

National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**National Redress Scheme for Institutional Child
Sexual Abuse (Commonwealth Powers) Bill 2018**

A Bill for

An Act —

- to adopt the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Commonwealth) as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the day on which this Act receives the Royal Assent for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and
- to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and
- to amend the *Criminal Injuries Compensation Act 2003*; and
- for related matters.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Terms used

In this Act —

adoption means the adoption under section 4(2);

amendment reference means the reference under section 5(1);

assent day means the day referred to in section 2;

express amendment of the National Redress Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the National Redress Act;

National Redress Act means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Commonwealth);

National Redress Scheme means the National Redress Scheme for Institutional Child Sexual Abuse as established by the National Redress Act and as in force from time to time;

participating State institution means a participating State institution within the meaning of the National Redress Act;

State institution means a State institution within the meaning of the National Redress Act.

Part 2 — Adoption and referral

4. Adoption of the relevant version of the National Redress Act

(1) In this section —

relevant version of the National Redress Act means the National Redress Act as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the assent day.

(2) The relevant version of the National Redress Act is adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth.

(3) Despite subsection (2), the adoption has effect for, and for no longer than, the period —

(a) beginning when subsection (2) comes into operation; and

(b) ending at the beginning of the day fixed under this Part as the day on which the adoption is to terminate.

5. Amendment reference

(1) Matters relating to a redress scheme for institutional child sexual abuse are, except as provided by sections 7 and 8, referred to the Parliament of the Commonwealth, but only to the extent of making laws with respect to those matters by making express amendments of the National Redress Act.

(2) The amendment reference has effect only —

(a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth); and

(b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

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- 1 (3) Despite subsection (1) and subject to section 10(2), the
2 amendment reference has effect for, and for no longer than, the
3 period —
4 (a) beginning when subsection (1) comes into operation;
5 and
6 (b) ending at the beginning of the day fixed under this Part
7 as the day on which the reference is to terminate.

8 **6. Amendment of National Redress Act**

9 It is the intention of the Parliament of the State that the National
10 Redress Act may be expressly amended, or have its operation
11 otherwise affected, at any time after the commencement of this
12 Act —

- 13 (a) by provisions of Commonwealth Acts the operation of
14 which is based on legislative powers that the Parliament
15 of the Commonwealth has apart from under the
16 amendment reference; and
17 (b) by provisions of instruments made or issued under the
18 National Redress Act or under provisions referred to in
19 paragraph (a).

20 **7. State redress mechanisms**

21 (1) A *State redress mechanism* is —

- 22 (a) a scheme, program or arrangement (temporary or
23 otherwise) established (before or after the
24 commencement of this Act) by —
25 (i) the Parliament or government of the State; or
26 (ii) an institution (whether governmental or
27 non-governmental) or other entity,
28 for or in respect of persons who have suffered
29 institutional child sexual abuse in the State (whether
30 applying only to any such persons or applying to any
31 class of victims of crime) and any associated matters; or

- 1 (b) the jurisdiction of a court or tribunal to grant
2 compensation or support for or in respect of victims of
3 crime (including crime relating to institutional child
4 sexual abuse) and any associated matters.
- 5 (2) The amendment reference does not include the matter of making
6 a law to the extent that that law would operate to prevent or
7 limit the power to establish, or to prevent or limit the operation
8 of, any State redress mechanism, whether or not the mechanism
9 deals with the same or similar subject-matters as those dealt
10 with in any aspect of the National Redress Scheme.
- 11 (3) Subsection (2) does not cover any of the following matters (if
12 they would otherwise be covered by the amendment
13 reference) —
- 14 (a) any matter to which the National Redress Act as
15 originally enacted relates;
- 16 (b) the matter of the release or discharge, in connection with
17 the operation of the National Redress Scheme, of
18 relevant civil liability of institutions or officials;
- 19 (c) the matter of the disclosure or use of evidence or other
20 information provided or obtained in connection with the
21 operation of the National Redress Scheme;
- 22 (d) the matter of the making, enforcement or protection (for
23 example, protection against the operation of orders in
24 the nature of garnishee orders) of payments in
25 connection with the operation of the National Redress
26 Scheme.

27 **8. Requirements for agreement of the State**

28 The amendment reference does not include the matter of making
29 a law to the extent that that law would substantively remove or
30 override a provision of the National Redress Act that requires
31 the agreement of the State.

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9. Termination of adoption or amendment reference

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which —
- (a) the adoption and the amendment reference are to terminate; or
 - (b) the amendment reference is to terminate; or
 - (c) the adoption is to terminate (if the amendment reference has been previously terminated).
- (2) The Governor may, by proclamation (a *revoking proclamation*), revoke a proclamation published under subsection (1).
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) If a revoking proclamation has effect the revoked proclamation is taken never to have been made for the purposes of sections 4(3) and 5(3).
- (5) A revoking proclamation does not prevent the making of a further proclamation under subsection (1).

10. Effect of termination of amendment reference before adoption

- (1) If the amendment reference terminates before the adoption, the termination of the amendment reference does not affect —
- (a) laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
 - (b) the continued operation in the State of the National Redress Act as in operation immediately before that termination or as subsequently amended or affected by —
 - (i) laws referred to in paragraph (a) that come into operation after that termination; or
 - (ii) provisions referred to in section 6.

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(Commonwealth Powers) Bill 2018***

Adoption and referral

Part 2

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- 1 (2) Accordingly, the amendment reference continues to have effect
2 for the purposes of subsection (1) unless the adoption is
3 terminated.

Part 3 — Agreement and information

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

(1) The regulations may make provision for or with respect to, or (subject to any relevant provisions of the regulations) the Minister may give directions as to, how the agreement of the State is to be given or withdrawn and may be evidenced for the purposes of, and consistently with, this Act and the National Redress Scheme.

(2) Without limitation —

(a) the regulations or directions may authorise a person to give agreement on behalf of the State; and

(b) the agreement of the State to State institutions participating in the National Redress Scheme may be given in respect of —

(i) one or more particular State institutions; or

(ii) a class of State institutions, however described.

12. Information sharing

(1) In this section —

Operator means the Operator within the meaning of the National Redress Act;

State agency means the whole or part of a body (whether or not incorporated) established for a public purpose by or under a law of the State, whether or not it is a State institution or participating State institution, and includes a body or class of bodies prescribed by the regulations as being within this definition, but does not include a body or class of bodies prescribed by the regulations as not being within this definition.

(2) A participating State institution may give information to the Operator for the purpose of complying with a request made by the Operator to the participating State institution under the

- 1 National Redress Act to give information in relation to an
2 application under the National Redress Scheme.
- 3 (3) A State agency may give information to another State agency
4 for the purpose of assisting any participating State institution to
5 comply with a request made by the Operator to the participating
6 State institution under the National Redress Act to give
7 information as referred to in subsection (2).
- 8 (4) Nothing in a law of the State prevents —
- 9 (a) a participating State institution from giving information
10 to the Operator as referred to in subsection (2); or
- 11 (b) a State agency from giving information to another State
12 agency as referred to in subsection (3),
- 13 unless that law is prescribed by the regulations under this Act.
- 14 (5) A reference in this section to a participating State institution is a
15 reference to a participating State institution that is, is part of or
16 is connected with the State.

1 **Part 4 — Interaction between the *Criminal Injuries***
2 ***Compensation Act 2003* and the National Redress Act**

3 **13. Terms used**

4 In this Part —

5 ***abuse*** means abuse as defined in the National Redress Act
6 section 6 that is within the scope of the National Redress
7 Scheme;

8 ***assessor*** has the meaning given in the *Criminal Injuries*
9 *Compensation Act 2003* section 3;

10 ***compensation application*** has the meaning given in the
11 *Criminal Injuries Compensation Act 2003* section 3;

12 ***offence*** has the meaning given in the *Criminal Injuries*
13 *Compensation Act 2003* section 3;

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

16 **14. Deferral of compensation application if redress application**
17 **not made in relation to abuse**

18 (1) This section applies if —

- 19 (a) a person has made a compensation application in
20 relation to an offence; and
21 (b) the offence for which the compensation application is
22 made is or involves abuse; and
23 (c) the person has not made a redress application; and
24 (d) the assessor dealing with the compensation application
25 by or on behalf of a person is of the opinion there is a
26 reasonable likelihood that the person is eligible for
27 redress under the National Redress Scheme.

28 (2) The assessor must defer the compensation application pending
29 the making of a redress application.

1 **15. Effect on compensation application if redress application**
2 **made**

3 (1) This section applies if —

4 (a) after a person has made a redress application the person
5 makes a compensation application in relation to an
6 offence and —

7 (i) the offence in relation to which the person makes
8 the compensation application is or involves
9 abuse; and

10 (ii) the redress application has not been determined;

11 or

12 (b) after a person has made a compensation application in
13 relation to an offence the person makes a redress
14 application and —

15 (i) the offence in relation to which the person made
16 the compensation application is or involves
17 abuse; and

18 (ii) the compensation application has not been
19 determined.

20 (2) The assessor dealing with the compensation application by or on
21 behalf of a person must defer the compensation application
22 pending the determination of the redress application.

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Part 5 — Regulations

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16. Regulations

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The Governor may make regulations, not inconsistent with this

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Act, for or with respect to any matter that by this Act is required

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or permitted to be prescribed or that is necessary or convenient

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to be prescribed for carrying out or giving effect to this Act.

Part 6 — Tabling particular documents

17. Tabling documents relating to scheme reviews

(1) In this section —

intergovernmental agreement means the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia as in force from time to time;

scheme review means —

- (a) a review under the National Redress Act section 192(1) or (3); or
- (b) a review of the operation and objectives of the intergovernmental agreement carried out under clause 36 of that agreement.

(2) Subsection (3) applies if —

- (a) a scheme review is carried out; and
- (b) a report is prepared by the person carrying out the review; and
- (c) the Minister receives the report.

(3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after the Minister receives the report, but not later than 6 sitting days of the House after the Minister received it.

(4) If a report to which subsection (3) applies contains sensitive, confidential or personal information, the Minister may comply with subsection (3) by removing the sensitive, confidential or personal information from the report before causing the document to be laid before each House.

This Part amends the *Criminal Injuries Compensation Act 2003*.

(1) In section 42(3) delete “received by way of compensation or damages, or under a contract of insurance,” and insert:

(2) In section 42(4) delete “amount by way of compensation or damages, or under a contract of insurance,” and insert:

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined term | Provision(s) |
|--|--------------|
| abuse | 13 |
| adoption | 3 |
| amendment reference | 3 |
| assent day | 3 |
| assessor | 13 |
| compensation application | 13 |
| express amendment | 3 |
| intergovernmental agreement | 17(1) |
| National Redress Act | 3 |
| National Redress Scheme | 3 |
| offence | 13 |
| Operator | 12(1) |
| participating State institution | 3 |
| redress application | 13 |
| relevant version of the National Redress Act | 4(1) |
| revoking proclamation | 9(2) |
| scheme review | 17(1) |
| State agency | 12(1) |
| State institution | 3 |
| State redress mechanism | 7(1) |