

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

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.19 pm]: I move —

That the bill be now read a second time.

The Royal Commission into Institutional Responses to Child Sexual Abuse shone a light on the experience of thousands of Australians who had been silenced for so long. The royal commission heard from many courageous Western Australians, who told their traumatic and deeply personal stories through private sessions, written submissions and public hearings. During its five years of inquiry, the royal commission made 409 recommendations to governments and institutions. The royal commission's "Redress and Civil Litigation Report" notably recommended the establishment of a single national redress scheme to recognise the harm suffered by survivors of institutional child sexual abuse. In responding to the royal commission's recommendations on 27 June 2018, the Premier of Western Australia announced that the Western Australian government would join the National Redress Scheme for survivors of institutional child sexual abuse. This decision recognises the Western Australians who have sadly experienced child sexual abuse in government and non-government institutions, and is a significant step towards righting past wrongs and making amends. This will create a truly national scheme. All state and territory governments have agreed to participate, and many of the major non-government institutions have committed to joining.

The Western Australian government did not immediately agree to participate in the national redress scheme for a very important reason—I was working hard to improve the scheme for all survivors, in not only Western Australia, but also throughout Australia. Constructive negotiations with the commonwealth Minister for Social Services have made the scheme fairer and more equitable, particularly for former child migrants, survivors who are in prison and survivors with a serious criminal history. The decision to join the scheme complements the action already taken by the McGowan government to remove the limitation periods that historically applied to civil claims based on child sexual abuse. Western Australians who experienced institutional child sexual abuse as children will have a choice as to the avenue that they pursue. Redress is likely to be preferable for many Western Australian survivors, as it is more supportive, less traumatic and less financially onerous than other avenues. The National Redress Scheme offers eligible applicants three elements of redress: firstly, a direct personal response from the responsible institution, if requested; secondly, funds to access counselling and psychological care; and, thirdly, a monetary payment. The scheme also provides survivors with community-based supports, including application assistance, financial support services, and independent legal advice.

The National Redress Scheme formally commenced operation on 1 July 2018 and will operate for 10 years. It is being administered by the commonwealth government on behalf of participating government and non-government institutions, which contribute on a responsible entity—pays basis. The commonwealth Parliament does not have the power to enact legislation to enable the delivery of the National Redress Scheme for institutions other than its own. I am therefore pleased to introduce the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018, which will allow the Western Australian government and Western Australian-based non-government institutions to participate in the scheme. The bill enables the National Redress Scheme to operate in Western Australia by providing for the adoption of the commonwealth's National Redress Scheme for Institutional Child Sexual Abuse Act 2018 and for a referral of power—an amendment reference—which will enable the commonwealth Parliament to make express amendments to the national redress act. This amendment reference will allow the national redress act to be expressly amended from time to time by the commonwealth Parliament. This will ensure the adaptability of the scheme during the 10 years of its operation. It is important to note that amendments to the national redress act can be made by the commonwealth Parliament only with the agreement of participating jurisdictions. The scheme's governance mechanisms, including how agreement to amendments to the national redress act will be sought, are detailed within the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, which Western Australia has signed.

Importantly, as with any referral of power, the amendment reference is subject to limitations. Clause 7 of the bill provides that the amendment reference does not include state redress mechanisms. This ensures that the state retains control over the operation or establishment of any current or future Western Australian redress

mechanisms or schemes. It also ensures that the jurisdiction of the state's courts and tribunals is not inadvertently affected by the national redress act. Clause 8 also limits the amendment reference by preventing the commonwealth Parliament from making any amendments to the national redress act that would remove or override a provision of that act that requires the agreement of the state. This ensures that the commonwealth Parliament cannot, for example, declare a state institution as a participating institution in the scheme or require the state to assume responsibility for a defunct institution without the state's prior agreement. Further protection for the state is provided through clauses 9 and 10, which relate to the termination of the adoption or amendment reference. The Governor may, by proclamation, terminate the adoption and/or amendment references. Clause 11 of the bill provides that regulations or a ministerial declaration may be made by Western Australia about how the agreement of the state is to be given, withdrawn or evidenced for the purposes of the scheme.

As a participant in the National Redress Scheme, the Western Australian government will be required to provide information to the scheme operator—the secretary of the commonwealth Department of Social Services—in order for an application for redress to be considered by the scheme. The participation of Western Australian government agencies in the National Redress Scheme will be managed through a central coordination point. To facilitate streamlined interaction with the scheme operator, a redress response coordination unit has been established in the office of the Commissioner for Victims of Crime within the Department of Justice. Clause 12 of the bill provides for the sharing of information with the scheme operator, as well as between state institutions. The bill also provides for the making of regulations. This may include, for example, the making of regulations for the purposes of clauses 11 and 12 of the bill.

Part 4 of the bill addresses the interaction between the National Redress Scheme and the Western Australian government's own criminal injuries compensation scheme, as provided by the Criminal Injuries Compensation Act 2003. The Western Australian criminal injuries compensation scheme is a mechanism that allows victims of crime to receive compensation in circumstances in which all other avenues, such as insurance and redress, have been exhausted. It provides support to victims of crime who would not otherwise be compensated for their injury or loss. This bill facilitates the state's participation in the National Redress Scheme, which provides a tailored approach to recognising survivors of institutional child sexual abuse. It is intended to be a simpler process than other means of obtaining financial recognition. The National Redress Scheme is also likely to provide better outcomes for survivors than criminal injuries compensation, given the therapeutic elements of redress. Additionally, redress is likely to provide higher maximum and average payments for survivors of institutional child sexual abuse compared with historical maximum criminal injuries compensation payments. Consequently, it is not necessary for persons who have accepted a National Redress Scheme payment to also receive criminal injuries compensation under the Criminal Injuries Compensation Act 2003. Clause 14 in part 4 of the bill addresses this by providing that a person is not entitled to receive criminal injuries compensation in relation to a criminal offence if the offence is or involves abuse within the scope of the National Redress Scheme and the person has accepted a National Redress Scheme payment. It is also appropriate that a person pursues the National Redress Scheme ahead of being considered for criminal injuries compensation for the reasons I have just mentioned. The bill addresses this at clause 15 by providing that a criminal injuries compensation assessor must defer consideration of an application by a person for criminal injuries compensation, pending the person making a National Redress Scheme application, if the person's criminal injuries compensation application is made for an offence that is or involves abuse within the scope of the National Redress Scheme, the person has not made an application to the National Redress Scheme and the assessor dealing with the compensation application by or on behalf of the person is of the opinion that there is a reasonable likelihood that the person is eligible for redress under the National Redress Scheme.

Clause 16 of the bill deals with the effect of making a National Redress Scheme application on a Criminal Injuries Compensation Act 2003 application. In circumstances in which a person has applied to the National Redress Scheme and subsequently applies for criminal injuries compensation for an offence that is or involves abuse within the scope of the National Redress Scheme, the criminal injuries compensation assessor is to defer the application pending determination of the redress application. Similarly, when a person has made a criminal injuries compensation application for an offence that is or involves abuse within the scope of the National Redress Scheme that is yet to be determined and then makes a National Redress Scheme application, the criminal injuries compensation assessor is to defer the application pending determination of the redress application. In both circumstances the criminal injuries compensation application will be taken to be refused once the person accepts a redress payment under the National Redress Scheme. If the person is found by the National Redress Scheme not to be eligible or entitled to redress or the person declines the offer of a redress payment, the criminal injuries compensation application would proceed and be dealt with in the usual way. With these provisions in place, it can be determined whether survivors of institutional child sexual abuse can obtain an offer of redress under the National Redress Scheme, which has been specifically designed to meet their unique needs. It is only when a survivor cannot obtain an offer of redress that the survivor should have to pursue criminal injuries compensation.

As the National Redress Scheme formally commenced operation on 1 July 2018, Western Australian survivors are able to access the scheme's support services and submit their application. Applications will be assessed once the institution or institutions responsible for the abuse formally join the scheme. A number of arrangements need to be put in place before the Western Australian government can officially participate in the scheme. It is proposed that the government's participation in the scheme will formally commence on 1 January 2019, subject to this bill passing by the end of the year. The Department of the Premier and Cabinet and the Department of Justice are working with other state government agencies and the commonwealth government to prepare for 1 January.

The McGowan government's agreement to join the National Redress Scheme demonstrates our commitment to responding to historical abuse and to providing support to survivors. The introduction of this legislation is a very important step in ensuring recognition for Western Australians who have experienced institutional child sexual abuse.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.