¹⁴⁹

2.118 Submitters have expressed concern that the introduction of a monetary figure for the counselling and psychological component in the National Redress Bill, discussed earlier in this chapter, may result in counselling and psychological care provided through a participating jurisdiction being limited or capped.¹⁵⁰ At Senate Budget Estimates, the Department verified that there was no 'tally system' that required a counselling and psychological component payment made to a participating jurisdiction to be 'used up', and that a state will provide services to survivors irrespective of whether they received \$1250, \$2500, or \$5000. Instead, this money 'will go into...existing structures those states have' such as victim support units and public health networks.¹⁵¹ Furthermore, the National Service Standards for counselling and psychological care, included in the Intergovernmental Agreement, provide that jurisdictions must provide a minimum of 20 hours of counselling and psychological care over the course of the survivor's lifetime.¹⁵²

146 Explanatory Memorandum, p. 47.

147 National Redress Bill, cl. 51.

148 National Redress Bill, cl. 52, 53. See also: National Redress Bill, cl. 49, 50.

149 Ms Bennett, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 82.

150 Alliance for Forgotten Australians, *Submission 13*; Relationships Australia, *Submission 15*; CECFW, *Submission 10*; Shine Lawyers, *Submission 19*; among others. A small number of submitters also continue to recommend the use of a 'Gold Card' for medical and counselling and psychological services for survivors: see Bravehearts Foundation, *Submission 33*, and Ms Bucello, *Submission 30*, for example.

151 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 82, 89.

152 Intergovernmental Agreement, p. 22.

2.119 The Australian Government agreed to the committee's recommendation from the previous inquiry that consideration be given to 'mechanisms to ensure ongoing counselling is available to survivors, should they need it'. The Government Response details other programs funded by the Department to support vulnerable people, such as Find and Connect, which is a targeted service for Forgotten Australians and former child migrants, Family and Relationship Services, and therapeutic and practical assistance to people who suffer from psychological trauma through the Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule.¹⁵³

2.120 Furthermore, the Australian Government agreed to the committee's recommendation that affected family members are referred to existing counselling services in cases where it is necessary to meet the critical needs of the survivor. The Government Response reported that, while Redress Support Services are primarily for people making an application to the Scheme, where it is in the best interest of the survivor, support services may assist affected family members and that this could include referral to other services.¹⁵⁴

Direct personal responses

2.121 In the previous inquiry, many submitters raised concerns about the content, nature and delivery of direct personal responses to survivors.¹⁵⁵

2.122 The National Redress Bill provides that the Minister will declare a direct personal response framework to guide the delivery of responses,¹⁵⁶ and more clearly sets out what constitutes a direct personal response from an organisation:

A direct response from a participating institution to a person is any one of the following:

- (a) an apology or a statement of acknowledgement or regret;
- (b) an acknowledgement of the impact of the abuse on the person;
- (c) an assurance as to the steps the institution has taken, or will take, to prevent abuse occurring again;
- (d) an opportunity for the person to meet with a senior official of the institution.¹⁵⁷

2.123 The general principles guiding provision of direct personal responses, although reordered, have not changed in the National Redress Bill.¹⁵⁸

153 Government Response, p. 6.

154 Government Response, p. 6.

155 Commonwealth Redress Scheme Bills Report, pp. 71–73.

156 National Redress Bill, cl. 55.

157 National Redress Bill, cl. 54.

158 National Redress Bill, cl. 56.

Redress support services

2.124 In introducing the National Redress Bill, the Minister reported that:

Redress support services will be available to all applicants, including specialised support for Indigenous people, people with disability, and people from culturally and linguistically diverse backgrounds.

Support services will be available nationally, and use face-to-face, telephone, online and outreach services to ensure coverage.¹⁵⁹

2.125 The committee's Commonwealth Redress Scheme Report examined in detail the types of support services available to survivors.¹⁶⁰

2.126 The National Redress Bill adds additional functions, not included in the Commonwealth Redress Bill, which allow the Operator to arrange for support and assistance services for applicants and prospective applicants to the Scheme,¹⁶¹ and to enter into, vary and administer contracts, agreements, deeds or understandings on behalf of the Commonwealth in relation to those support or assistance services.¹⁶²

2.127 The Intergovernmental Agreement outlines the three types of specialist support services which will be provided under the Scheme:

- (a) Redress support services—trauma-informed and culturally appropriate community-based support services to provide assistance with engaging with the Scheme. This may include assistance in making an application, referrals to other services (such as counselling), and support during delivery of a direct personal response.
- (b) Financial supports—through existing Commonwealth-funded services with specific information for survivors applying to the Scheme.
- (c) Legal services—to be provided through a legal service provider engaged by the Commonwealth. Legal assistance may include advice on eligibility requirements and participating in the scheme or on the effects of accepting an offer and signing a civil liability release.¹⁶³

2.128 At Senate Budget Estimates, the Department explained that many of the support services which were established and funded to support survivors during the Royal Commission will transition to new funding arrangements and continue providing supports to survivors with whom they already have connections with. However organisations with a conflict of interest, such as those who are participating institutions in the Scheme, will not be transitioned as Redress Support Services.¹⁶⁴

159 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 5.

160 Commonwealth Redress Scheme Bills Report, pp. 78–81.

161 National Redress Bill, sub cl. 9(3).

162 National Redress Bill, sub cl. 9(4).

163 Intergovernmental Agreement, p. 13.

164 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 87, 96.

2.129 The submission from Australian Government Departments further outlined the service delivery framework and infrastructure which has been, or is in the process of being, developed by the Department to support survivors, including communications materials, plain English policy explanations, dedicated case management and specialist redress staff, and a remote service strategy.¹⁶⁵

Other relevant provisions in the National Redress Bill

Independent Decision Makers

2.130 The National Redress Bill provides that the Operator will appoint appropriately qualified Independent Decision Makers as assessors for the Scheme.¹⁶⁶ Some submitters have expressed doubts about the independence of these assessors and have questioned whether current or former officials of participating institutions may be appointed as Independent Decision Makers.¹⁶⁷

2.131 The submission from Australian Government Departments indicated that state and territory governments have been asked to nominate candidates and confirmed that successful Independent Decision Makers will be required to:

- be independent from participating institutions 'to ensure fairness and transparency';
- declare any potential conflicts of interest, undertake a national police history check, a working with children check and a social media check;
- have knowledge and experience in social welfare, case management and/or the legal sector, and an ability to develop an understanding and knowledge of the survivor cohort and the history of the Royal Commission; and
- undertake comprehensive training to ensure they are trauma-informed.¹⁶⁸

Nominees

2.132 The National Redress Bill sets out provisions for the appointment of nominees to act on behalf of an applicant for the purposes of the Scheme.

2.133 The Commonwealth Redress Bill proposed two categories of nominees: correspondence nominees and payment nominees. However, some submitters raised concerns that the purpose and role of nominees in that bill were not clearly defined and that applicants would not have the ability to request a change to or revoke the appointment of their nominee, and the Department told the committee that it was reviewing those provisions.¹⁶⁹

165 Australian Government Departments, *Submission 1*, pp. 4–5.

166 National Redress Bill, cl. 185.

167 Maurice Blackburn Lawyers, *Submission 29*, p. 11; Relationships Australia, *Submission 15*, pp. 3–4.

168 Australian Government Departments, *Submission 1*, p. 6.

169 Commonwealth Redress Scheme Bills Report, pp. 53–54.

2.134 The National Redress Bill has replaced the previous nominee provisions and now proposes two new categories of nominees:

- (a) Assistance nominees—can do any act on behalf of an applicant in relation to the Scheme, except for making an application, accepting or declining an offer of redress, or any act for the purposes of the appointment, suspension or revocation of a nominee, or any act prescribed by rule.¹⁷⁰
- (b) Legal nominees—must have powers under a law of the Commonwealth, or a state or territory, to make decisions of the applicant (i.e. have legal guardianship or power of attorney) and may do any act on behalf of the person for the purposes of the Scheme.¹⁷¹

2.135 Other provisions relating to the role, appointment and functions of nominees remain largely unchanged in the Redress Scheme; however an applicant may now request to have the appointment of an assistance nominee (but not a legal nominee) revoked.¹⁷² Submitters were generally supportive of the updates to nominee provisions.¹⁷³

Protected information under the Scheme

2.136 The National Redress Bill introduces a small number of new provisions for the use of protected information under the Scheme.

2.137 Clause 97 provides for obtaining, recording, disclosing and using protected information for permitted purposes, such as disclosure to by an official to a government institution for law enforcement, for child safety and wellbeing, or for a purpose prescribed by the rules (i.e. compliance with current reportable conduct schemes); and disclosure by a person to a government institution if a law requires or permits that person to do so and the institution has functions for that purpose.¹⁷⁴

2.138 Clauses 102 to 104 introduce provisions for the use and disclosure of assessment framework policy guidelines. The Explanatory Memorandum notes that these are necessary:

...to ensure that the assessment framework policy guidelines are appropriately protected from unauthorised use and disclosure, as the guidelines provide additional matters that the Operator may take into account when applying the assessment framework...which may contain graphic and triggering descriptions of abuse.¹⁷⁵

170 National Redress Bill, cl. 85.

171 National Redress Bill, cl. 86.

172 National Redress Bill, para. 82(1)(b).

173 People With Disability Australia, *Submission 28*; Relationships Australia, *Submission 15*; knowmore legal service, *Submission 20*.

174 Explanatory Memorandum, p. 66.

175 Explanatory Memorandum, pp. 68–69.

2.139 The National Redress Bill also introduces a clause which protects individuals who have disclosed protected information in good faith from civil or criminal proceedings, disciplinary actions, and from breaches of codes of conduct or professional ethics or standards.¹⁷⁶

2.140 Additionally, the clause which relates to the disclosure of protected information to a court or tribunal has been updated in the National Redress Bill to reflect that a person must also not be required to disclose the assessment framework policy guidelines and to add a small number of exceptions which allow disclosures for the purpose of giving effect to the Act.¹⁷⁷ The Explanatory Memorandum notes the importance of this clause:

The objects of the Scheme are to provide an avenue for a payment that acknowledges a wrong that might otherwise be pursued through civil litigation. The Scheme would be undermined if it were able to be used as a form of discovery in court proceedings. It would also overload the administrative arm of the Scheme which would result in delays to the process of assessing applications under the Scheme.¹⁷⁸

2.141 Submitters raised the following concerns in relation to the amended protected information provisions in the National Redress Bill:

- The Law Council of Australia noted some implications of protection information provisions on survivors, including the potential of self-incrimination.¹⁷⁹
- The Office of the Australian Information Commission suggested that some protected information provisions in the bill could be narrowed and could benefit from further explanation of whether authorisations to disclose information are reasonable, necessary and proportionate to achieving a legitimate aim, in the context of the overall objectives of the Scheme.¹⁸⁰

Financial matters

2.142 The National Redress Bill includes a small number of new provisions, and minor amendments to existing provisions, relating to financial matters such as liability for funding and debt recovery.

2.143 The financial provisions relating to liability for funding in the National Redress Bill are similar to those included in the Commonwealth Redress Bill, but include several significant amendments including:

176 National Redress Bill, cl. 106.

177 National Redress Bill, cl. 105.

178 Explanatory Memorandum, p. 69.

179 Law Council of Australia, *Submission 18*, p. 8.

180 Office of the Australian Information Commissioner, *Submission 36*, p. 2.

- (a) The late payment penalty for institutions has been reduced by half from that in the Commonwealth Redress Bill.¹⁸¹
- (b) A new liability provision for corporate state or territory institutions has been introduced.¹⁸²
- (c) New provisions relating to the Commonwealth's contribution to counselling and psychological services for jurisdictions which are declared providers have been introduced.¹⁸³

2.144 There are also several minor amendments relating to the introduction of the counselling and psychological component payment and new institutions categories.

2.145 Internal review is not available where an amount of financial liability has been determined by the Operator. In the previous inquiry, some submitters had raised concerns about institutions' liability for funding redress under the Scheme and recommended that institutions have a right to request review of any determination of responsibility and financial liability.¹⁸⁴ However, the Explanatory Memorandum now clarifies that:

Internal review is not available for this decision. By agreeing to participate in the Scheme a participating institution accepts that the Operator will make determinations in relation to the redress payment and the counselling and psychological component they are required to pay. Each participating institution is aware from when they agree to participate in the Scheme that the maximum redress payment is capped at \$150,000 and the counselling and psychological component of redress may consist of either access to counselling and psychological services or a payment, depending on the participating State where the applicant lives at the time of their application.¹⁸⁵

2.146 The provisions relating to debt recovery have also been subject mostly to minor text changes since the Commonwealth Redress Bill, but include one new clause relating to the repayment of any recovered amounts to participating organisations where appropriate.¹⁸⁶

Funders of last resort

2.147 In the committee's Commonwealth Redress Scheme Bills Report, it was noted that funder of last resort provisions would be updated for a National Redress Scheme

181 National Redress Bill, cl. 154. See also: Commonwealth Redress Bill, cl. 60.

182 National Redress Bill, cl. 158.

183 National Redress Bill, cl. 158, 159.

184 Commonwealth Redress Scheme Bills Report, p. 85.

185 Explanatory Memorandum, p. 90.

186 National Redress Bill, cl. 172.

and that there was no constitutional basis for the Commonwealth being a universal funder of last resort.¹⁸⁷

2.148 The funders of last resort provisions in the National Redress Bill now reflect the national nature of the Scheme and clearly set out where a participating government institution acts as a funder of last resort for a defunct institution. This part of the National Redress Bill provides that:

- (a) A participating government institution is a funder of last resort for a defunct institution if it determined to be so.¹⁸⁸
- (b) A defunct non-government institution, not participating in the Scheme, is listed, varied or revoked for one or more participating jurisdictions, by notifiable instrument by the Minister.¹⁸⁹
- (c) Where a participating government institution is equally responsible with a defunct institution for the abuse of a survivor and is the funder of last resort for the defunct institution, that government institution is liable to pay for all aspects of redress and administration payable by the defunct institution.¹⁹⁰

2.149 When introducing the National Redress Bill, the Minister explained the purpose of the funder of last resort policy as included in the bill:

...is to pick up shortfalls in funding where an institution no longer exists. It is not intended to pick up liability for institutions that have the capacity to opt in and choose not to.¹⁹¹

Reporting on and reviewing the operation of the Scheme

2.150 One of the recommendations made by this committee in its report into the Commonwealth Redress Scheme bills related to the types of information to be included in the annual report on the operation of the Scheme. The Government Response agreed with the committee's recommendation and noted that the requirements of the annual report would be specified in the rules for the National Redress Bill.¹⁹²

2.151 The National Redress Bill reflects that the annual reporting requirements will be prescribed by rule.¹⁹³ In the previous inquiry, the committee had recommended that the annual report on the operation of the Scheme include detailed data 'to understand the experiences of people going through the Redress Scheme and to provide a basis of

187 Commonwealth Redress Scheme Bills Report, pp. 22–23.

188 National Redress Bill, cl. 163.

189 National Redress Bill, cl. 164.

190 National Redress Bill, cl. 165.

191 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, pp. 4–5.

192 Government Response, p. 7.

193 National Redress Bill, cl. 187.

any necessary refinements to the Scheme'. The Australian Government agreed with this recommendation and noted that matters for annual report prescribed by rule will include:

- the number of people who applied for redress in the year;
- the number of people who were determined to be eligible for redress in the year; and
- details relating to redress payments that were paid in the year.¹⁹⁴

2.152 Furthermore, the provisions relating to reviews of the scheme have been significantly amended to provide for both second anniversary and eighth anniversary reviews.¹⁹⁵ The second anniversary review must include consideration of many aspects raised and suggested by submitters in the previous inquiry, such as the extent to which the scheme is accessed and payments made under the Scheme.¹⁹⁶ The submission from Australian Government Departments noted that there is a specific commitment to review the child applicant policy and the processes regarding applications from people in gaol and applicants with serious criminal convictions, as well as the impact of the Scheme's design on Indigenous survivors.¹⁹⁷

National Consequential Bill

2.153 The National Consequential Bill contains two new schedules which were not in the Commonwealth Consequential Bill.

2.154 Schedule 4 makes provisions relating to the disclosure and protection of information under the National Redress Scheme. It inserts a new item into the *Freedom of Information Act 1982* which makes protected information under the Scheme not required to be disclosed under Freedom of Information; and inserts two paragraphs in the *Social Security (Administration) Act 1999* to allow a person to obtain, record, disclose or otherwise use protected information if it is done for the purposes of the Scheme. The Explanatory Memorandum notes that exempting information from Freedom of Information disclosure:

...supports the trauma informed approach of the Scheme, ensuring that survivors' information is adequately protected. It also protects institutions' information against fraudulent applications made to the Scheme. The exemption protects the integrity of the operation of the Scheme, removes any uncertainty about the operation of the information publication scheme regarding the assessment policy guidelines, and makes it transparent that protected information under the Scheme is exempt under the Freedom of Information Act.¹⁹⁸

194 Government Response, p. 7.

195 National Redress Bill, cl. 192.

196 Commonwealth Redress Scheme Bills Report, pp. 89–90.

197 Australian Government Departments, *Submission 1*, pp. 8–9.

198 Explanatory Memorandum, p. 112.

2.155 Schedule 5 inserts a new item into the *Age Discrimination Act 2004* which will exempt the National Redress Scheme from unlawful age discrimination and allow the Scheme to apply an age limit. The Explanatory Memorandum explains that:

Applying an age limit to the Scheme addresses the risk of children signing away their future civil rights when they may have limited capacity to understand the implications, and when the impact of the abuse may not fully be realised, and reduces the risk of monetary payments to minors being misused. The Scheme's support services will be available to child survivors who must wait until they turn 18 years to receive redress under the Scheme.¹⁹⁹

Other related matters

2.156 Other matters not strictly contained in the National Redress Bill but related to the operation of the National Redress Scheme were raised by submitters.

2.157 Some submitters to the inquiry recommended that the Independent Advisory Council on Redress be maintained, or otherwise included directly in the National Redress Bill.²⁰⁰ The committee notes that the Intergovernmental Agreement provides that the Commonwealth Minister responsible for redress may reconvene the council for particular advisory purposes at any time in the future.²⁰¹

2.158 The Queensland Law Society proposed that the provisions relating to liability, representatives of unincorporated institutions, and management committees be clarified, noting:

While in practice this may be of little consequence as the Operator could no doubt simply look to the representative (and the representative look to the unincorporated association), it seems to be in the interests of clarity in the law for the Bill to indicate where the liability rests.²⁰²

2.159 The National Social Security Rights Network questioned whether, despite the provisions in the National Redress Bill and National Consequential Bill, a redress payment could be subject to an asset test for a survivor's social security entitlements, as 'there are no provisions...that propose payments under the redress scheme be exempt from social security asset assessments'.²⁰³

Committee view

2.160 The committee firmly believes that the introduction of a National Redress Scheme for Survivors of Institutional Child Sexual Abuse is a vital step in addressing cases of historical child sexual abuse.

199 Explanatory Memorandum, p. 112.

200 Relationships Australia, *Submission 15*, p. 3; SASS, *Submission 11*, p. 3.

201 Intergovernmental Agreement, p. 9.

202 Queensland Law Society, *Submission 25*, pp. 1–2.

203 National Social Security Rights Network, *Submission 22*, [p. 2].

2.161 The committee is strongly supportive of the objects of the National Redress Scheme to recognise and alleviate the impact of past institutional child sexual abuse and to provide justice for the survivors of that abuse.

2.162 The committee is pleased to see that all states and territories have agreed to participate in the National Redress Scheme, making the Scheme truly national. The committee recognises that several non-government organisations have already announced their participation and encourages non-government organisations in all jurisdictions to join the National Redress Scheme so that all eligible survivors are able to receive redress.

2.163 The committee recognises the significant work by territory, state and Commonwealth governments in negotiating and developing the National Redress Scheme over the past 18 months. It acknowledges the considerable efforts made by these governments to address many of the concerns raised by survivors and institutions about the implementation and operation of a Scheme, as well as important amendments made to the Scheme since the introduction of the Commonwealth Redress Scheme bills in 2017.

2.164 The committee also recognises that the majority of recommendations from the committee's previous inquiry, including those in minority reports, have been accepted in full or in part in the development of the National Redress Scheme bills.

2.165 The committee further recognises that any changes made to the National Redress Bill would require renegotiation with each of the participating states, jeopardising the Scheme's start date of 1 July 2018.

Recommendation 1

2.166 The committee recommends these bills be passed.

Senator Slade Brockman

Chair

Additional Comments by Labor Senators

1.1 Labor Senators on this Committee note the recommendation of the majority report, and wish to make the following additional comments.

1.2 The advent of a National Redress Scheme is due to the courage of Survivors who told their stories to the Royal Commission, and those who advocated for justice for so long.

1.3 Labor Senators on this Committee note that the Government has responded to some of the recommendations made by the Committee in the Final Report of its Inquiry into the Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse Bill 2017.

1.4 However, Labor Senators remain disappointed that a number of recommendations have not been addressed in the National Redress Scheme for Survivors of Institutional Child Sexual Abuse Bill 2018.

1.5 Details of these recommendations are outlined in this report.

1.6 Labor has been committed to establishing a National Redress Scheme for Survivors of Institutional Child Sexual Abuse since 2015. Many Survivors are ageing and have been waiting most of their life to receive justice.

1.7 Labor Senators on the Committee note the Royal Commission's recommendation that a National Redress Scheme be in operation from 1 July 2017¹ and are of the view that the Redress Scheme must not be delayed any longer.

1.8 Further, Labor Senators on the Committee note the advice of Australian Government Departments that:

Any changes made to the National Bill would mean the National Bill would not align with the Schedule included in state referral Acts. This would render the referral ineffective and means that the National Bill could not operate in States which had passed their referral Bills before the changes were made to the National Bill. Any amendments to the National Bill in the Commonwealth Parliament would require the negotiation, reintroduction and passage of a State referral Bill through any State Parliament that has passed its legislation, thereby delaying the 1 July 2018 Scheme start date.²

1.9 Labor Senators on the Committee still hold a number of serious concerns regarding this legislation, including the arbitrary lowering of the maximum payment, the adequacy of counselling and the equality of all Survivors of child sexual abuse before the Scheme.

1.10 Notwithstanding these very important issues, Labor Senators note that for many Survivors time is of the essence.

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report in to Redress and Civil Litigation*, recommendation 31.

2 Australian Government Departments, *Submission 1*, p. 2.

1.11 Labor Senators also note the high likelihood that any attempt to amend the legislation in the Commonwealth Parliament would jeopardise the scheduled Scheme start date of 1 July 2018.

1.12 Therefore, for this reason alone, Labor Senators on the Committee do not recommend any amendments to the Bill.

Payment cap

1.13 Labor Senators on the Committee wish to draw attention to the cap on payments made under the Scheme of \$150 000.

1.14 This is significantly less than the \$200 000 maximum payment that was recommended by the Royal Commission.

1.15 Labor Senators on the Committee note widespread support between submitters and witnesses to increase the cap to \$200 000.

1.16 The Alliance for Forgotten Australians has indicated that lowering the cap without explanation threatens the credibility of the entire Scheme:

...this reduction is assumed to be the result of pressure brought to bear by the Catholic Church. Most seriously, such decisions undermine faith in the design of the scheme. Where design decisions appear arbitrary, or unexplained, people lose confidence in the totality of the scheme.³

1.17 Care Leavers Australasia Network (CLAN) was also of the view that 'the Federal Government should respect the Royal Commission recommendations'.⁴

1.18 The Committee also received a large number of submissions from the legal profession, which advocated for an increase to the maximum payment.

1.19 The Australian Human Rights Commission wrote:

...the efficacy of the Scheme depends on the availability of adequate redress to recognise the significance of the abuse from the perspective of the survivor. Inadequate redress may cause more survivors to pursue civil litigation, which undermines the efficacy of the Scheme and may not be in the best interests of the survivor.⁵

1.20 The Australian Lawyers Alliance also considered the reduced cap to challenge the effectiveness of the proposed Scheme:

It is important that the amount of redress paid adequately reflects the seriousness of the survivor's experiences and the impact of the abuse on their lives. Particularly in the most serious cases, some survivors might not feel that what they are offered adequately reflects the impact of the abuse on their lives if the maximum redress payment is restricted to \$150,000.⁶

3 Alliance for Forgotten Australians, *Submission 13*, p. 1.

4 Care Leavers Australasia Network, *Submission 31*, p. 2.

5 Australian Human Rights Commission, *Submission 23*, p.13.

6 Australian Lawyers Alliance, *Submission 2*, pp. 4-5.

1.21 Shine Lawyers also highlighted:

...the monetary payment for redress is substantially lower than the Royal Commission's recommendation. It is unreasonable not to follow the Royal Commission's recommendation in this respect and no adequate explanation has been offered for the reduced amount or divergence from the considered view of the Royal Commission.⁷

1.22 Others also called for the maximum payment to 'be adjusted to reflect the recommendations of the Royal Commission'.⁸

1.23 These include Maurice Blackburn, as well as Victorian Aboriginal Legal Services, who wrote:

...given that the scheme is designed to redress both sexual abuse and related physical abuse, a maximum cap of \$200,000 is not unreasonable.⁹

1.24 And also the Law Council of Australia which stated:

...the maximum amount for a redress payment should be raised to \$200,000, in accordance with the Royal Commission's recommendation.¹⁰

1.25 A number of other submitters to this Inquiry highlighted the lower maximum cap as an issue of concern.

1.26 Labor Senators are of the view that the Redress Scheme would be enhanced by raising the maximum payment to \$200 000.

Lifelong counselling

1.27 Labor Senators on this Committee support the recommendation of the Royal Commission that access to lifelong counselling be made available to those Survivors who accept an Offer of Redress.

1.28 Labor Senators remain concerned that the counselling arrangements detailed in the National Bill continue to fall short of this standard.

1.29 Further, Labor Senators on the Committee note that the arrangements in the legislation are inconsistent with the Government's Response to the Committee's Final Report from the Inquiry in to the earlier Commonwealth Bill which accepted the recommendation that counselling provided to Survivors as part of Redress should be lifelong.¹¹

1.30 The Committee received evidence that adequacy of counselling continues to be an issue.

7 Shine, *Submission 19*, p. 6.

8 Maurice Blackburn, *Submission 29*, p. 6.

9 Victorian Aboriginal Legal Services, *Submission 3*, p. 3.

10 Law Council of Australia, *Submission 18*, p. 7.

11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report in to Redress and Civil Litigation*, recommendation 9.

1.31 Shine Lawyers wrote that 'It is well known that abuse has lifelong consequences and neither option for counselling and psychological services within the Bill meets survivors' desperate needs'.¹²

1.32 Additionally the Law Council of Australia wrote that they question '...the adequacy of a \$5000 cap...as this amount will almost certainly be inadequate to cover such services over a prolonged period'.¹³

1.33 The Australian Psychological Society are also concerned that placing a \$5000 cap on counselling 'falls short of the Commission's recommendation that survivors should have access to counselling and psychological services across their lifetime'.¹⁴

1.34 The Alliance for Forgotten Australians has indicated that whilst this cap:
...may be sufficient for some; for others it will be inadequate to support a survivor for whom the impact of childhood abuse has lasted a lifetime...the scheme limits access to a key aspect of healing, appearing to make what for many will be a token contribution for a lifetime of pain, poverty, lost opportunities and poor health.¹⁵

1.35 According to Knowmore Legal Services, specialists in assisting Survivors of institutional child sexual abuse, limited access to counselling will:

...come at a high cost to survivors who, every day are trying to deal with the continuing impacts of their childhood sexual abuse and who need ongoing and appropriate counselling support to do so. Under these arrangements, many will not be able to access sufficient or acceptable support.¹⁶

1.36 Labor Senators on the Committee understand that adequate counselling is of critical importance to Survivors, and urge the Government to clarify the precise arrangements for counselling under the Redress Scheme as a matter of priority.

Residency requirements

1.37 The Committee received further evidence that Survivors who are not Australian Citizens of permanent residency should not be barred from accessing the Redress Scheme.

1.38 Labor Senators on the Committee support the view of the Australian Human Rights Commission:

12 Shine, *Submission 19*, p. 7.

13 Law Council of Australia, *Submission 18*, pp. 14–15.

14 Australian Psychological Society, *Submission 17*.

15 Alliance for Forgotten Australians, *Submission 13*, p. 3.

16 Knowmore, *Submission 20*, p.7.

In the Commission's view it is the occurrence of abuse in Australia, rather than the citizenship or residency status of the person affected, that should determine eligibility.¹⁷

1.39 This is in line with the recommendation of the Royal Commission, which stated that:

We see no need for any citizenship, residency or other requirements, whether at the time of the abuse or at the time of application for redress.¹⁸

1.40 Labor Senators on the Committee also support the recommendation of the Australian Association of Social Workers that:

...people who were sexually abused as children while they were in immigration detention be eligible for redress under the Scheme.¹⁹

1.41 Labor Senators are seriously concerned that Survivors who were abused in the care of an Australian institution, such as former child migrants and those who have been in immigration detention, may not be able to access the Redress Scheme because they no longer live in Australia.

1.42 Labor Senators call on the Government to urgently address this issue by committing to ensuring that there will be provision in delegated legislation to enable former child migrants and former immigration detainees to access the Redress Scheme.

Criminal history exclusion

1.43 Labor Senators on the Committee are deeply disappointed by the Government's commitment to treat Survivors with a criminal history differently to others.

1.44 The provisions in the legislation continue to present a number of serious concerns, including the negative impact these could have on the mental health of Survivors, the disregard of fairness and the disproportionate effect of these provisions on Indigenous and Torres Strait Islander Survivors.

1.45 A number of submitters have referred the Committee to strong evidence of a link between traumatic childhood experiences and criminal offending in later life.

1.46 Knowmore Legal Services estimated that during the Royal Commission: 19% of the nearly 9000 clients assisted...were in prison or other places of detention.²⁰

1.47 Shine Lawyers further explained that:

The Royal Commission conducted private sessions receiving over 8,000 personal stories of institutional child sexual abuse. 10.4% of survivors who

17 Australian Human Rights Commission, *Submission 23*, p. 6.

18 Maurice Blackburn, *Submission 29*, p. 3.

19 Australian Association of Social Workers, *Submission 27*, p. 3.

20 Knowmore, *Submission 20*, p. 4.

were interviewed by the Royal Commission were in prison. There may be many more. It is anticipated that approximately 60,000 survivors will participate in the Redress Scheme. This would suggest that over 6,000 people are potentially excluded from redress unless this element of the proposed scheme is amended.²¹

1.48 The Committee received an abundance of evidence that potentially excluding some Survivors from the Redress Scheme due to historical criminal offending either misunderstands, or denies, the impacts of childhood sexual abuse in later life.

1.49 Maurice Blackburn explained:

...any such exclusion demonstrates a lack of understanding about the role childhood abuse can play in the causality of future criminal behaviour. We lend our voice to the many survivor groups which have expressed profound disappointment in this apparently populist course of action.²²

1.50 The Australian Human Rights Commission wrote that the Bill:

...fails to recognise that a survivor's later criminal behaviour may be directly or indirectly connected to the experience of child sexual abuse in the first place [and] ignores that survivors have a right to an effective remedy for human rights violations experiences through child sexual abuse irrespective of any later criminal conduct.²³

1.51 The Australian Psychological Society argued:

Given that the reason for incarceration was likely related to a person's experience of abuse, and moreover given that access to appropriate redress, including psychological counselling, might be expected to contribute to their rehabilitation, which is in the whole community's interest.²⁴

1.52 Additionally, the Royal Australian and New Zealand College of Psychiatrists wrote that:

Excluding criminal offenders from the Scheme is of profound concern considering the high rates of subsequent sexual offending in males who have been sexually abused as older children, as well as the strong relationship between sexual abuse and subsequent substance use, which may be associated with drug offending.²⁵

21 Shine, *Submission 19*, p. 3.

22 Maurice Blackburn, *Submission 29*, p. 5.

23 Australian Human Rights Commission, *Submission 23*, p. 7.

24 Australian Psychological Society, *Submission 17*, p. 2.

25 Royal Australian and New Zealand College of Psychiatrists, *Submission 21*, p. 1.

1.53 Ryan Carlisle Thomas has called these provisions 'manifestly unjust'²⁶ and explained that:

...a significant portion of our clients have substantial criminal records, and this is almost always attributable to the abuse suffered by them while in care. Preventing these clients from making a claim at all, amounts to a double punishment, as these people have served their sentences.²⁷

1.54 Jesuit Social Services told the Committee that:

The status of victim and offender are often intertwined, and it is only fair that all people have the right to access compensation, have support to rehabilitate, and have an opportunity to heal.²⁸

1.55 Victorian Aboriginal Legal Services and the Law Council of Australia argued that the exclusion will disproportionately affect Indigenous Survivors, due to historical practices of institutionalising Indigenous children and the overrepresentation of Indigenous people in the justice system.

1.56 Victorian Aboriginal Legal Services wrote that:

We are...strongly opposed to the provision that people who are currently serving a custodial term are prevented from applying for the scheme, regardless of the nature of their offence or length of sentence. As has been well documented, the rate of Aboriginal and Torres Strait Islander people in prison across the country far exceeds that of non-Indigenous people.²⁹

1.57 The Law Council of Australia submitted:

...access to the Scheme should not be restricted on the basis of criminal record...Further, the proposal to exclude survivors with a criminal record particularly affects Aboriginal and Torres Strait Islander people who are disproportionately represented in the criminal justice system. By virtue of being forcibly and systematically removed from their communities and placed into institutions, Aboriginal and Torres Strait Islander children are a group which were particularly vulnerable to the abuses identified by the Royal Commission. Excluding these survivors from the Scheme appears to be contrary to the intent of a redress scheme.³⁰

1.58 The Committee heard from a number of submitters that excluding some Survivors on the basis of previous criminal offending is unfair, particularly where the Survivor may have already served a sentence for those actions.

1.59 The Blue Knot Foundation told the Committee that:

...whether a person is in gaol or not is irrelevant to whether they were sexually abused as a child within an institution. As a crime was committed

26 Ryan Carlisle Thomas, *Submission 16*, p. 2.

27 Ryan Carlisle Thomas, *Submission 16*, p. 2.

28 Jesuit Social Services, *Submission 26*, p. 2.

29 Victorian Aboriginal Legal Services, *Submission 3*, p. 1.

30 Law Council of Australia, *Submission 18*, p. 8.

against them they should have equal access to redress, as any other survivor.³¹

1.60 The Australian Lawyers Alliance told the Committee:

...those whose lives were ruined and led into crime directly or indirectly by the abuse should not be further punished by being discriminated against.³²

1.61 The Sexual Assault Support Service argued that the treatment of Survivors with criminal histories is particularly unfair due to the state based nature of criminal law. They wrote:

Sentences vary from judge to judge, and from jurisdiction to jurisdiction. This means that in a case where two people commit similar crimes, but where one receives a sentence of less than five years, and one a sentence of more, the former will automatically be eligible under the Redress scheme whilst the latter will not.³³

1.62 The Service further noted the detrimental effect these provisions would have on Survivors. They explained:

...a rejection of their application on the basis of their conviction would be extremely detrimental to their mental health, and in many cases could lead them to feel suicidal. Survivors of institutional child sexual abuse almost always feel that they have been let down by 'the system', and this is likely to be seen by survivors as definitive proof of this. SASS counsellors have expressed that they would be hesitant even telling some survivors with serious criminal convictions about the scheme if there was a risk that they would be rejected.³⁴

1.63 Labor Senators on the Committee note advice that the inclusion of a general prohibition against Survivors making an application to the Scheme while incarcerated was driven by a concern for the safety and privacy of Survivors themselves, as well as a difficulty in providing supports within closed institutional settings.

1.64 Labor Senators on the Committee are unconvinced that these issues are insurmountable, and refer to the submission of Sexual Assault Support Service which acknowledges that:

...allowing incarcerated survivors to apply to the Scheme is complex, and in particular that there are risks associated with the confidentiality of applicants in a closed institutional setting. Regarding the concern that it would be difficult to secure appropriate redress support services for this environment, we note that we have been successfully providing advocacy

31 Blue Knot Foundation, *Submission 12*, p. 2.

32 Australian Lawyers Alliance, *Submission 2*, p. 7.

33 Sexual Assault Support Service, *Submission 11*, p. 5.

34 Sexual Assault Support Service, *Submission 11*, p. 6.

and counselling services to incarcerated survivors of institutional child sexual abuse for some time.³⁵

1.65 Labor Senators on the Committee agree with the expert advice provided in evidence to this Inquiry, and are of the view that all Survivors of childhood sexual abuse in institutions should be eligible to apply to the Redress Scheme on equal footing with one another.

Indexation

1.66 Since the Committee tabled its Final Report for the Inquiry into the earlier Commonwealth legislation, Labor Senators have become aware of the serious concerns held by many Survivors regarding the indexation arrangements recommended by the Royal Commission.

1.67 CLAN provided the Committee with a case study of how one of their members would be impacted by these provisions.

1.68 CLAN wrote that the Care Leaver and Survivor received a \$39 000 from another Redress Scheme many years ago, and that at the time, the Care Leaver and Survivor used \$12 000 of that payment to settle legal expenses incurred in obtaining the redress.

1.69 Labor Senators on the Committee understand that although a portion of the payment was used to cover legal fees, the sole purpose of the payment made was compensation, and as a result, the entire sum would be subject to the indexation provisions in the National Bill.

1.70 CLAN wrote that it is 'grossly unfair to index the gross amount...indexing is like robbing the poorest of abuse victims...the Government's children'.³⁶

1.71 Another Survivor advocacy organisation, Tuart Place, submitted to the Committee that their members believed:

...upscaling of past payments is mean-spirited, unfair and clearly intended to cut costs for past provider institutions.³⁷

1.72 Labor Senators on the Committee are deeply concerned that the implementation of these provisions may reduce some Survivors' redress payments to \$0.

1.73 Labor Senators on the Committee believe the Redress Scheme would be improved by removing the provisions which relate to adjusting previous amounts of compensation received by Survivors.

35 Sexual Assault Support Service, *Submission 11*, p. 4.

36 Care Leavers Australasia Network, *Submission 31*, p. 2.

37 Tuart Place, *Submission 14*, p. 7.

Decision time frame

1.74 Labor Senators note that the legislation currently before the Committee extends the timeframe for a Survivor to accept an Offer of redress from ninety days to at least six months.

1.75 Notwithstanding this improvement, Labor Senators continue to be of the view that Survivors should have one year to be make this decision, as recommended by the Royal Commission.

1.76 Submitters to the present Inquiry were also of the view that '12 months...is a reasonable period for acceptance'.³⁸

1.77 The Law Council of Australia explained that:

...given the legal implications of accepting an offer, it is essential that survivors have the opportunity to seek and receive independent legal advice as to whether they should accept an offer or pursue a civil claim...in the Law Council's experience, it does not consider that it will always be feasible for this to occur in six months, especially given the volume of survivors predicted to come forward to make an application for compensation under the Scheme.³⁹

1.78 Labor Senators maintain their view that Survivors should have one year to respond to an Offer of Redress.

Funder of last resort

1.79 Legislation before the Committee limits Funder of Last Resort provisions to only apply where the Government had equal responsibility for the abuse that occurred in the defunct organisation.

1.80 Labor Senators remain concerned that some Survivors may miss out on redress entirely as a result of this formation.

1.81 Submitters to the Inquiry also raised this issue.

1.82 Maurice Blackburn submitted that it is necessary to:

...ensure that the Commonwealth would still be the funder of last resort even if it had no direct involvement with the claimant, or the defunct institution at all. Failure to do so creates a class of survivor who misses out on redress merely because the abuse occurred in an independent institution which is now defunct.⁴⁰

1.83 The Centre for Excellence in Child and Family Welfare has also expressed concern that Survivors:

38 Maurice Blackburn, *Submission 29*, p. 7.

39 Law Council of Australia, *Submission 18*, p. 12.

40 Maurice Blackburn, *Submission 29*, p. 10.

... will have no recourse in respect of the abuse suffered, either through the redress scheme or by civil litigation.⁴¹

1.84 Labor Senators on the Committee maintain the view that the Funder of Last Resort provisions should be expanded.

Inclusion of all forms of abuse

1.85 Labor Senators note submissions from a number of individuals and organisations which advocate for eligibility for Redress to be extended to people who were not sexually abused, but survived other forms of abuse as children in the care of an institution.

1.86 Labor Senators have confined their comments to issues that are explicitly raised in the legislation and the recommendations of the Royal Commission.

Recommendations

1.87 Labor Senators on the Committee are cognisant of the challenges that amendments to the legislation would pose to the constitutional integrity and timeliness of the Redress Scheme.

1.88 For that reason, and notwithstanding a range of serious concerns, Labor Senators support the recommendation of the majority report that the Bill be passed and make the following additional recommendation:

Recommendation 1

1.89 That current and future Governments continue to negotiate with States and Territories in good faith to continue to strengthen the Redress Scheme.

Senator the Hon Lisa Singh

Senator Murray Watt

41 Centre for Excellence in Child and Family Welfare, *Submission 10*, p. 2.

Additional Comments by the Australian Greens

1.1 The Australian Greens strongly support the establishment of the National Redress Scheme (Scheme) for survivors of institutional child sexual abuse as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). We want to see it based on fairness, equity and justice and want it to be survivor focused and trauma and culturally informed.

1.2 The Australian Greens submitted a dissenting report to this committee's inquiry into the provisions of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Commonwealth Bill) and related bill as we could not support those bills passing in their current form at that stage.

1.3 This inquiry is looking at the provisions of the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (National Bill) and related bill, the bills that will give effect to the Scheme across the country.

1.4 The Australian Greens acknowledge that some progress has been made since the inquiry into the provisions of the Commonwealth Bill and its related bill, specifically:

- the Government agreed with the recommendation of the Committee in its report on the provisions of the Commonwealth Bill and related bill that Redress Support Service incorporate referral of affected family members, in cases where it is necessary to meet the critical needs of the survivor;
- the period of acceptance for an offer of redress has been increased to at least six months (though the Australian Greens would still like to see this extended to a year);
- the timeframes for applying for a review of a determination and for providing additional information have been extended to six months and eight weeks (or four weeks for urgent matters) respectively; and
- there will now be two reviews of the operation of the Scheme and there is a list of matters that the reviews must consider.

1.5 While a small number of the issues canvassed during the previous inquiry have been addressed, many of those issues still remain. These include:

- significant items to be left to the rules (though we acknowledge that some items that were previously going to be left to the rules have been included in the National Bill);
- the maximum redress payment being capped at \$150 000, rather than the \$200 000 recommended by the Royal Commission;
- the lack of a minimum monetary payment of \$10 000 as recommended by the Royal Commission;
- uncertainty of whether or not counselling and psychological services will be available to survivors for the duration of their life as recommended by the Royal Commission;

- the need for flexibility with regards to the timing of a direct personal response;
- the scope of eligibility for the Scheme (specifically, that survivors of institutional non-sexual abuse will not be eligible, unless they were also sexually abused);
- the exclusion of certain groups of survivors, particularly those who are not an Australian Citizen or permanent resident at the time they apply for redress, including former child migrants and asylum seekers, refugees and stateless people;
- the ability for survivors to submit only one application;
- the timeframe for institutions to opt in to the Scheme being set at two years;
- survivors needing to complete a statutory declaration to verify the information contained in their application for redress under the Scheme;
- the timeframe for accepting or rejecting an offer (though we acknowledge that the Government has increased this from the initial 90 days to six months);
- the lack of external merits review or judicial review of a determination;
- the need for adequate funding for additional support services for survivors;
- the need for supported decision-making principles to be included and nominees used only as a last resort; and
- the need for a funder of last resort in all circumstances.

1.6 Additionally, other new issues have arisen in the National Bill and its related bill. These include, but are not limited to:

- changes to the counselling and psychological component of redress, including the removal of the Commonwealth Bill's 'General principles guiding counselling and psychological services';
- the need for a survivor's application to specify where they live and applications needing to be made 12 months before the Scheme sunset date unless the Operator determines that there are exceptional circumstances;
- provisions for those with serious criminal convictions and the inability for those in gaol to apply for redress;
- the prevention of children applying for redress;
- provisions relating to security notices;
- the application of prior payment and indexation provisions; and
- changes to the funder of last resort model and the requirement for the Government institution to be 'equally responsible'.

1.7 The scope of this report is limited to the new issues listed above. The issues outstanding from the Commonwealth Bill and related bill were extensively canvassed in the Australian Greens' Dissenting Report to the previous inquiry. This report can be

found at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AbuseRedressScheme/Final_Report/d02.

Counselling and Psychological Services

1.8 The provisions for counselling and psychological services have changed in the National Bill. Survivors will either be provided counselling and psychological services under the Scheme, if they live in a jurisdiction that is a declared provider of these services, or they will receive a tiered lump sum payment of either \$1250, \$2500 or \$5000, depending on the severity of the sexual abuse they experienced. Where survivors receive counselling or psychological services under the Scheme, their jurisdiction will receive the tiered counselling payment directly.

1.9 The National Bill does not seem to provide any details around the length of the entitlement of those who will receive services under the Scheme. There is concern that this approach will also see survivors unable to choose the service they attend and that they may be unable to continue existing therapeutic relationships, which is in contradiction to the Royal Commission's recommendations.

1.10 It is worth noting here that the 'General principles guiding counselling and psychological services' that appeared in the Commonwealth Bill do not appear in the National Bill. As knowmore says in its submission to the inquiry, the principles:

... provided (as the very first principle) that "survivors should be empowered to make decisions about their own need for counselling or psychological services" have been removed from the current Bill. Those principles also emphasised that "survivors should be supported to maintain existing therapeutic relationships to ensure continuity of care."¹

1.11 The approach taken in the National Bill does not align with the principles.

1.12 There is concern that the services to be provided by the different jurisdictions that will be declared providers will also vary. There is also no clarity around what will happen if a survivor moves from a jurisdiction that is a declared provider to a jurisdiction that is not a declared provider. Will they subsequently receive a lump sum so that they can continue to receive counselling and psychological services in the new jurisdiction? From the Australian Government Departments' Submission, it appears not. Specifically, it says, 'Survivors will only be able to access one of the above options based on the jurisdiction they reside in at the time of submitting an application for redress.'²

1.13 The Australian Greens are also concerned that survivors who receive redress late in the life of the Scheme may only be able to access these services for a short period of time compared with those survivors who are granted redress early in the life of the Scheme.

1.14 There is also concern around the adequacy of the payments for counselling and psychological services for those who will receive a lump sum payment for

1 knowmore, *Submission 20*, p. 6.

2 Australian Government Departments, *Submission 1*, p. 6.

counselling and psychological services. As was canvassed during the Commonwealth Bill's inquiry, this is not a significant amount of money.

1.15 The Australian Greens note the agreement of the Government to the recommendation of the Committee in its report into the provisions of the Commonwealth Bill and related bill that counselling offered should be available for the life of the survivor; however, this does not appear to translate to the provisions in the National Bill or the arrangements being made for the Scheme.

Applications

1.16 The National Bill requires a survivor's application to specify where they live. It is assumed that this is so they can be referred to the State or Territory government for the provision of counselling and psychological services, where the State or Territory is a declared provider of these services. However, we are concerned for those survivors who are experiencing homelessness and do not have a fixed address. Such survivors should not be excluded from applying and should be able to provide merely the State or Territory that they live in for this purpose. Survivors should also be able to supply a nominated address (for example, the residential address of a friend or family member or of a support service they attend) for the receipt of correspondence.

When an application cannot be made

1.17 Under the National Bill, a survivor cannot make an application where they have already made an application, a security notice is in force (see below), the survivor is a child who will not turn 18 before the Scheme sunsets, the person is in gaol or the application is being made in the period of 12 months before the Scheme sunsets.

Survivor is a child who will not turn 18 before the Scheme sunsets

1.18 The consequence of this provision is that children who are not yet eight years old will be excluded from applying to the Scheme. There is also no Operator discretion with regards to this provision (as there is for a person in gaol and an application being made in the period of 12 months before the Scheme sunsets, outlined below). This provision is not in line with the view of the Royal Commission.

1.19 As the Australian Human Rights Commission (Commission) says in its submission:

The rationale of s 20(1)(c) therefore appears to be to safeguard against the Scheme unduly preventing a child survivor from limiting their future rights by permitting them to make an uninformed decision about redress. However, the Commission does not consider a blanket exclusion of children to be proportionate to the achievement of such a purpose. **To the contrary, the Commission considers that the blanket exclusion of children is contrary to requirement to ensure the best interests of the child, especially in relation to vulnerable children.**

Although there might be instances where it is in the child's best interest *not* to apply for redress, there are also instances where it *will* be in the best interests of the child to seek redress under the Scheme. The Commission

considers that it is ultimately children, with relevant specialist support, that should make that decision for themselves. The operation of the Scheme should not unduly restrict their freedom to do so, but should rather accommodate for a proper inquiry into the best interests of the individualised child in their particular circumstances, as required by international human rights law.³

1.20 Concern was also raised over the requirement, which will be set out in the Rules, for the Operator to wait until a child, where they apply to the Scheme while underage, is 18 before making a determination to approve or not approve their application. In this regard, the Commission said 'children should not be forced to wait until 18 to receive that redress as a matter of course.'⁴

The person is in gaol

1.21 The rationale for this in is the Explanatory Memorandum to the National Bill, which states:

This restriction is necessary as the Scheme will be unable to deliver appropriate Redress Support Services to incarcerated survivors...[and] institutions may not be able to deliver an appropriate direct personal response to a survivor if that survivor is incarcerated.⁵

1.22 As the Commission says in its submission:

The Commission does not accept that difficulties in delivering appropriate redress, including an appropriate direct personal response from relevant institutions, is reason enough to exclude incarcerated survivors from making an application for redress. If the particulars of a survivor's situation are such that aspects of redress cannot reach the survivor while in gaol, the Commission considers that redress can be delivered to the survivor at a time when reasonably practicable. It is not necessary for the relevant survivor to be barred from *applying* for redress altogether.

Although the 10-year life of the Scheme will allow some incarcerated survivors to apply for redress upon their release, this will not always be the case. The Commission notes that, as the lifespan of the Scheme continues to run, this exclusion would apply more readily to incarcerated survivors serving decreasingly serious sentences.⁶

1.23 It is unclear why a direct personal response could not be provided by the relevant institution/s in gaol, or why survivors would not be able to receive counselling and psychological services while they are in gaol.

1.24 As Blue Knot Foundation says in its submission:

3 Australian Human Rights Commission, *Submission 23*, p. 10.

4 Australian Human Rights Commission, *Submission 23*, p. 10.

5 *Explanatory Memorandum*, p. 119.

6 Australian Human Rights Commission, *Submission 23*, p. 8.

If it is difficult to secure appropriate redress services in gaol, this needs to be addressed, rather than a survivor being punished for a system not being fit for purpose.⁷

1.25 We do not want to see survivors penalised for choosing to apply for redress later in the life of the Scheme and this provision will see that happen in some cases. This provision will also discriminate against Aboriginal and Torres Strait Islander survivors, who are over-represented in the criminal justice system.

1.26 As Tuart Place says in its submission:

The proposed exclusion of this group of applicants misses an important opportunity to assist in protecting children from future sexual abuse.⁸

1.27 The Australian Greens note that this provision is subject to the discretion of the Operator and that the Operator may determine that there are exceptional circumstances justifying the application being made; however, there needs to be more clarity around what those circumstances might entail.

The application is being made in the period of 12 months before the Scheme sunsets

1.28 The effect of this provision is to limit the time survivors will be able to apply to the Scheme to 9 years, rather than the full 10 years the Scheme will be operating for. The Australian Greens acknowledge that this provision is subject to the discretion of the Operator and that the Operator may determine that there are exceptional circumstances justifying the application being made in the final year; however, we are of the view that this has not been adequately communicated to survivors and needs to be.

Criminal histories

1.29 Under the National Bill, survivors who have been convicted of an offence and sentenced to imprisonment for five years or more will be excluded from the Scheme, unless a determination by the Operator is made that the provision of redress would not bring the Scheme into disrepute or adversely affect public confidence in, or support for, the Scheme.

1.30 The Australian Greens do not support this exclusion. We believe that redress should be available to all survivors of institutional child sexual abuse.

1.31 Allowing a category of survivors to be excluded from the Scheme will see their experiences go unrecognised and, arguably, will see the relevant institutions not held to account for this abuse.

1.32 As Care Leavers Australia Network (CLAN) says in its submission:

The Royal Commission went into prisons & opened up the wounds of these Care Leavers & now the goal posts have been shifted for them[.]⁹

7 Blue Knot Foundation, *Submission 12*, p. 2.

8 Tuart Place, *Submission 14*, p. 3.

9 Care Leavers Australia Network, *Submission 31*, p. 2.

1.33 As Blue Knot Foundation says:

Making these decisions subjective and in the hands of different Attorneys-General means that the decisions will vary, depending on levels of understanding and values and can potentially be unfair and also mean that if found against a survivor, that institutions are not needing to provide redress for their crime. This is clearly inequitable.¹⁰

1.34 It was also pointed out in the course of the inquiry that the 'special assessment' model in the National Bill is opaquer than the model under the Commonwealth Bill and survivors who fall into this category will not know whether they are eligible or not, creating considerable uncertainty and likely causing distress.

1.35 This provision will also disproportionately affect Aboriginal and Torres Strait Islander survivors, who are over-represented in the criminal justice system.

1.36 The Law Council of Australia says in its submission:

This is a broad discretion, and while the Bill provides for matters that must be considered by the Operator prior to forming a determination, there remains significant uncertainty as to what will ultimately be deemed to bring the Scheme into disrepute or adversely affect public confidence or support for the Scheme.¹¹

1.37 knowmore makes the observation that:

... given the confidentiality provisions in the Bill, we anticipate that in most cases it would be unlikely that a decision to provide redress to a person with a serious criminal conviction could adversely affect public confidence in, or support for, the scheme, as rarely would the outcomes of such cases come to the public's knowledge.¹²

1.38 There was also concern expressed that it appeared that a determination made under Clause 63 could not be subjected to review.

1.39 While the Operator can override the blanket exclusion for individual cases, we are concerned that the starting point is one of exclusion. We believe that where the Government is adamant that there needs to be the ability to exclude some survivors that fall into this category, the starting point should be one of eligibility and that the Operator could then determine on a case by case basis whether an individual should be excluded. Exclusion should only be considered 'where granting redress to that person would 'bring the scheme into disrepute' or 'adversely affect public confidence in, or support for, the scheme'.¹³

1.40 The submissions of the National Aboriginal and Torres Strait Islander Legal Services and the Law Council of Australia contained similar suggestions, where such a provision is to be included at all.

10 Blue Knot Foundation, *Submission 12*, p. 3.

11 The Law Council of Australia, *Submission 18*, p. 9.

12 knowmore, *Submission 20*, p. 7.

13 Australian Human Rights Commission, *Submission 23*, p. 8.

1.41 The Commission says it:

...considers that this exclusion is primarily driven by the provision of redress *funds* to certain criminals. The Operator should be able to separate out and provide the non-monetary aspects of redress, namely counselling services and a direct personal response, while also precluding payment of redress funds to criminal survivors whose receipt of redress funds would 'bring the scheme into disrepute' or 'adversely affect public confidence in, or support for, the scheme'.¹⁴

Security notices

1.42 The National Bill includes provisions that exclude a survivor from accessing redress where it may prejudice the security of Australia or a foreign country. Where a security notice is issued by the Minister for Home Affairs in relation to a survivor, they cannot apply for, and are not entitled to, redress. The Minister for Home Affairs can issue a security notice when:

- The survivor has had their passport cancelled or refused; or
- The survivor's visa has been revoked or refused on national security grounds.

1.43 In the Australian Government Departments' Submission to the inquiry, it says:

A person's access to redress will only be impacted in circumstances where the receipt of redress is relevant to the assessed security risk posed by the individual and the receipt of redress would adversely impact the requirements of security. ... It is not intended that every person whose passport or visa has been refused or cancelled would lose access to redress, rather only in cases where it is appropriate or justified on security grounds.¹⁵

1.44 As the Commission says in its submission, it:

...does not challenge the legitimacy of this purpose. However, the Commission notes that the stated justification for this exclusion only refers to the use of 'funds' and is therefore confined to the redress 'payment'.

The Commission notes the importance of the other aspects of redress, namely a personal response and counselling services. Given the object of the Scheme to recognise and alleviate the past injustices of institutional child sexual abuse, the Commission considers that non-monetary aspects of redress could still be offered to survivors the subject of security notices.¹⁶

Prior payments and indexation provisions

1.45 When working out a survivor's redress payment, the process requires taking into account relevant prior payments by each institution and adjusting for inflation.

14 Australian Human Rights Commission, *Submission 23*, p. 8.

15 Australian Human Rights Commission, *Submission 23*, p. 10.

16 Australian Human Rights Commission, *Submission 23*, p. 12.

The indexation of prior payments is of deep concern to the Australian Greens. Prior payments should not be indexed.

1.46 As Tuart Place says in its submission:

The primary problem with indexing redress payments however, is that these payments are not 'proper compensation', and upscaling is inappropriate when dealing with amounts that bear no direct relationship to the 'true value' of the damage, as is the case in civil claims. It is accepted that redress payments are significantly lower than common law damages, which makes upscaling particularly unfair.¹⁷

1.47 If the Government is not willing to remove the indexation provisions from the National Bill, then at the very least, the redress payments survivors will receive should be indexed over the duration of the Scheme to ensure the value of the payment remains equivalent.

1.48 We are also concerned about how prior payments will be taken into account. We are of the view that only the amount that ended up in the survivor's pocket (as put forward in the submission of the Blue Knot Foundation)¹⁸ and is in recognition of the abuse or the harm caused by the abuse for which the institution is responsible should be taken into account. Where the survivor received an amount in recognition of the abuse or the harm caused by the abuse for which the institution is responsible and then subsequently had to pay legal fees from this, the legal fees should be deducted from the amount they received so that only the amount they were left with is taken into account. However, it appears to us from an answer we received to a question on notice that where a prior payment was not broken down into monetary components i.e. a specific amount of the prior payment being listed for legal fees, the entire payment will be taken into account (and adjusted for inflation), which is very concerning.

1.49 The Australian Greens acknowledge that '[i]n cases of shared responsibility, the Scheme will only deduct prior payments from the liability for redress of the institution that made the payment'.¹⁹

1.50 As Tuart Place says in its submission:

In the interests of justice, it is essential that the Operator's assessment of 'relevant prior payments' does not include any part of a previous redress settlement that is not specifically and manifestly identified as being related to sexual abuse [though later in its submission Tuart Place expands on this to say 'unless the non-sexual abuse is demonstrably related to the sexual abuse, and is specifically redressed in the NRS payment], and, as recommended by the Royal Commission, "any uncertainty as to whether a payment already received related to the same abuse for which the survivor

17 Tuart Place, *Submission 14*, p. 6.

18 Blue Knot Foundation, *Submission 12*, p. 3.

19 Australian Government Departments Submission, *Submission 1*, p. 16.

seeks a monetary payment through redress should be resolved in the survivor's favour."²⁰

Funder of last resort

1.51 Under the National Bill, there is a revised funder of last resort model. In order for a Government institution to be the funder of last resort for a defunct institution, the institution must be equally responsible with the defunct institution for the abuse of the survivor. As knowmore says in its submission, "This is a higher test than that of "shared responsibility" that was in the previous Bill."²¹

1.52 They go on to say:

Having regard to some of the cases we have seen, we are concerned that this change may operate to exclude some survivors where the participating Government had some role in their placement in an institution, but seeks to establish to the Operator that these acts did not amount to "equal responsibility" on its part for the abuse of the person.²²

1.53 In addition, it is not clear who, if anyone, will be the funder of last resort where the responsible non-government institution is now defunct, and there was no Government institution involvement whatsoever in the abuse.

Conclusion

1.54 The Greens want to see the Scheme operating from the nominated date of 1 July 2018, at the same time we are very concerned that the Scheme will not be the best it can be given the issues that remain unresolved. Following commencement of the Scheme, we will continue to advocate and work for subsequent reforms to make the Scheme the best it can be.

Senator Rachel Siewert

20 Tuart Place, *Submission 14*, p. 9.

21 knowmore, *Submission 20*, p. 8.

22 knowmore, *Submission 20*, p. 8.

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

- 1** Australian Government Departments
- 2** Australian Lawyers Alliance
- 3** Victorian Aboriginal Legal Service
- 4** Mr Robert Mackay
- 5** Restorative Justice International
- 6** Anglicare Australia
- 7** Confidential
- 8** Government of South Australia
- 9** Mr Frank Golding
- 10** Centre for Excellence in Child and Family Welfare (plus an attachment)
- 11** Sexual Assault Support Service Inc
- 12** Blue Knot Foundation
- 13** Alliance for Forgotten Australians (plus an attachment)
- 14** Tuart Place
- 15** Relationships Australia
- 16** Ryan Carlisle Thomas (plus an attachment)
- 17** Australian Psychological Society
- 18** Law Council of Australia (plus an attachment)

- 19 Shine Lawyers
- 20 knowmore legal service
- 21 Royal Australian and New Zealand College of Psychiatrists
- 22 National Social Security Rights Network
- 23 Australian Human Rights Commission
- 24 Salvation Army Australia and Uniting Church in Australia
- 25 Queensland Law Society
- 26 Jesuit Social Services
- 27 Australian Association of Social Workers
- 28 People with Disability Australia (plus two attachments)
- 29 Maurice Blackburn Lawyers
- 30 Ms Ellen Bucello
- 31 Care Leavers Australasia Network
- 32 In Good Faith Foundation
- 33 Bravehearts Foundation
- 34 Child Migrants Trust
- 35 Anglican Church of Australia, General Synod
- 36 Office of the Australian Information Commissioner
- 37 Aboriginal Health and Medical Research Council of NSW
- 38 Waller Legal
- 39 National Aboriginal and Torres Strait Islander Legal Services
- 40 Victorian Aboriginal Child Care Agency
- 41 Tasmanian Government

Answers to Questions on Notice

- 1** Answers to written Questions on Notice, received from Department of Social Services, 12 June 2018