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

Committee

Resumed from 20 November. The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon SUE ELLERY: Yesterday when the chamber was considering this matter, I undertook to table two documents. I will do that now. The first is the "National Redress Scheme Participant and Cost Estimates: Royal Commission into Institutional Responses to Child Sexual Abuse", July 2015. This document is referred to as the "Finity Consulting document". I table that.

[See paper 2212.]

Hon SUE ELLERY: I also undertook to table a list of the Western Australian government departments that are opting into the scheme. I have that. By way of explanation for the chamber, the National Redress Scheme for Institutional Child Sexual Abuse Act provides that in order to participate in the scheme, the state must make a declaration outlining the institutions it wishes to have declared as state institutions. The Western Australian government is currently preparing the state's declaration for the Attorney General's endorsement. This declaration will be based on the Public Sector Management Act 1994, which defines public sector bodies and organisations. As the draft declaration is still being finalised, I am unable to provide a detailed list; however, I can table a chart of the Western Australian government prepared by the Public Sector Commission, which lists current Western Australian public sector bodies and organisations. This captures a range of government departments, the majority of which will be included in the state's declaration. Once the Attorney General has approved the state's declaration, it will be provided to the commonwealth Minister for Families and Social Services for publication. It will then be publicly available.

For members' interest, I also table the most recent declarations, being the "National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018", and the "National Redress Scheme for Institutional Child Sexual Abuse Amendment (2018 Measures No. 4) Declaration 2018". I table those.

[See papers 2213–2215.]

Hon NICK GOIRAN: Yesterday evening we were looking through a number of examples, the genesis of which arose from comments made by Hon Alison Xamon during her second reading contribution. It is indeed unfortunate that Hon Alison Xamon is away on urgent parliamentary business at the moment because she kindly drew to our attention that under the National Redress Scheme there is a table that sets out how payments are to be made. Yesterday evening we were specifically looking at a scenario whereby a victim of sexual abuse might be categorised under the National Redress Scheme as having suffered exposure abuse. The minister kindly confirmed last night on the record—I encourage members to look at the uncorrected *Hansard* of last night's Committee of the Whole proceedings—that a victim of exposure abuse is restricted to a sum of $1 250 for their counselling and psychological costs. In other words, it is not possible for a victim of exposure abuse to get one dollar more than $1 250 for their counselling and psychological costs. That was confirmed by the minister last night in the Committee of the Whole House.

We then finished after I had asked the minister whether it was the case that if it were not for part 4 of the bill, a person who had suffered exposure abuse might be able to apply to the Chief Assessor of Criminal Injuries Compensation if the offence occurred after 1 January 1983 and recover, for example, $10 000 in psychological costs. The response provided by the minister usefully, accurately and correctly, was that, yes, that would be possible and people would be able to claim in criminal compensation any available or applicable gap. We finished last night with the final question and answer which was: if my amendment is passed, would the victim be able to apply for the true cost of their psychological counselling? The answer provided by the minister was "theoretically", yes. The minister then finished off, rounded out her answer, to indicate that, "Well, of course, one must always bear in mind that there is a higher evidentiary bar for criminal injuries compensation claims and, of course, a victim would need to jump over that higher evidentiary bar or satisfy the assessor of that higher evidentiary bar." All of that is true and correct.

I thank Hon Alison Xamon, who has returned to the chamber from urgent parliamentary business, for kindly bringing to our attention yesterday the table of payments being made under the National Redress Scheme. It will interest her that the example I have taken the chamber through, with the assistance and the kind help of the minister, is one in which a victim has suffered exposure abuse and is unable to get one cent more than $1 250 for their

counselling and psychological costs. Why? That is because part 4 of the bill will block that person from being able to get anything more. But, thankfully, the minister confirmed that if my amendment were to pass, that blockage would be removed and the person would be able to obtain their true cost of psychological counselling. However, the minister did say that that person would have to satisfy the higher evidentiary bar. That brings me to my question for the minister: in order to satisfy the higher evidentiary bar, would one way in which that could be done be by way of the provision of a medical report?

Hon SUE ELLERY: Through the Chair, the argument being mounted is that this is an example of how people, in fact, will be less well-off under the National Redress Scheme due to not being able to claim for treatment costs under that scheme or through the criminal injuries compensation scheme. My argument yesterday, and I will make it again today, is that these things are a balance. The reason I outlined those additional factors, for example, that there is a lower evidentiary bar with the redress scheme, that it is likely therefore to be less traumatic, that there are fewer medical reports—in fact, medical reports are not required under the National Redress Scheme—was to make the point that one scheme has been designed to recognise the particular trauma and length of time of that trauma that survivors have been through. This is a scheme that is designed to provide those who apply for it with a sum of money that recognises what they have been through, and to do that in a way that causes the least amount of stress and re-traumatisation than might otherwise apply if they were to pursue the course with more obstacles, if can describe it that way, which is the criminal injuries compensation scheme. In particular, I draw to the chamber's attention that the Chief Assessor of Criminal Injuries Compensation advises that in the experience of that office it is unlikely that applicants will incur significant gap expenses for counselling. The chief assessor does not recall a claim for treatment expenses for counselling in the figures quoted by the honourable member—that is, $10 000 worth of counselling. The chief assessor has not seen a claim like that. Generally, people are treated under the Medicare Better Access scheme, which provides 10 sessions of counselling annually with a rebate and a gap of a maximum of $121.50 per session. Although the criminal injuries compensation scheme can provide for future counselling gap costs, they are rarely claimed. People who receive a redress payment —

Hon Nick Goiran: Sorry, minister; did you say "rarely"? You didn't say "never".

Hon SUE ELLERY: No, I said "rarely".

People who receive a redress payment or a redress counselling payment can continue to access existing services, such as the Medicare Better Access scheme or existing community-based services.

Hon NICK GOIRAN: I asked the minister a question and we have not been given an answer. What we have been given is a new range of topics that need to be explored, and I will happily explore all those things —

Hon Sue Ellery: They're not new.

Hon NICK GOIRAN: The minister just raised a range of new things. She used the phrases "treatment costs", "balance", "less traumatic" and apparently—this is a new thing—criminal injuries compensation is now a "course with more obstacles". We will explore all those things in a moment. My question to the minister to which she did not respond was: is it the case that one of the ways in which this higher evidentiary bar that the minister spoke about last night could be satisfied is a medical report? The minister has not responded to that and I ask for an answer.

Hon SUE ELLERY: I am advised that it is a case-by-case process and that the assessor will need to be satisfied on the balance of probabilities. It is not possible for me to tell Hon Nick Goiran that it will take X number of medical certificates. It will depend entirely on the particular circumstances of the case and the judgement exercised by the assessor.

Hon NICK GOIRAN: Minister, is there a difference between a medical certificate and a medical report?

Hon SUE ELLERY: Yes, there is.

Hon NICK GOIRAN: Minister, was not my question about medical reports, not medical certificates?

Hon SUE ELLERY: We are not trying to be tricky here.

Hon Nick Goiran: It sounds like it. It is coming across exactly like that.

Hon SUE ELLERY: With the best will in the world, I am trying to provide the honourable member with the answers he seeks. The answer is the same; it will depend on a case-by-case judgement made by the assessor to determine the particular set of circumstances and what is required to satisfy the assessor that the requirements have been met.

Hon NICK GOIRAN: I once again repeat my question: is one of the ways in which a victim can satisfy the high evidentiary bar of which the minister speaks the provision of a medical report?

Hon SUE ELLERY: Chair, I do not know how to say it another way. It may well be —

Hon Nick Goiran: The answer is yes.

The DEPUTY CHAIR (Hon Matthew Swinbourn): The minister has the call.

Hon SUE ELLERY: I am trying to provide the member with an answer that recognises that it will be a case-by-case situation.

Hon Nick Goiran: What if that case includes a medical report?

Hon SUE ELLERY: I would have thought that that would be the logical conclusion of me saying —

Hon Nick Goiran: Then say it. We have just spent 15 minutes for no reason.

The DEPUTY CHAIR: Member, the minister is trying to give you an answer; whether you like the answer is a different issue. Please let the minister give her answer uninterrupted.

Hon SUE ELLERY: It is a case-by-case system and a judgement will be made case by case, and that may include reliance on a particular medical report.

Hon NICK GOIRAN: I know other members want to ask questions at this time. They will be pleased to know that this is my final question, although I wish to pursue other topics. Is it the case that the cost of a medical report fee is claimable under criminal injuries compensation but not claimable under the National Redress Scheme?

Hon SUE ELLERY: Yes, and I provided that information in the extensive second reading reply that I gave yesterday. I indicated that with respect to the National Redress Scheme, for example, a medical report is not required.

Hon ALISON XAMON: I rise to seek clarification about the status of applications for redress. In particular, I am aware that some people may want to make an application for redress even if they do not ultimately want to accept the payment for redress because they may just want to access the counselling support, an apology or legal assistance. As a result, they may choose to put in a fairly cursory application for redress in the first instance on the basis that they intend to reject whatever payment is made available to them. My question is about the status of that submission. Will a cursory submission that has been deliberately submitted be able to be used as evidence against the authenticity of the claim should the person involved wish to either pursue civil proceedings or go down the criminal injuries compensation path? I am concerned to ensure that an inconsequential application is not able to be used at a later date as evidence to demonstrate that someone's claim is perhaps not fulsome if it has not been comprehensive.

Hon SUE ELLERY: I am not sure whether the honourable member has in front of her the commonwealth National Redress Scheme for Institutional Child Sexual Abuse Act 2018—I will start at the beginning. The process by which a person makes an application and how the operator responds to that application is set out in division 4, section 29 of that act. It sets out that the operator must make a determination on the application and they must consider that there is a reasonable likelihood that the person is eligible for redress. Then they must approve the application, determine each participating institution and determine the amount et cetera. In order to meet those threshold questions in the first place, the operator needs to make a judgement that there is a reasonable likelihood that the person is eligible for redress. There has to be enough information in the application for the operator to make that judgement. I cannot tell the member that there is a prescribed amount of information, but there has to be enough information. I will provide the member with the full answer to the question—that is where it starts. There needs to be enough information that the operator can consider that there is a reasonable likelihood that the person is eligible for redress. There is no prescription on the extent of information, the operator just has to make a reasonable likelihood decision. The substance of the member's question is: if that application is not comprehensive enough, can that then be used against that applicant in consideration of a criminal injuries compensation application? The answer to that is no. Regarding civil litigation, there is a specific provision in the national redress act at division 6, section 36 which says —

> (1) A determination by the Operator under section 29 —

Which I referred to earlier —

> has effect only for the purposes of the scheme.

It limits the use of that information for the purpose of the scheme.

Hon ALISON XAMON: I understand that in making an application through the redress scheme, if a survivor has previously written down their story comprehensively for other purposes, such as maybe for the Redress WA scheme, perhaps other actions, previous CIC claims or whatever, that rather than going through the trauma of having to rewrite their entire story, they would be able to simply make reference to those previous documents and that would be deemed to be sufficient or deemed to be eligible. Can I confirm that my understanding is correct?

Hon SUE ELLERY: They need to complete a form that identifies them, and then they can attach to that any information that they want to rely on, including whether they had made a statement to the royal commission itself,

police, an application to Redress WA, or whatever documentation they already have that goes to the nature of the abuse that they are claiming against.

Hon NICK GOIRAN: Earlier, when we discussed the $1 250 to which a victim who has experienced exposure abuse is limited under the National Redress Scheme, the minister indicated that the chief assessor had advised the government that they could not recall a claim for counselling costs in the realm that I had put in my example, and that, of course, was $10 000. Does the government have any advice on whether treatment costs for psychological counselling and the like for criminal injuries compensation claims have ever been more than $1 250?

Hon SUE ELLERY: I have the chief assessor at the table with me. The advice that I have is that from time to time those costs have been above that amount, but it is rare for the costs to go above $2 000 or $3 000, which, I am advised by the chief assessor, is a lot.

Hon NICK GOIRAN: When the minister says that $2 000 or $3 000 is a lot, to whom is that a lot?

Hon SUE ELLERY: The honourable member asked the question, "Has the government got any advice that these costs go above $1 000?" The answer that I provided was that yes, those costs have gone above that, but it is rare—the point I had made earlier—for the cost to be around $10 000. It is the experience of the chief assessor that those costs are rarely that high and they are generally no more than $3 000, and $3 000 would be at the high end, based on the experience of the criminal injuries compensation system. To make sure I am clear about that, that is the gap cost that I am referring to, not the actual total.

Hon NICK GOIRAN: To the best that the government is aware, has it ever been the case that the amount has exceeded $3 000?

Hon SUE ELLERY: The advice I am provided with is that the chief assessor cannot recall ever paying more than $3 000. That is not to say it has not happened, but in her 16 years as chief assessor, she does not recall that ever happening. There was a case that was above $3 000 in which a particular counsellor charged $10 000 and the criminal injuries compensation regime was concerned that that might represent overcharging, challenged that cost successfully and refused to pay.

Hon NICK GOIRAN: Does the chief assessor see all awards that are made in Western Australia?

Hon SUE ELLERY: The chief assessor herself sees one-third, but the system in place with her two colleagues is that they get monthly statistics on the average award and there is generally a $200 difference between those statistics. That is the basis of the advice that I am being provided with.

Hon NICK GOIRAN: Minister, is the government able to say whether the other two assessors have ever made an award in excess of $3 000?

Hon SUE ELLERY: I have already provided the answer available to me here at the table from the Chief Assessor of Criminal Injuries Compensation, which was that she does not recall. I am not able to provide the member with further advice on that matter than I already have.

Hon NICK GOIRAN: Let us operate on the basis of the information that has been conceded so far —

Hon Sue Ellery: Provided.

Hon NICK GOIRAN: Provided so far. Let us not agonise over what the other two-thirds of applications have done, because we as a chamber do not have at our disposal the other two assessors in Western Australia. So we can work on the basis of the information of one-third of the applications.

Hon SUE ELLERY: I correct the honourable member, because the point that I made before was that the chief assessor, in her capacity as chief assessor, sees the monthly statistics from all three assessors so is able to advise the house, and I have advised the house, that the variation is around a couple of hundred dollars and that those amounts are not commonly in excess of $3 000.

Hon NICK GOIRAN: Minister, do these monthly statistics set out the amount of psychological criminal injuries compensation award for loss in each and every award that is made in Western Australia?

Hon SUE ELLERY: They are an average.

Hon NICK GOIRAN: I go back to my earlier point. The information before the house is one-third of the information. The information that the minister has just given us is conveniently an average figure and, as members know, an average means that must be a maximum and a minimum. I am trying to ascertain whether in Western Australian history there were ever cases in which assessors gave more than $3 000 in compensation for psychological costs. Does that happen? We do not know the information because the government does not have that information at its disposal. It has the information for one-third of the awards from the personal testimony of the chief assessor. It does not know what happens in the other two-thirds of cases other than it gets to see on a monthly basis some statistics that tell us about the average figure. The average figure is of no use to

us whatsoever in this instance. We want to know the worst-case scenario for a victim of child sexual abuse in Western Australia. We want to know that no Western Australian victim of child sexual abuse will be worse off under this regime. As I said at the outset, let us leave that. The minister wanted to reopen that. I said let us leave it and work on the basis of the information that has been provided. We can work on the information of one-third of the awards. I might still contest the other two-thirds on another occasion, but for the purposes of making progress, let us work on the basis of the one-third of information that is available. That information tells us that the maximum amount that a victim of child sexual abuse would get in Western Australia for criminal injuries compensation for psychological costs is $3 000. The gap is $3 000. They would not get more than that in Western Australia, at least in respect of that one-third of awards. That is fine. Let us work on that basis, minister. I am happy to make progress and work on that basis.

The point is that $3 000 is, of course, more than $1 250, which is the maximum that somebody can get under the National Redress Scheme. If the government's part 4 of the bill did not exist, would a person in Western Australia otherwise be able to seek up to $3 000 for criminal injuries compensation if the offence occurred after 1 January 1983?

Hon SUE ELLERY: They could seek it. That is correct. Whether they would get it remains to be seen. It would be based on the particulars of the case. I know the member may find this a bit frustrating, but I reiterate the point that the whole picture here includes the provisions that are available to people through the National Redress Scheme, which go to some of the issues that the survivors have identified as being important to them—that is, whether they have to tell their story again, whether they get an apology and what the evidentiary bar is.

Hon NICK GOIRAN: I will pick that up now because the minister keeps repeating that and keeps taking us into territory that is unhelpful. It does not make progress. For example, the minister repeatedly tells us that the National Redress Scheme will allow victims to get an apology. What the minister says is true. My amendment does not change that. My amendment ensures that a person has to go to the National Redress Scheme first, and after they have been to the National Redress Scheme and after they have received that same apology that the minister keeps talking about and after the institution has paid for the National Redress Scheme, they then get to come back to the Chief Assessor of Criminal Injuries Compensation for anything that might still be available to them. That is the difference between my amendment and the government's amendment. Every time the minister stands up and says that it is about the apology that people get under the National Redress Scheme, I agree. It will be the same under the government's amendment and it will be the same under my amendment. My amendment does not change the capacity for a victim to get an apology.

The second thing that the minister keeps saying time and again is that we do not want to re-traumatise a person by getting them to put in more than one application. The problem with what the minister says is that the government thinks that it is up to it to determine on the part of victims how many applications they might want to put in. If a victim of child sexual abuse wants to put in a claim for national redress and another claim for criminal injuries compensation and go through the high evidentiary bar that the government keeps talking about, who are we to stop them from doing that? Who are we to say, "Thou shalt not do that because thou shall be re-traumatised"? That is unacceptable. That is what the government is doing and that is the situation that I am trying to alleviate.

Every time the minister gets up and says that, and from time to time expresses exasperation of the need to repeat it, let us be clear that my amendment does not change one part of that. It is the case under the government's amendment and under my amendment that a person would be entitled to have a national redress payment, an apology, and, if my amendment were passed, they would also be able to seek criminal injuries compensation for an additional amount that is not otherwise covered by the National Redress Scheme.

The minister referred to treatment costs. Can the minister inform the house what treatment costs are claimable by a victim of child sexual abuse under the redress scheme and what treatment costs are claimable by a victim of child sexual abuse under the criminal injuries compensation scheme?

Hon SUE ELLERY: While the advisers are finding the information on criminal injuries compensation, I make the point that I made in my second reading reply yesterday. I gave quite an extensive reply to set out the specific responses to each issue raised, including this issue—that treatment costs are not specifically and identifiably claimable under the National Redress Scheme, because it is not about a response or an application being judged on the basis of particular treatment reports. That is not what the scheme was intended to do. That is not the structure of the scheme. I provided the house with that information in my second reading reply last night.

I have the information on the criminal injuries compensation scheme. Although specific treatment is not defined, it is treatment that is required as a result of the injury. Obviously, depending on the nature of the injury, the treatment will be different. That is entirely based on circumstances of the injury, but it is accurate to say that treatment and being able to claim for treatment is indeed a part of the criminal injuries compensation scheme and it is not part of the National Redress Scheme.

Hon NICK GOIRAN: Is it not true that counselling and psychological costs are indeed treatment costs?

Hon SUE ELLERY: They are indeed and the point I made in the answer I just gave is that it would depend on the injury. If the injury was the kind of injury that required psychological treatment, it would be considered as part of the criminal injuries compensation scheme. It depends entirely on the injury. Some injuries will be physical and others will not.

Hon NICK GOIRAN: Is it not the case that counselling and psychological costs are claimable under the National Redress Scheme?

Hon SUE ELLERY: I am advised that the royal commission made a specific recommendation about counselling and psychological services being made available to applicants but not that it be a separate element that is claimable as part of the whole final payment. An allocation of funds is set aside in the scheme for the provision of counselling and psychological services in the same way that an amount of money is available for legal advice, for example. Yes, a person making an application can receive an amount of money for psychological services and counselling but the services are not claimable in the same way that they are in the criminal injuries compensation scheme.

Hon NICK GOIRAN: Earlier, the minister said to the house that treatment costs were not identifiably claimable under the redress scheme. She has said that on more than one occasion, yet part 3 of the "National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018", of which no doubt the government is very familiar, is entitled "Amount of counselling and psychological component of redress". It sets out an amount of money that is claimable if a person is a victim of penetrative abuse, contact abuse or exposure abuse. It is untrue to tell the house that it is not identifiably claimable when in fact it is claimable. Counselling and psychological costs are claimable under the National Redress Scheme for the specific amounts of $1 250, $2 500 or $5 000. Nevertheless, treatment costs are of course also available under the criminal injuries compensation scheme. What types of treatment costs are ordinarily payable to a victim of child sexual abuse under a criminal injuries compensation award?

Hon SUE ELLERY: If I can point out the difference to the honourable member, can I take him to the "National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018"? Section 6 of part 3 is titled "Amount of counselling and psychological component of redress". It states —

> The amount of the counselling and psychological component of redress for a person is worked out using the following table:

A table then sets out the components. I am advised that there is no requirement to provide evidence that a person has sought or received counselling, which there is under the criminal injuries compensation scheme. The money under the redress scheme is provided whether or not the person uses it for that purpose, so there is a difference in the two schemes in that sense. Under the criminal injuries compensation scheme, there is a precise and prescribed way of making an application for money and then acquitting and demonstrating that the funds have been spent on that. That is deliberately not part of the redress scheme because it was about a whole package that recognises it is important to ensure that as little bureaucracy, if I can call it that, as possible is put in the way of survivors being able to access assistance to help them come to terms with what has happened to them.

Hon NICK GOIRAN: I will repeat my question to the minister. What types of treatment costs are ordinarily claimable under a criminal injuries compensation award in Western Australia for a victim of child sexual abuse?

Hon SUE ELLERY: I am advised that, generally, it would be psychotherapy, unless there was a physical injury that went along with the sexual abuse. The honourable member would appreciate that sometimes that does happen. If that were the case, then the kind of treatment would be appropriate for the nature of the physical injury.

Hon NICK GOIRAN: Of those two types of treatment—the minister talked about psychotherapy and any treatments associated with physical injury—let us just deal with psychotherapy for a moment. That would be the amount we were talking about earlier that would ordinarily not be more than $3 000—right?

Hon SUE ELLERY: The answer is yes.

Hon NICK GOIRAN: Could the treatment costs for a physical injury include dental costs?

Hon SUE ELLERY: Theoretically, yes.

Hon NICK GOIRAN: Are dental costs claimable under the National Redress Scheme?

Hon SUE ELLERY: They are not specifically because, as I made the point in my second reading reply last night, it is a global figure.

Hon NICK GOIRAN: The truth of course is that it is not claimable. The truth is that it is not claimable because the payment to which the minister is now referring is a payment provided for the wrongdoings suffered. It is not a payment for injury and loss, which occurred under the criminal injuries compensation scheme. They are two entirely different things.

Hon Sue Ellery: Honourable member —

Hon NICK GOIRAN: If the minister wants to reply in a moment, I have no doubt she will.

Hon Sue Ellery: I don't like your use of the language —

Hon NICK GOIRAN: It does not matter what you like, minister, because you do not have the call at the moment.

Hon Sue Ellery: — "the truth is" when I answered truthfully by specifically saying no.

The CHAIR: Order!

Hon Michael Mischin interjected.

The CHAIR: Order! Members, let us keep the temperature down and the debate respectful. Hon Nick Goiran has the call.

Hon NICK GOIRAN: Thanks, Mr Chair. The truth of the matter is that the National Redress Scheme provides three things. I draw the attention of the minister and interested members specifically to section 3 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018. Section 3(2)(b) sets out that the purposes of achieving the objects of the act are to provide redress for three things —

> (i) a monetary payment to survivors as a tangible means of recognising the wrong survivors have suffered; and
>
> (ii) a counselling and psychological component which, depending on where the survivor lives, consists of access to counselling and psychological services or a monetary payment; and
>
> (iii) a direct personal response to survivors from the participating institutions responsible;

To the extent that there is any similarity between the two schemes, we can look at the second component to do with a psychological counselling component which, depending on where the survivor lives, consists of access to counselling and psychological services or a monetary payment. We can consider that those things are largely comparable between the two schemes, because the minister has told us that it is not uncommon for up to a maximum of about $3 000 to be provided for psychotherapy. We know that under the National Redress Scheme, such things are also claimable, but, depending on the type of abuse that has been suffered, there will be a variance of between $1 250 and $5 000. A victim of penetrative abuse can receive $5 000 worth of counselling and psychological costs under the National Redress Scheme, which, we are told, at least in the sense of one-third of the awards in Western Australia, would be more than they would get under the criminal injuries compensation scheme. Members can be satisfied on the information about those types of claims that has been provided to the chamber that victims of penetrative abuse will not be worse off from what the government is doing—at least for psychological counselling costs, because, remember, they can get $5 000 under the National Redress Scheme, but under our Western Australian scheme, they would get only $3 000. That is one of three examples. The second example is contact abuse. We now know from the minister that a person can claim up to $3 000, but under the National Redress Scheme they are limited to $2 500. It is worse if they are a victim of exposure abuse, because they can claim only $1 250, whereas it is not uncommon in Western Australia, at least in one-third of the awards, for the amount to be $3 000. I fail to understand why we are being so mean-spirited to those victims of exposure abuse. Despite the fact that quite commonly they would need $3 000 worth of psychotherapy, we are saying to them, "Sorry; because of Mr Quigley's bill, you are going to be entitled to only $1 250 and not one cent more." Of course, there is a solution to that and that would be for my amendment to be supported when we eventually get to it.

I am interested in the minister's explanation that under our criminal injuries compensation scheme, treatment costs could, in theory, include dental costs. Dental costs are not claimable under the National Redress Scheme. As we have at our disposal this evening information on at least one-third of the awards that have been made in Western Australia over the last 16 years, what would be the highest amount of dental costs that the Chief Assessor of Criminal Injuries Compensation can recall awarding in a case in Western Australia?

Hon SUE ELLERY: No information is available. No-one here can recall. The chief assessor cannot recall any case related to dental work. However, I can give an undertaking that the chief assessor will check and if we are able to provide the member with any more information, we will. But I cannot guarantee it if they are not able to find any information in that time.

Hon MICHAEL MISCHIN: I would like to ask a few questions of a more general nature about the process proposed under the National Redress Scheme and with particular reference to the commonwealth National Redress Scheme for Institutional Child Sexual Abuse Act 2018, which we are proposing to adopt and which is the touchstone for the text-based referral of powers. The starting point is section 12 of that act, which provides that a person can be provided with redress under the scheme only if the person is entitled to it. Subsection (2) of that section sets out the criteria for an entitlement. Section 29(1) requires the operator to make a determination to

approve or not approve the application as soon as practicable. Subsection (2) of that section provides that if the operator considers that there is a reasonable likelihood that the person is eligible for redress, the operator must approve the application and do a number of other things in accordance with it.

We have also heard that under the Criminal Injuries Compensation Act 2003, the chief assessor must be satisfied of a variety of things, and "satisfied" is defined in section 3 as meaning satisfied on the balance of probabilities. The minister has mentioned that this different standard is being applied to reduce the level of trauma to eligible people—genuine victims—and to facilitate their getting redress. I would appreciate it if the minister could outline the difference in the standard of proof between the balance of probabilities and there being a reasonable likelihood of something being the case. In the case of the balance of probabilities, it is essentially "more likely than not". In the case of a reasonable likelihood, I can detect a slight difference in emphasis, but is there a meaningful difference in emphasis and what is the reason for it?

Hon SUE ELLERY: There is certainly a difference of emphasis and it is based on the two separate purposes. In respect of the redress scheme, there is an acceptance, if you like, built in to the whole scheme that these things happened and that if someone says they were at place X during these years and this thing happened to them, it is taken to be believed in the first instance. Compare that with the balance of probabilities in the criminal injuries compensation scheme, where the burden of demonstrating that X happened rests with the applicant. There is not an assumption to begin with that if X said they were at this institution during these years and this happened to them, it happened. There is a difference in the emphasis and it is a function of the fact that the redress scheme was put together to recognise that wrong was done and it starts with the assumption that the wrong was done. That is the difference; there is a difference in emphasis.

Hon NICK GOIRAN: That, of course, is not true with regard to any proved offence under the criminal injuries compensation scheme. Under the criminal injuries compensation scheme, if there has been a proved offence, the victim has already been through the criminal justice system and it has already been determined that a perpetrator is guilty, and it is not necessary for a victim to satisfy the assessor on the balance of probabilities that the offence took place.

Hon SUE ELLERY: They still need to prove that the injury happened.

Hon MICHAEL MISCHIN: I can understand as a matter of policy a bias towards minimising the burden to victims, but my concern, I have to say, is that we are talking about genuine victims being eligible for up to $150 000 of public money. Going back to the Criminal Injuries Compensation Act for a moment, the eligibility threshold under section 12(1) relates to injury as a consequence of the commission of a proved offence. It says —

> A person who suffers injury as a consequence of the commission of a proved offence may apply for compensation for the injury and any loss also suffered.

Subsection (3) goes on —

> An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied —

We will leave aside death for the moment —

> … that the claimed injury and any claimed loss has occurred and did so as a consequence of the commission of a proved offence;

There is that threshold of a proved offence and that it is more likely than not that the person suffered a claimed injury, consequences flowed from that and there was a causal connection. I understand from what the minister just told me and from the operation of section 29 of the commonwealth act that the bias is to assume that anyone who puts an application is eligible and has been sexually abused within the meaning of the legislation. Would that be right?

Hon SUE ELLERY: There are a couple of elements to the question that the member asked. I appreciate the intent of the question. The member used the expression "inbuilt bias". I would not necessarily use that language.

Hon Michael Mischin: Perhaps "assumption" is a better term.

Hon SUE ELLERY: Okay, but if I start at the other end and make the point that in respect of criminal injuries compensation, when we are talking about a proved offence as a result of a conviction, for example, in many cases, of course, there has not been a conviction in respect of the kinds of abuse to these people when they were children. That is one of the reasons that survivors sought a redress scheme of this nature. The proposition that they would be successful in meeting the evidentiary bar required by the criminal injuries compensation commission needs to take that into account. In respect of the other part of the question, the operator will make their determination based on information provided by the applicant. They will also seek information from the relevant institution. Although the evidentiary bar is lower, and appropriately and deliberately so, they will make an assessment. They will check the facts to the extent that it is possible. It is not a carte blanche matter of the applicant filling in the paperwork

and being given a cheque. There will be an assessment of the information that has been provided, but it starts from the premise that this is a scheme that recognises that for too long these people were not listened to when they made complaints, if they did so; therefore, for many of them the opportunity to seek legal redress was not available and convictions and the like were very hard to prove.

Hon MICHAEL MISCHIN: I thank the minister. My concern is that the threshold might be too low. I know we have indicated our support for the bill, the policy and the like, but I think there needs to be some satisfaction on the part of the public that what is being offered here is not simply a tick-the-box application that looks plausible and possible. It allows the applicant to get access to a significant sum of money, when those who do manage on the basis of the balance of probabilities to prove under our criminal injuries compensation scheme that they have injuries that arise as a consequence of the commission of a proved offence get a significantly lesser amount. Perhaps I will pursue this line of thought with the minister tomorrow, as I note the time and we probably need to report progress to the house.

Progress reported and leave granted to sit again, pursuant to standing orders.