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

Committee

Resumed from 21 November. The Deputy Chair of Committees (Hon Robin Chapple) 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: Before we rose last night, Hon Michael Mischin asked a question about the prospect of fraud, I suppose I would describe it in that way—I do not know whether I am putting words in his mouth. He was looking for assurances about what measures might be put in place under the redress scheme to ensure that there was testing of the legitimacy of applications. Section 19 of the commonwealth National Redress Scheme for Institutional Child Sexual Abuse Act 2018 requires applicants to verify the information in their application by signing a statutory declaration. Section 28 of the act provides —

> A person must not give information, produce a document or make a statement to an officer of the scheme if the person knows, or is reckless as to whether, the information, document or statement is false or misleading in a material particular.

A penalty is attached to that to the value of $12 600. There is also a civil penalty provision. Conduct prohibited by this section may also be an offence against the commonwealth Criminal Code in respect to making false or misleading statements, giving false or misleading information or giving misleading documents. The civil penalty was introduced by the commonwealth to ensure that the scheme was adequately protected against the risk of fraudulent applications. The commonwealth government is continually undertaking fraud detection activities to ensure the integrity of payments. It is important that the scheme's policy settings support the integrity and appropriate targeting of payments made under the scheme. We would not want the institutions, for example, to be in a position in which they choose not to participate or seek to leave the scheme, because that would leave legitimate survivors unable to access redress from those institutions. The commonwealth government takes seriously the measures it needs to put in place to ensure the integrity of the scheme. The level of penalty is sufficiently high to support the principle of deterrence and ensure that applications made to the scheme are legitimate and appropriate.

Hon MICHAEL MISCHIN: I thank the minister for that information. The minister mentioned a penalty of up to $12 600. Where is that to be found? Is a potential penalty of imprisonment also attached to that; and, if so, what is that?

Hon SUE ELLERY: It is a civil penalty, with a fine, not imprisonment. The way in which the penalty structure is set up by the commonwealth is in the form of penalty units. Under section 28 of the national act, the penalty for providing false or misleading information, documents or statements is 60 penalty units. Each penalty unit is worth $210, so that equates to $12 600. That is how the commonwealth does its calculations.

Hon MICHAEL MISCHIN: Could the minister clarify what a civil penalty is meant to be as opposed to a criminal penalty? Does it require some conviction or adjudication by a court? How is liability for a civil penalty determined, as opposed to breaching the requirement to provide truthful information? Perhaps I have not framed that as well as I could. Section 28 of the commonwealth act provides —

> A person must not give information, produce a document or make a statement to an officer of the scheme if the person knows, or is reckless as to whether, the information, document or statement is false or misleading in a material particular.

Who makes that finding, and what is the distinction between a civil penalty and any other sort of penalty prescribed as a breach of the law that is made an offence?

Hon SUE ELLERY: In the first instance it is the operator—that is the language used—or the assessor who makes a judgement or has a question about whether the information provided is false or misleading. If the member has the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 in front of him, division 2, "The Dictionary", sets out —

> ***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

I do not have the Regulatory Powers (Standard Provisions) Act 2014 in front of me. If the member thinks it necessary, we could get it over the lunchbreak. It is defined according to the commonwealth provisions set out in the regulatory powers act.

Hon MICHAEL MISCHIN: I thank the minister. I think that might be helpful, because I am concerned about the potential for claims being made, noting the very low threshold involved for considering people eligible, and

a determination having to be made on them. There needs to be a sufficient disincentive for people to lodge false claims, particularly as some of those eligible to lodge false claims are people with criminal histories who may be serving terms of imprisonment and may be thought to have very little to lose if there is an opportunity for a claim to be lodged, considered eligible and paid from the public purse. We can contrast that with the not unreasonable threshold of the balance of probabilities to achieve a level of satisfaction on the part of an assessor under our Criminal Injuries Compensation Act. I would appreciate knowing what a civil penalty is said to be, and the distinction between the civil penalty that comes up with a monetary fine and any sort of offence that is dealt with as a criminal matter. Perhaps the minister can provide us with that information after lunch.

I will get back for a moment to the threshold of a reasonable likelihood. I note the definition in section 6 of division 2, the dictionary part of the national act, that says —

> ***reasonable likelihood***, in relation to a person being eligible for redress, means the chance of the person being eligible is real, —

So they have a realistic chance of being someone who was institutionally abused. The definition goes on —

> is not fanciful or remote and is more than merely plausible.

Can the minister give us any indication of what is contemplated as a level of satisfaction in that regard, with reference to the sort of evidence—quite apart from simply a statutory declaration saying so—that the operator might need to take into account? There seems to be a very, very low threshold indeed. One can understand trying to avoid the potential re-traumatisation of victims, but there seems to be practically no standard at all. Has this formula been used in any other state or commonwealth legislation?

Hon SUE ELLERY: While the advisers are seeing whether they can provide further information, it is the case that the scheme starts from the assumption that the person experienced abuse. Quite deliberately there is a low bar of evidentiary standard of proof. To suggest, though, that there is no standard is not accurate. The person's application is about the abuse that occurred and the impact it had on their life. It is a low-evidence scheme. Police and medical reports are not required for an application to be assessed. Applications can be assessed only on the information provided in the form. Applicants can choose to provide additional information, if available. So if they want to provide police or medical reports or statements they made to the royal commission, or in the case of Western Australians material they provided to the previous Redress WA scheme, they may. The burden is on the scheme to gather information on the circumstances of the abuse—for example, from the named institutions—and make a decision based on the available information and the reasonable likelihood standard of proof. The ordinary understanding of those words applies.

The honourable member is right to make the point that there is a low evidentiary bar. That is quite deliberate and goes to the policy at the heart of the scheme—that is, to recognise that this happened and that for many of these people there is no documentation on their earlier lives. There is no documentation of complaints they may have made, and there is no documentation of their injuries being treated and being understood to be as a consequence of abuse when they were a child. It is in recognition of the fact that those things were not recorded. Many of those then children were treated as less than a second class of citizen, and were not afforded the care, protections or rights while in care that we now take for granted. The member is quite right to raise that there is a low bar. That is deliberately the case; however, we believe that the checks and balances in place recognise what was going on at the time and the fact that those children were not afforded the opportunity to make a formal legal complaint or be adequately protected. The balance is right in that there is a system in place to say that if we find that there is reason to believe that someone is providing misleading documentation et cetera, there is a check and balance. But this system does not have a high evidentiary bar, and it does not apologise for that; it is quite deliberately so.

Hon MICHAEL MISCHIN: I thank the minister. I accept what the minister says regarding the need to try to strike an appropriate balance and the like with very sound policy considerations behind it. But I feel that part of my responsibility in order to see whether the balance is being struck in the right place is to be, in a sense, devil's advocate and look at the potential ways that any well-meant scheme could be abused. The fact that it is a deliberate choice to use a very low threshold does not necessarily mean it is the correct one. The formulation of that threshold test, whether any apology is offered for it by the crafters of the scheme or not, is by the bye. It is a question of whether there is a sensible and sufficiently robust test that needs to be satisfied in the public interest. I will give the minister an example, and perhaps the minister can tell me whether the threshold is met.

Let us say I now put in an application, supported by my statutory declaration, because when I was in primary school, I was abused by the then principal, who would cane the children who he considered had committed misdemeanours. I should add that I am using this as a hypothetical, because I do not want to darken the name of any person or even suggest that this ever happened to me. I make quite clear that I am using it as a convenient example. The principal would require the caning to be on not only the hand, but also bare buttocks. I put that into a statutory declaration and I submit it to the operator. The chance of my being eligible is real, is it not? It is not fanciful or remote, and it is more than merely plausible. I can certainly say that the cane was used at my primary

school back in the day, and I can name the principal who conveniently—or inconveniently, depending on one's point of view—is dead. I am sure there will be records somewhere in the system that the cane was used.

Sitting suspended from 1.01 to 2.00 pm

Hon SUE ELLERY: I will respond to some of the issues raised by Hon Michael Mischin just before we rose. The last issue was about a person being caned on a bare bottom. Whether that constitutes sexual abuse and/or related non-sexual abuse would need to be determined on a case-by-case basis. In determining whether the caning is sexual abuse and/or related non-sexual abuse, consideration will be given to whether the act meets the definition of sexual abuse in part 6 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018, which sets out what sexual abuse is. Consideration would also be given to the context. Although I can appreciate that the honourable member might be seeking something more prescriptive than that answer, I am not able to say whether the particular scenario that the member referred to would be considered sexual abuse under the scheme. That will be for the scheme operator to determine, with all the relevant information available. In respect of civil penalties, as the honourable member referred to, section 28 of the National Redress Scheme act provides for a civil penalty. In section 190 of the national redress act, the civil penalty provisions are set out in more detail. The authorised applicant who can bring a civil penalty case is the scheme operator or a senior public servant in the Department of Social Services. They may apply to the Federal Court or the Federal Circuit Court.

Hon MICHAEL MISCHIN: Thank you for that, minister, but it is not quite what I was after. I think there has been a little bit of a misunderstanding of what I was driving at with my example. Let us go back a moment to the question of what is the difference between a civil penalty and a criminal penalty for an offence. What is the distinction in practical terms between the two, and in their enforcement, and in the manner in which any sanction is to be enforced?

Hon SUE ELLERY: Before the break I had referred the honourable member to the commonwealth Regulatory Powers (Standard Provisions) Act 2014, which refers to civil penalty orders. To assist the honourable member, that is set out in division 2, section 82, relating to civil penalty orders of that particular act. It states —

> (1) An authorised applicant —

In this case it would be the operator, so that is the national redress officer —

> may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

They must make application within four years of the alleged contravention. It goes on —

> (3) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

An order under that subsection I have just read out is deemed to be a civil penalty order. In respect of the member's question about commonwealth Criminal Code offences, the civil penalty—I think I had already made that point—does not impose imprisonment; however, if a judgement is made that it is an order to pursue through the commonwealth's Criminal Code, the relevant offences are: in section 136(1), false and misleading statements; section 137(1), false or misleading information; and section 137(2), false or misleading documents, and the penalty for each of those offences is up to 12 months' imprisonment.

Hon MICHAEL MISCHIN: The upshot of all that is that for civil penalties the standard of proof is on the balance of probabilities. Would that be right?

Hon SUE ELLERY: After having had a short time to check this, the view is that a civil penalty is on the balance of probabilities. I put a caveat on that: members might be aware that advisers were providing information to other members who were seeking information to be clarified in the break, so with the short time they had to check that, that is the advice I have been given.

Hon MICHAEL MISCHIN: Also, presumably that would not result in a criminal record.

Hon Sue Ellery: A civil matter would not, no.

Hon MICHAEL MISCHIN: If a civil penalty were involved, there would be no criminal history or any other record of that in the event of future prosecutions.

Hon SUE ELLERY: The way that the matter is dealt with is by way of debt. I refer to section 83, which reads —

> **Civil enforcement of penalty**
>
> (1) a pecuniary penalty is a debt payable to the Commonwealth.

(2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

Hon MICHAEL MISCHIN: It can be dealt with in the same manner as any other civil debt to the commonwealth, whereby, presumably, it can make a value judgement on whether it will bother to try to recover it, because the costs of trying to recover that sum will be in excess of the benefit gained by doing so. Would that be right?

Hon SUE ELLERY: My advice is that that would be a matter for the commonwealth government to pursue.

Hon MICHAEL MISCHIN: I return to the scenario that I was posing to the minister about whether the case would meet the threshold. I understand what she is saying about having to make a judgement on whether the conduct I describe is sexual conduct, which would be, as I understand it, the linchpin of whether non-sexual abuse can be the subject of redress. Let us assume in that scenario we have a child, some 50-odd years ago, who now comes forward and says, "At my state primary school the then principal used the cane, but in my case, as well as caning on the back of my legs, he required me"—the child—"to drop my pants and be caned on my bare buttocks and in the process of doing that he also touched me in the genital region." The records of the primary school, if there was such a headmaster, as they were called then, shows that yes, the cane was in use in those days, and yes, others can reinforce the fact that this headmaster caned children from time to time on the back of the legs, but there is no other evidence. Would that allegation, what I just said, if reduced to a statutory declaration, meet the threshold of eligibility and hence, without any further inquiry other than the information provided, entitle someone to redress under the scheme?

Hon SUE ELLERY: The first thing I would say is that if that did happen, I am sorry.

Hon Michael Mischin: I am not saying it did. I have made it quite plain that I am not talking about me.

Hon SUE ELLERY: I am sorry. I thought the member referred earlier to knowing that the principal had passed away. I am sorry. I withdraw that.

Hon MICHAEL MISCHIN: That is another factor that I should have mentioned. I want to make it quite clear that I am not talking about me or any teacher with whom I have had dealings in this context, because I do not want any impression to be left that anyone who has taught me or, to my knowledge, has taught my fellow students back in the day, is guilty of this sort of conduct. I have never encountered it. I never knew of any of this sort of thing happening. I want there to be no slur on the character of anyone who has taught me in the past. I am using this as a total hypothetical, but based on, of course, a school that I have been to, simply as an example. In this scenario, a person who 50-odd years ago was a child in the region of about 10 years old claims on a statutory declaration that the headmaster used to do the conduct that I outlined. By convenience, happy or otherwise, that headmaster is now deceased and has been for some time. Therefore, he cannot give any account of his behaviour if asked. School records being what they are, and what they were, if that conduct had occurred, it is unlikely to have been recorded in any event. Would that be sufficient information to then make that applicant entitled to redress without anything more?

Hon SUE ELLERY: I understand the scenario that the honourable member is painting. I appreciate that the honourable member would like to get a prescriptive answer about that scenario. I am not in the position to give it, because it would depend on all the circumstances. The judgement would be made based on the information provided in the application and if the person receiving the application thought that they might need further information, they could seek it. They could seek it from the institution or the applicant. I am not in the position to go through, scenario by scenario, that scenario or other scenarios, and give the member the prescriptive definitive answer on whether that would make someone eligible to be considered in the scheme or what it might mean for someone if they were deemed eligible and then what payment it might mean for the person in that scenario. I can appreciate the question and wanting to get clear what kind of scenarios might be considered, but it really will be on a case-by-case basis.

Hon MICHAEL MISCHIN: I understand that it is difficult dealing with hypotheticals and the like, but my concern is that if what I outlined were reduced to a statutory declaration and submitted to the operator—perhaps the minister or her advisers may be able to say whether there are guidelines, rules, frameworks or directives under the scheme that may assist an operator in this regard—the operator, in the absence of anything else, could and probably would consider the person who made such an application as eligible for redress. The test seems to be whether the operator considers that there is a reasonable likelihood that the person is eligible for redress. It is not about whether the situation happened or anything, but a reasonable likelihood of eligibility. Reasonable likelihood is the chance of the person being eligible is real—something more than zero presumably—and is not fanciful. The headmaster used the cane. Canes were used. There was a practice of being caned in a certain fashion that everyone knew about. The chance is not remote, whatever that might mean, and is more than merely plausible. An application can be put in on that basis and the assessor is required to accept it. It troubles me that the threshold is

low, that the sums of money that can be paid out are significant, and we are told that there are something like 5 700-odd potentially eligible people in this state alone, so over the years the potential payout could be $640 million. It troubles me that there is a distinct possibility that a significant number of those payments may be made to people who are undeserving of them. Although I would not like to see someone deserving of a redress payment miss out, I do not think it bodes well for any future redress scheme of any other sort if the standard is so low as to be meaningless—that is, basically being able to fill out a form with sufficient verifiable detail in it and to make the right allegations in order to get a payment.

Moving on from that, we have a criminal injuries compensation scheme with a proved offence and people need to satisfy the test on the balance of probabilities in order to satisfy the assessor. It is a significant but not insurmountable standard and it presumably involves a balancing and consideration of conflicting evidence. Is there any requirement under the National Redress Scheme for the operator to try to verify the story being told by an applicant and their evidence? I know that the operator will have the power to do so, but is there a requirement for the operator to seek further information and engage in a balancing exercise of the evidence?

Hon SUE ELLERY: Two provisions relate to the power to request information. The power to request information from the applicant is in section 24. It provides that if the operator has reasonable grounds to believe a person who has applied has information that might be relevant, they may request the person to give further information but they are not required to if they believe that the person might have it. Section 25 sets out the power to request information from participating institutions. If the person who has applied either identifies a particular participating institution or the operator has reasonable grounds to believe that a participating institution may be responsible for that abuse, the operator must request the institution to give any information that may be relevant to that application.

Hon MICHAEL MISCHIN: I described a scenario in which an allegation is made against a particular primary school 50 years ago. The operator sees there is an application for redress and identifies a participating institution being involved in the abuse of the person, as much as the Department of Education employed that headmaster at that time at that school. The operator writes to the institution or the education department to request any information that may be relevant. The institution replies, "Hey, we're talking about 50 years ago. No, we didn't keep a register or any other records of sexual abuse that took place back in those days. No allegations were ever received of any such conduct. Sorry, we can't help you." Is that where the process will end? Is the operator then entitled to say that there has been an allegation and, as the minister has pointed out, there is the assumption that people are telling the truth and we do not want to re-traumatise the applicant by probing any further? The applicant has refused to say so anyway because the applicant claims they are too traumatised thinking about it. Is that where the process will end? Is that sufficient to pay out redress?

Hon SUE ELLERY: I appreciate that the member is pursuing a particular line of questioning and that he may feel a sense of frustration at the answer I am going to give. It will be determined on a case-by-case basis. If the operator determines that they cannot get any further information, but in the operator's judgement there is information that meets the requirements of eligibility, the application will proceed. What happens to the application will be determined on a case-by-case basis. I appreciate the line of questioning and I appreciate that there is a view that this should take the rest of today because certain people might not be here. I appreciate the line of questioning, but the answer will continue to be on a case-by-case basis. I am not able to give the member a specific prescriptive answer to a particular case. If the member asks about whether in scenario X the matter would be determined in a particular way, I cannot give him that answer.

Hon NICK GOIRAN: Can the minister clarify her remarks that she understands that this matter should continue for the rest of today in the absence of a person?

Hon SUE ELLERY: I understand some people are of the view that this should continue for the rest of today because somebody is not here. That is what I have been told.

Hon MICHAEL MISCHIN: Is the minister suggesting that the questions I have asked her somehow have an ulterior motive behind them?

Hon SUE ELLERY: Honourable member, I have said about five times that in respect —

Hon Michael Mischin: I do not care how many times the minister has said it—just answer the question!

Hon SUE ELLERY: The answer that I have given the member is the answer. I have provided the member with the answer about five times and said that the judgements will be made on a case-by-case basis. Although I can appreciate that the member has put a couple of very specific scenarios to me, I am not able to provide any answer other than that they will be determined on a case-by-case basis. I am happy to answer questions—can, have and will—about the processes that will sit behind the scheme, but I am not able to give the member a prescriptive answer to a particular scenario.

Hon MICHAEL MISCHIN: Let me help the minister. I suggest to the minister that the scenario I have outlined would meet the test of eligibility that the operator has to consider and in the absence of any other evidence and given what the minister has told us is the rationale for the scheme and the way in which it is meant to operate, that would be sufficient for the operator to make a payment of redress under the scheme and potentially require the institution to apologise. The minister will get up and say that she cannot help me because it is done on a case-by-case basis and that she does not know and the like, but I suggest to the minister that on the evidence that I have provided, it is quite patent that that would be sufficient under the test laid down in the legislation to meet the threshold of reasonable likelihood; that is, the chance of the person being eligible is real, not fanciful or remote and is more than merely plausible. Apart from telling me for the sixth time that it will be done on a case-by-case basis, does the minister have any comment? Does she cavil at my conclusion?

Hon Sue Ellery: I do not think I have anything further to add on that line of questioning.

Hon MICHAEL MISCHIN: I did not think so. All right, perhaps there is another thing that the minister can help with. Are there any guidelines, frameworks, rules or regulations currently in existence under the federal scheme that can inform the operator on how to deal with these things? That is not a case-by-case basis answer. Are any principles laid down under the legislation or subordinate instruments that can assist the operator and us to understand how this is meant to work?

Hon SUE ELLERY: I think that those members who were briefed were provided with the assessment framework, which is a public document. In addition to that, the decision-makers will have guidelines to use when assessing an application. A deliberate decision has been made not to make those public to avoid the situation in which an applicant might write an application literally against each of the lines in the guidelines and, in doing so—to meet the point that the member made earlier—make a fraudulent application using the specific guidelines to write their application. Although there will be guidelines, they will be developed by the commonwealth at its own discretion and they will not be made public.

Hon MICHAEL MISCHIN: Thank you. We are getting somewhere. There are means by which the operator can guard against mischievous, false and unfounded claims. Is this test of reasonable likelihood, as formulated in section 6 of the National Redress Scheme for Institutional Child Sexual Abuse Act, a formula that has been used in any other legislation, redress scheme or otherwise either for a state or federally?

Hon SUE ELLERY: I am not able to give advice now about what the comparisons might be, but this was a direct response to a recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. In forming its recommendations, the royal commission specifically looked at the legislative regimes established in other jurisdictions and the particulars of those schemes.

Hon MICHAEL MISCHIN: Is there any case law to explain the operation of this formula?

Hon SUE ELLERY: I do not have any advice to that effect. I can only repeat what I said before: this is a direct response to a specific royal commission recommendation. The royal commission itself undertook a broad examination of the legislative background and other means used to provide forms of redress to people who find themselves in this situation. I am not in a position to provide the member with direct advice on that.

Hon MICHAEL MISCHIN: This scheme has already been operative in several other Australian jurisdictions, has it not?

Hon Sue Ellery: Yes.

Hon MICHAEL MISCHIN: To date, has the Western Australian government received any information on the scale of applications, the number that have been satisfactorily disposed of, whether any have been found to be unsubstantiated or not meet the threshold test and have been rejected, and how many are still pending? Is there anything of that nature that can assist us in seeing how this formula is working?

Hon SUE ELLERY: I do not have any formal advice about this. We know that there have been 1 600 applications. Informally, in discussions between relevant officers, I understand that approximately 10 have been accepted and an offer has actually been made. I do not have any more precise information than that.

Hon MICHAEL MISCHIN: Sorry, I was distracted for a moment at the beginning.

Hon SUE ELLERY: We know that there have been 1 600 applications. I do not have any formal advice to add, but I am advised informally, by way of discussions between officers from various jurisdictions, that around 10 cases have been processed through to completion and payments made.

Hon MICHAEL MISCHIN: Is there any information, either formally or informally, that might indicate how many applications have been refused or are those still pending determination? The minister is saying that about 10 cases have been completed, but have any been rejected to the minister's knowledge?

Hon SUE ELLERY: I am advised that once the scheme is operating there will be global quarterly reports and jurisdiction-by-jurisdiction quarterly reports as well. Of course, Western Australia is not yet fully in the scheme, but I am advised that those quarterly reports have not been generated yet.

Hon MICHAEL MISCHIN: One element the operator will need to consider is the identity of the applicant. I have received some information—it may not be correct; I hope the minister might be able to inform us about it—that there is a requirement in other jurisdictions that the applicant must have a Centrelink number to apply. Is that the case?

Hon SUE ELLERY: I am advised that provision of a Centrelink number is one of the mechanisms used to establish identity. If the person has a Centrelink number, that is deemed sufficient to meet the identity test. If they do not have a Centrelink number, the normal 100-point system applies for the establishment of identity.

Hon MICHAEL MISCHIN: I propose to move on to another area to do with eligibility involving criminal convictions and then another area after that, but I will give an opportunity to other members who may wish to pursue certain questions.

Hon AARON STONEHOUSE: I apologise if this has been canvassed previously, but I am trying to clarify a few things I was told earlier today. The limit for compensation under the redress scheme is $150 000. We have amendments on the notice paper dealing with the Criminal Injuries Compensation Act. The limits for the Criminal Injuries Compensation Act are guided by a schedule that sets limits dependent upon when the offence occurred, if I am not mistaken, with the largest limit being $75 000 for offences that occurred between 1 January 2004 to the present. Is that correct?

Hon SUE ELLERY: The answer is yes, or twice that amount if it is a series of offences by the same offender.

Hon AARON STONEHOUSE: Okay. Can the minister explain to me what a serious offence by the same offender might cover?

Hon Sue Ellery: Series.

Hon AARON STONEHOUSE: Sorry; a series of offences by the same offender—more than one. If it is more than one, they are potentially eligible for double that limit?

Hon SUE ELLERY: Yes.

Hon AARON STONEHOUSE: Is there anything else under Western Australian statutes that places a limit on compensation paid under the Criminal Injuries Compensation Act, redress or any other compensation scheme there might be?

Hon SUE ELLERY: No, there is no other cap, if that is what the question is.

Hon AARON STONEHOUSE: So just what is in the CIC act or what is in redress?

Hon SUE ELLERY: If the member is asking about the criminal injuries compensation scheme, yes, there are tables that set it out under section 31 of the Criminal Injuries Compensation Act. If the member's question is whether there is any other variation within the Criminal Injuries Compensation Act, the answer is no. I am not sure I understood the original question.

Hon AARON STONEHOUSE: I think that answers the first part of it for me. I am just wondering whether there is anything else, other than the limits within the CIC act, that places an upper limit on compensation paid under the CIC scheme.

Hon SUE ELLERY: The member understands that the payment is linked, not in respect of a cap or limit, to when the offence happened?

Hon Aaron Stonehouse: Sure, yes.

Hon SUE ELLERY: If it happened a certain number of years ago, a person's eligibility at that time might be significantly lower than it would be if it happened now, so that of course has a bearing on what the maximum could be.

Hon ALISON XAMON: Just further on this point, if I can assist the honourable member, I think part of the question was whether there are any sort of constitutional limitations on the amount of compensation that may be payable, in addition to those prescribed within the act.

Hon SUE ELLERY: Section 109 of the Commonwealth of Australia Constitution Act states —

> When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

The High Court has interpreted the effect of that provision to be that the state law will be inoperative while the commonwealth law remains inconsistent with the state law. A state law will be relevantly inconsistent with the commonwealth law if the state law alters, impairs or detracts from the commonwealth law. In view of what is set out in section 109, the member needs to look at three legislative provisions. Firstly, section 42(3) of the Western Australian Criminal Injuries Compensation Act states —

> An assessor must deduct from a compensation award in relation to any injury or loss suffered by a victim, or a close relative of a deceased victim, any amount that the victim or close relative has received by way of compensation or damages, or under a contract of insurance, for the injury or loss.

We then need to look at sections 49 and 52 of the commonwealth National Redress Scheme for Institutional Child Sexual Abuse Act 2018 to look at those elements of payment. Section 49, "Protection of the redress payment—general", states —

> (1) A redress payment is a payment of compensation under the scheme. However, for the purposes of:
>
> …
>
> (b) any other legislation of the Commonwealth, a State or a Territory; the payment is not to be treated as being a payment of compensation or damages.

The note in the commonwealth act under section 49(1) states, in part —

> Note: This subsection prevents a redress payment affecting other payments that may be payable to the person under legislation.

The government view is that section 49 of the national redress act provides that a redress payment is a payment of compensation under the scheme. However, for the purposes of state law, it is not to be treated as a payment of compensation or damages. Section 42(3) of the Western Australian Criminal Injuries Compensation Act provides that an assessor must deduct any amount a person has received by way of compensation or damage for injury or loss from a compensation award. Therefore, that section requires that the state's criminal injuries assessor act inconsistently with section 49 of the national redress act. That is because section 42(3) requires the assessor to take into account any prior payments. Section 49 prevents the state assessor from taking commonwealth redress payments into account; therefore, the state assessor is forbidden from doing that under section 49 of the commonwealth act. Noting that section 49 of the commonwealth act says that an amount received as a redress payment cannot be taken into account when calculating a state compensation award, it is therefore inconsistent with section 42(3) of the Criminal Injuries Compensation Act, which requires the state assessor to take into account amounts received by way of compensation or damages, and that would include a commonwealth redress payment. If we go back to section 109, which says that, to the extent that there is an inconsistency, the commonwealth provisions apply, there appears to be a direct inconsistency between the commonwealth and state legislation. That inconsistency will occur when the Parliament adopts the commonwealth act, including section 49, and, as a consequence, that adopted act will apply as a commonwealth law in Western Australia. I hope that that was not too confusing.

Hon ALISON XAMON: I will try to paraphrase what has been described into a quite succinct understanding. I would like to know whether I have this wrong. As I understand what the minister has just relayed to me, she has indicated that if we were not to include within the legislation the provisions to exclude the capacity for people to apply for criminal injuries compensation if they had received redress payments, the current provisions within the CIC act that preclude double dipping, if you like, or that require previous payments to be taken into account, could not be applied and that would mean that someone could ostensibly apply for redress and, because of the inconsistency, also apply for criminal injuries compensation. Have I understood that correctly?

Hon SUE ELLERY: That is correct.

Hon AARON STONEHOUSE: Has the government sought legal advice from the State Solicitor's Office on this matter?

Hon SUE ELLERY: Yes, we have.

Hon AARON STONEHOUSE: Can the minister tell us what that advice was?

Hon SUE ELLERY: No. There is a longstanding convention that the government does not reveal its legal advice, but I can assure the member that the State Solicitor's Office was involved in the drafting of these provisions.

Hon ALISON XAMON: Because the inconsistency between the WA act and other states' acts is a source of some concern, can I confirm whether provisions in other state criminal injuries compensation acts are similar to the provision within the CIC act that we are now referring to, which was designed to prevent double dipping?

Hon SUE ELLERY: Other jurisdictions' legislation uses much broader language than the language in the Western Australian provisions. I am advised that the Western Australian provisions are—this is my word—more prescriptive than others. There is significant variation in the legislative basis and policy intent of other jurisdictions' equivalent of the criminal injuries compensation scheme. They have taken different policy positions on how redress will intersect with their respective criminal injuries compensation schemes and they have not necessarily needed to include provisions similar to part 4 of the Western Australian bill because they do not take the view that they are affected by section 49 of the National Redress Scheme for Institutional Child Sexual Abuse Act due to the way that their particular state scheme is crafted. The WA Criminal Injuries Compensation Act refers to compensation and damages throughout. This means that should a person receive a National Redress Scheme payment and then apply for criminal injuries compensation, the Chief Assessor of Criminal Injuries Compensation would not be able to consider the National Redress Scheme and deduct it as appropriate when making an award of criminal injuries compensation. The result is that a person would be compensated twice for the same abuse: once by the responsible institution and then again by the state government—the taxpayers of Western Australia. As I said, other jurisdictions' legislation uses broader language. Language such as "any other payment" is used in some jurisdictions, and those jurisdictions are of the view that that will enable them to take into consideration National Redress Scheme payments when making a victims of crime payment.

Hon NICK GOIRAN: I simply indicate to members that although this is an important issue to explore, in many respects it is irrelevant to the matter before the chamber.

Hon Sue Ellery: Which is clause 1.

Hon NICK GOIRAN: Yes, it is minister; that is exactly right. It is irrelevant to the matter before the chamber because the government's bill eliminates any possibility of there being an inconsistency with section 109. Part 4 of the government's bill effectively obliterates a person's capacity to seek criminal injuries compensation. The government will object to my language about obliteration and it will play silly games and say that it is still possible for a person to put in a criminal injuries compensation application. That is true, but, remember, the final and killer provision in part 4 says that as soon as a person accepts a redress payment, their award for criminal injuries compensation is refused. For all intents and purposes, it is obliterated. It is good that members have raised this issue, but there is no problem because the government's bill addresses this. The way in which it addresses it is by obliterating the possibility, in effect, of a criminal injuries compensation claim.

In contrast to that, there is my amendment on the supplementary notice paper, which seeks to restore some of the rights of a person to make a criminal injuries compensation claim. The reason I have had the amendment drafted in the way that I have is to avoid any concern about double dipping. If I had simply said that we should allow a person to make a full criminal injuries compensation claim—this is my preference and I have expressed this to members previously—inevitably, the government would have run around and scared all the members of this place by saying that there is an inconsistency with section 109 and that double dipping will be going on left, right and centre. To avoid that situation, which is the very concern that members have raised, I have had the amendment drafted to restrict the application to loss only.

I take members to the "National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018", which Hon Alison Xamon referred to extensively in her contribution to the second reading debate. Members will see that there are six columns to quantify the amount of a redress payment depending on whether the survivor suffered penetrative abuse, contact abuse or exposure abuse. I will take members through each of the columns in that schedule because I think it will help them. The first column is straightforward; it simply lists the kind of sexual abuse of the person. Column 2 provides an amount of money—from very small, $5 000 for exposure abuse, to very large, $70 000 for penetrative abuse. Let us be clear here, members, and let us not allow the government to mislead us: the amount in column 2 is for recognition of sexual abuse. The words in the schedule are "recognition of sexual abuse". It is not recognition of physical abuse that might have happened during the course of the sexual abuse; it is not recognition of psychotherapy costs, dental costs and face or nose reconstruction because the person has been bashed. It is a payment for recognition of sexual abuse and nothing more.

Let us move to column 3, which refers to the recognition of impact of sexual abuse. A modest amount is then given in addition to column 2, in the event that the person can demonstrate to the National Redress Scheme assessor that there has been some impact of the sexual abuse—only the sexual abuse, and we are still talking about impact, not loss.

Column 4 refers to recognition of related non-sexual abuse. A minuscule amount of money is then provided, which is $5 000. To put this in a practical example, I have raised several times the scenario of a victim of child sexual abuse being bashed at the same time. The National Redress Scheme compensates or provides some kind of payment for that wrongdoing, for the bashing, and that is $5 000. That is why I would have preferred that the government did not do what it was doing in part 4 and did what the other states have done, because the victim of the bashing would be able to get a full claim for injury under criminal injuries compensation, not the measly $5 000 awarded under the National Redress Scheme. I have not put that in the amendment, because, as I said, I knew what

would happen. The Attorney General of this state would start speaking about section 109, causing fear in everyone's heart that lo and behold there would be these victims of child sexual abuse who have been abused significantly and consistently in institutions double dipping. Could members imagine if that happened? It would be a great injustice to the planet that a victim of child sexual abuse repeatedly abused in an institution might possibly be able to construct a scenario in which they would be double dipping. That is what would have happened, members. We all know that is what would have happened, so that is why I have not gone down the path of having a full criminal injuries compensation claim available, only for loss.

Column 5 in the schedule allows another $5 000 if it can be demonstrated that the person was institutionally vulnerable, and there is a definition of that.

Finally, column 6 refers to an amount of $50 000 that can be applied only for the victims of penetrative abuse—not for contact or exposure abuse; they get nil for that category—if there is recognition of extreme circumstances of sexual abuse.

All of that is to say that the issue of inconsistency in section 109 is not an issue with the government's bill and it is not an issue with my amendment. It might have become an issue in the event that my amendment gave somebody the full rights they currently have for a criminal injuries compensation claim. It might then have become an issue, because the government could argue—even though I might have a different view on this—that because of the issues being created with section 49 of the federal legislation and section 42 of the state legislation and the inconsistency, some victims will double dip. That is what would have happened, but it will not be an issue with my amendment, because a victim would not be able to claim for their injury. The government will not allow them to claim for the injury and nor will my amendment. In fact, the only scenario in which they could possibly do that is if they put in an application for national redress, rejected the offer and then proceeded with the criminal injuries compensation claim afterwards, which, I might add, is one of the so-called solutions put forward by the government. I strenuously object to that, because not only are we then creating a ridiculous situation of having National Redress Scheme assessors going through the motions, but, worse, we are making survivors of this institutional abuse go through the motions. We are making them put through two applications—to be disappointed on the first application, but happy about the second—whereas my amendment will allow them to be happy in both instances. There is no scenario in which the government's proposition that a solution to all this is to just reject the redress application and continue with the criminal injuries compensation application can seriously be supported by members. I am happy to continue if the minister or other members want to explore the issue of section 109. I respectfully say that this is not an issue with the government's bill and nor is it an issue with my amendment. Unless there are specific further questions, I think we can move to other important areas of inquiry.

Hon ALISON XAMON: I also have a question arising from Hon Nick Goiran's proposed amendment, which will obviously be discussed further down the track. If the amendment were to be adopted, would there be any other consequential amendments required to make the scheme work; and, if so, could the minister please be quite specific about what those likely consequential amendments would be?

Hon SUE ELLERY: I am not saying there is anything wrong with this, but the amendment was provided on Friday and officers have been briefing others. At least one consequential amendment would need to happen, and I am saying by way of caveat that there may be more, but this is what has been identified so far. The proposed amendment does not address the issue that a criminal injuries compensation assessor cannot in the Criminal Injuries Compensation Act take into account the National Redress Scheme payment because of section 49 of the National Redress Scheme for Institutional Child Sexual Abuse Act. Section 49 provides that a redress payment is not to be treated as a payment of compensation or damages for the purpose of any other legislation. Section 52 provides that a counselling payment cannot be treated as a payment of compensation or damages. That means a person could receive treatment expenses that do not take into account the National Redress Scheme counselling payment. That person could seek to be reimbursed for counselling by the criminal injuries compensation scheme, despite receiving a payment from the National Redress Scheme for counselling. The criminal injuries compensation assessor could not take the National Redress Scheme payment into account and the person would receive the whole amount that they would have been eligible for under the criminal injuries compensation scheme. Therefore, the government would need to look at a consequential amendment to section 42 of the Criminal Injuries Compensation Act to broaden the language from "compensation" to include "other payments", which, as the member will recall from the answer I gave earlier, is the kind of language used in other jurisdictions. That could be required to prevent, effectively, double dipping, but we do not know whether that would be successful against the constitutional issue in section 109.

Hon NICK GOIRAN: This is a wonderful smokescreen by this government. It is truly, truly incredible that yesterday in Committee of the Whole House—members go back and have a look at the *Hansard* from yesterday and Tuesday—the minister was consistently trying to tell me that psychotherapy costs and so forth are not real payments. Now, suddenly, today, this is going to be a big issue because, remember, these victims of institutional child sexual abuse might get their measly $1 250 for counselling and psychotherapy costs from the National Redress

Scheme and the poor assessor in Western Australia will not be able to take that into account. The government cannot have it both ways; it is either one or the other.

I am happy to deal with both scenarios since the government, depending on the day of the week, will take a different position. If it is a Tuesday or Wednesday, it is not really a payment, but if it is a Thursday and it is asked a questioned by Hon Alison Xamon, suddenly it becomes a payment and it becomes an issue, which under the language of this government requires a consequential amendment.

I will deal with the first scenario. If the government wants to go ahead and move consequential amendments, it should put them on the notice paper and we will consider them. But it should not put up smokescreens to try to confuse members about this outrageous scenario that possibly the assessor in Western Australia might not be able to take into account the pittance that is provided for psychological and counselling costs. I might add that yesterday in the debate the government stressed that it might not be a payment—that it is actually a little bit like providing legal services and that those legal services are provided to the applicants but they may not necessarily be a payment, but all of a sudden now it is going to be a payment. Let us not be distracted by that because the situation is simply this: in Western Australia, the chief assessor and the two assessors in this state have at their disposal the ability in their award to make an allowance for future medical costs. They can say to the person, "If in the future you would like to have access to psychotherapy, I will award you up to, for example, $3 000, but you will have to access that treatment and you will have to provide your receipts and then we will reimburse you for that." There is nothing to fear, members, by this smokescreen that has suddenly been put up by the government, because if an assessor is so concerned about the possibility of double dipping, it is easy—they can simply make a future award and say to the person, "Unless you actually have that counselling, you will not get one cent for your psychotherapy." That happens routinely, and the government knows that full well. To use that as some kind of distraction and smokescreen, I find very, very unsatisfactory, to put it in the most polite terms available to me this afternoon.

Of course, there is also the second scenario that if this is such a big deal and suddenly these consequential amendments are needed, it is very simple. What the government can do is my preferred option. We have heard the government talk about the different language and the different statutes around the nation and its concern about the use of the word "compensation" in section 42 and how other states do not necessarily have that language. It can move an amendment. There would be nothing better for me if at the end of the consideration of this bill we reinstated a victim's right to a full criminal injuries compensation claim and allowed the assessors in Western Australia to take into account the redress payment. That is my preferred option. But if the government wants to do that, it should put it on the notice paper and let us debate the amendments.

In the absence of that, we have two options. We have the mean-spirited government option, which is to say, "You won't be able to get anything more than the redress payments. The instant you accept that amount, you will not be able to have a criminal injuries compensation claim." Why? That is because the language in the government's bill says that an application is deemed refused. Or we have the second option, which is my option, and which gives the survivor of this institutional abuse the option, if they so want, to make an additional application for criminal injuries compensation—not a full compensation claim, as I would prefer, but one for loss? Why? That is because, otherwise, members will be concerned about double dipping, including the government, which is very concerned about the section 109 issue.

The other issue that needs to be explored is that we must get to the bottom of the different situations in which a person will be worse off. When we left things yesterday, the government indicated that it would go away and look at the maximum amounts that have been provided to victims of crime in Western Australia for dental costs. I would be interested in whether the minister has an answer to that.

Hon SUE ELLERY: The chief assessor has endeavoured to find out whether it is possible to provide the information that the member sought. It is not possible to provide the information without examining individual case files, so we are not able to provide further information than was provided yesterday.

Hon NICK GOIRAN: This is hopeless! This is the problem. When a government brings on an important bill like this, we are constrained by the time available to us. The Western Australian Attorney General runs off out to the public and says that it is the opposition that is holding up things and that somehow we are not interested in the best interests of victims of crime. He runs off and blames us for these things and, yet, when we want simple answers to questions like, "What is the amount of the dental costs that have been paid for in criminal compensation", they are not available. That was fair enough for yesterday because I asked a question without notice and it was quite understandable for the minister to have said, "I need to take that away and have a look at it." But 24 hours later we are here and we are no better off. How can it be that the government, with thousands of employees at its disposal, cannot find out what is the maximum amount of dental costs provided in our state for a criminal injuries compensation award? What is the government doing? Is this actually a priority bill or not? It should pull staff from one of its other pet projects and get them to look at the files so we can have the answer to this question.

To make this all the more ridiculous, unlike the government, with its thousands of employees available to it, I have a measly two full-time equivalent electorate and research office staff, yet I have managed to get some information that the government wants to hide from the chamber this afternoon. This government says that it aspires to a gold standard in transparency, but here we are 24 hours later, after a reasonable question has been asked, it has taken it on notice and the reply is, "Sorry, we cannot provide that information to you." It is only a matter of victims of child sexual abuse who have been repeatedly abused in institutions for years and years and years! A royal commission, for goodness sake, had to look into this matter. Earlier today, I was talking to an advocacy group that put in 600 submissions to the royal commission for victims in Western Australia just in respect to our state—it is only a matter of that!

The government cannot possibility get one person out of its thousands of employees to pick up some files and look at the dental costs that might have been paid in a criminal injuries compensation award in our state. Since the government is unable to provide this information to the chamber—either it is incompetent or deliberately unwilling—I can tell members that over the last 24 hours I have consulted with people who work in this space and I have done the consultation that the government, in its ineptitude, is unable or unwilling to do. The dental costs that have been provided in recent awards in this state include $11 000, $15 500 and, get this members, $25 000. When it comes to the third amount, I need to emphasise that that $25 000 included dental and psychotherapy costs—I do not want to mislead any members here. As we know from yesterday's debate, the government was at absolute pains to let us know that psychotherapy costs in Western Australia are never more than $3 000. Members might remember that I asked whether it has ever been the case that it has been more than $3 000? The answer that came back was, "Not in accordance with the memory of the chief assessor." Yesterday we operated on the basis of the provision of that information, and I suggest that we do so today as well, that the maximum that would ordinarily apply for psychotherapy costs is $3 000. If that is the case in this particular instance, in which $25 000 was provided for dental and psychotherapy costs, the arithmetic is very simple: $25 000 less $3 000 for psychotherapy costs means that the dental amount was $22 000. The three examples that I have for members today obtained with my measly number of two full-time staff members compared with the thousands of employees that the government has at its disposal, which has provided zero examples, are: $11 000 for dental costs, $15 500 for dental costs and, what I will say is $22 000 for dental costs, because in that particular case it was $25 000, which consists of $22 000 for dental costs and what we assume is $3 000 for psychotherapy costs. The point here is that the government has already conceded in earlier debates this week—I say conceded, the minister says provided, but in this case I think it is a concession—that dental costs are not claimable under the National Redress Scheme.

If a victim of child sexual abuse was bashed during the course of the sexual abuse and they suffered dental reconstruction as a result, they cannot claim that under the National Redress Scheme. It is nonsense from the government that somehow it is a global system that fails to take into account the precise language that is being used in each of the six columns in the national redress payment. A person can get an amount for the recognition of sexual abuse. In the case of penetrative abuse it is $70 000. Members, $70 000 is for the recognition of sexual abuse, it is not for being bashed and having $25 000 of dental treatment. That is not what it is covering; it is covering recognition of sexual abuse. It is bad enough that they suffered penetrative abuse. Let us not pretend and fall for the government's smokescreen that somehow that $70 000 is covering dental costs. It is not and that is why there was the concession earlier this week by the government that dental costs are not claimable under the National Redress Scheme. If we allow the bill to pass through this place unamended, people who were bashed and might have to have dental treatment to the tune of $11 000, $15 000 or $22 000 will not be able to claim it under the National Redress Scheme. But they will be able to do so if we pass my amendment. It is also the case, and I anticipate in due course that the government might raise column 4 and will say, "Look, the honourable member is very passionate about this matter but he never tells any members in the chamber about column 4." The government has not done that yet, despite that it has thousands of employees supposedly looking into this matter.

Column 4 refers to "Recognition of related non-sexual abuse." If I was the government and I was sitting there, I would be saying that column 4 allows a payment of $5 000 for recognition of related non-sexual abuse. I would be saying that that could be an amount to take into account the bashing that took place. That is what I would say. However, it is $5 000 for the fact that the bashing took place; it is not $5 000 to cover the dental costs. Remember that the dental costs were $11 000, $15 500 or $22 000—that is it not what the $5 000 is for. Once again, if the government in its desperation not to amend this bill tries to put up another smokescreen, members should not fall for it. Column 4 is "Recognition of related non-sexual abuse." It is not for dental costs. There is no scenario in which the government can seriously claim that the National Redress Scheme covers dental costs; it simply does not. I might add, members, that ordinarily if a person puts in a criminal injuries compensation claim, they would be able to claim for the injury component. They will not be able to do that here, because the government will not allow them to; and my amendment will not allow them to do that, even though in my heart of hearts I would rather that it did. That is a shame because when people are bashed during the course of a sexual assault and they then need to have dental reconstruction, they may also have scarring. It is those types of things that will not be able to

be compensated, other than the pittance of $5 000 in the National Redress Scheme. Could the minister possibly tell us the maximum amount that has been awarded in Western Australia for reconstructive nose surgery? If the minister thinks it is funny, she should talk to the victims of child sexual abuse.

Hon SUE ELLERY: I do not think it is funny at all. I think it is extraordinary that the member thinks I would have information of that level of detail available to me at the table. I can give the member an undertaking to get it.

Hon Nick Goiran: You said that on the other one yesterday on dental, and now you have said, "No, you can't have it."

The CHAIR: Order! The minister is addressing the Chair.

Hon SUE ELLERY: I am, Chair. When I give an undertaking, I follow through on it.

Hon Nick Goiran: You haven't today.

Hon SUE ELLERY: Chair, I did. I gave an undertaking that I would see whether the information was available. I did that. Unless the officers of the criminal injuries compensation office devoted their entire time last night or today before we started dealing with this bill to examining the files case by case, that information is not available. However, the undertaking that I gave was met. I do not have that available with me at the table today, and I think any reasonable person would think it is entirely understandable that I would not have that level of detail at the table today. I can give an undertaking that I will see if it is available; however, I cannot give an undertaking—I did not yesterday and I am not now—that I can provide it. I can give an undertaking that I can see if it can be provided.

Hon MICHAEL MISCHIN: I thank the minister for her speech. All she needed to say is that she did not have the information and would endeavour to find it. I understand, having sat in that seat, that sometimes information is unavailable, but to express outrage in that fashion when a simple question is asked—one that is quite germane to the amendments that Hon Nick Goiran is trying to persuade the house are worthy and that the government is continually dismissive of—is simply beneath the position that she is occupying.

I want to ask one question though, and it goes back to a slightly unrelated matter. The minister mentioned earlier some convention against releasing the tenure of legal advice that the government has been given. What was the basis of that? Was it legal professional privilege? Is that what the minister was driving at?

Hon SUE ELLERY: It is a longstanding convention and one that the honourable member relied upon when he was in government: the government does not reveal legal advice. There may be exceptions to that, but that is a longstanding convention. With the greatest respect, we are on clause 1 of the legislation and government policy, historical or otherwise, about the release of legal advice is not germane to clause 1 of the bill.

Hon MICHAEL MISCHIN: It was a good try, but the minister raised the objection to the release of the tenor of the legal advice. I am a little surprised, given that the Attorney General on several occasions in the last almost 18 months has revealed to the media and otherwise the tenor of legal advice he claims to have received, yet objects on other occasions when he is asked whether his decisions have been in accordance with legal advice. I suppose members can draw their conclusions about whether that legal advice supported his decisions. However, I find it curious that in a case such as this when questions are being asked about the impact of the federal scheme on Western Australians and the government trenchantly claims a particular point of view is correct, we cannot get some assistance from the legal advice that has been provided by the State Solicitor's Office, if it is uncontroversial. Nevertheless, it is perhaps another reflection of the McGowan government's standards of transparency.

Hon SUE ELLERY: Chair, we are dealing with clause 1. I appreciate that it is a broad-ranging debate across the bill, not across the honourable member's views about transparency in this government or otherwise.

The CHAIR: I hear what is being said. I assure the minister and others here that I am closely following the debate to make sure that it is a genuine clause 1 debate and that it is not a revisiting of the second reading debate, which has concluded. In doing so, it is necessary that, even though it may cover a range of different points, the debate on clause 1 is limited to that. Listening closely to Hon Michael Mischin as the recent example that the minister objected to, he is working around the debate as it has progressed so far, but I assure the minister that I will not allow the debate to go outside what is recognisable as a clause 1 debate, and so far it is not.

Hon MICHAEL MISCHIN: Before I was rudely interrupted, I was leading in to a question. The question relates to section 49, which has been referred to on several occasions. It is contained in part 2–5 of the national act and deals with the provision of redress under the scheme. The commonwealth legislation helpfully provides a simplified outline of the tenor of that part of the act. Division 2 deals with the redress payment. Section 48 states —

> (1) If:
>
> (a) a person is entitled to redress under the scheme …; and —

We have established the low threshold necessary to entitle someone to an order for redress —

(b) the person stated in the acceptance document that the person wishes to be paid the redress payment;

then the Operator must pay the redress payment to the person as soon as practicable.

(2) The rules may prescribe matters relating to the payment of redress payments.

Section 49 purports to be a protection of the redress payment. In general terms, it states —

(1) A redress payment is a payment of compensation under the scheme. However, for the purposes of:

(a) the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*; and

(b) any other legislation of the Commonwealth, a State or a Territory;

the payment is not to be treated as being a payment of compensation or damages.

This is important for the purposes of the amendment and the debate that we have had over Hon Nick Goiran's proposals for how the bill might be improved. Section 49 continues —

(2) For the purposes of the application of any law of the Commonwealth, a State or a Territory in relation to a redress payment:

(a) the payment and the entitlement to the payment are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise; and

(b) no amount may be deducted from the payment.

There is one exception in section 49(3). Certain other provisions relate to protection in section 50, which says —

(1) If:

(a) a redress payment is being paid, or has been paid, to the credit of an account; and

(b) a court order in the nature of a garnishee order comes into force in relation to the account;

the court order does not apply to the saved amount (if any) in the account.

Is there the potential for criminals serving terms of imprisonment—imprisonment being a sentence of last resort, so reserved generally for the more serious circumstances—who may have committed offences that have caused physical harm to others, whom I will call the victims, to receive a redress payment from the scheme and have that payment of redress protected against any claim for criminal injuries compensation or, indeed, any other compensation on behalf of the victim?

Hon SUE ELLERY: The description the honourable member gave is correct. The redress payment is, effectively, quarantined from being garnished by any other method. The criminal injuries compensation scheme can create an order that would create a debt that the person would have. The state can pursue that, but not the redress payment. That is in recognition that the redress payment is not considered something for the person to use to deal with any liabilities or debts they might have going forward. It is a payment in recognition of what happened to them as children.

Hon MICHAEL MISCHIN: Let us say someone using the civil liability legislation that was passed earlier this year sues an institution and recovers an amount of compensation—let us say $150 000—for sexual abuse they suffered as a child. They went to the extent of litigation. Maybe they got the money by way of settlement or after a trial, but they got $150 000 in damages. Is that amount equally protected against a claim by the state or anyone else for compensation for the harm that that plaintiff may have caused them?

Hon SUE ELLERY: No, it is not. The bill before us is specifically about the redress scheme.

Hon Michael Mischin interjected.

Hon SUE ELLERY: I am answering the question through the Chair.

The bill that is before us now is specifically about the redress scheme. The answer to the honourable member's question is no.

Hon MICHAEL MISCHIN: Why is one payment of $150 000 under a redress scheme with a very low threshold for eligibility protected, yet the amount recovered in other circumstances for the same harm is not?

Hon SUE ELLERY: I make the point again that we are dealing with clause 1 of the redress scheme bill. This is a very specific scheme established by the commonwealth government in direct response to the recommendations of the royal commission. The honourable member may well have a perfectly reasonable policy campaign to run that there ought to be other measures put in place for people who claim under other regimes. That is not before the chamber. The redress scheme is before the chamber.

The CHAIR: I will clarify for members the question before the Chair now, in light of what the minister has observed. The bill before us is, in effect, a bill to do several things. It is to adopt a commonwealth act as originally enacted and subsequently amended by the Parliament of the commonwealth. It is to refer certain matters relating

to the National Redress Scheme for Institutional Child Sexual Abuse to the Parliament of the commonwealth and it is for related matters. In contemplating the structure of this bill, there is, as the minister pointed out, fairly limited machinery to give effect to that, given that there are only 17 clauses. However, it is legitimate, when canvassing the content of the bill, for members to examine what is being adopted, which is the provisions of the commonwealth act. The only place to do that, with some minor exceptions, is at clause 1. That is why I am allowing the series of questions raised, including the one just raised by Hon Michael Mischin. It is a little bit unusual in that sense, but this is a bill that adopts commonwealth legislation.

Hon MICHAEL MISCHIN: Thank you, Mr Chairman. I appreciate your clarification of the situation and I am pleased to say that it accords with my understanding. I made mention the other day that this is the only opportunity that we will have to examine the scheme that this government, by this bill, says Parliament ought to adopt. We have dealt with the second reading debate, but I think that we are entitled to understand how the scheme will work, particularly in light of certain amendments that I have foreshadowed that will keep this Parliament informed from time to time of any commonwealth changes to the scheme that will be out of this Parliament's control because there will be no opportunity to review them formally through our standing orders and our Standing Committee on Uniform Legislation and Statutes Review. They will automatically become part of the law of Western Australia. I think we need to know the metes and bounds of what the government has signed us up to.

I made the point that there will be two classes of victims. One class of victim seeks their legal rights under civil litigation. That is the choice they make. They recover money, but they are also, as citizens, responsible to other citizens in society. The moneys that they recover by way of damages from responsible institutions, whether they are state of Western Australia or private institutions, is open to the same exigencies as every other payment in a bank account. If that victim of child abuse has done harm to others, those victims will not go without. If a person happens to have committed a crime and harmed others, criminal injuries compensation against them can be recovered through an assessor. Others may be able to sue them for the harm that they have done. That seems right and proper, yet we are signing up to a scheme whereby money, whether government or institutional, will be protected.

I would like to raise a simple scenario. I do not want the answer that it "depends on a case-by-case basis assessment". It is a simple scenario. Let us say a redress recipient gets $150 000 plus all the other extras, and that redress recipient in the meanwhile has bashed someone to the point of blinding them and knocking out their teeth. The victim has to go off to the criminal injuries compensation assessor through which the maximum amount available is $75 000 or they can choose to sue that redress recipient for the actual harm that has been done to them. They know that the redress recipient is in prison for his crime. Can that victim recover any of the redress payment that is sitting in the redress recipient's account? I think it is a simple yes or no.

Hon SUE ELLERY: I appreciate the member saying that he thinks it should be a simple yes or no answer, but I am not able to give him that. Certainly, the person could pursue a claim against the other person's redress payment. If a court found in their favour, whether it could be executed is actually prevented by section 49(2)(a) of the National Redress Scheme for Institutional Child Sexual Abuse Act—the bit that the member read out earlier—that refers to the payment being "absolutely inalienable" and then sets out the rest of that provision, which the member also referred to.

Hon MICHAEL MISCHIN: I think the answer is no, I cannot recover it even if I was the victim of a redress recipient's crime and I know that the redress recipient has $150 000 of money that is recovered as a redress payment sitting in their account. The recipient is in jail for a crime he has committed against me and he has done me more than $150 000 worth of damages. I can sue him but I cannot recover any of the money because he can say that the money in his account is all redress payment and it is protected: "Sorry, you've won your case, but you're going to have to go to criminal injuries compensation to do the best you can with $75 000, and guess what taxpayer? The assessor can't get it off me either." Is that what it amounts to, minister?

Hon Sue Ellery: I have answered the question, Chair.

Hon MICHAEL MISCHIN: Yes, the minister has; thank you.

Given that the Attorney General was very keen to ensure that criminals would get redress under this scheme, did he address that particular problem and the sense of injustice that might be felt by other victims in the community of the crimes that redress victims might have committed against them? Did he raise any of that with a view to modifying the scheme that he has signed us up to while he was advocating for the inclusion of criminals as eligible redress recipients?

Hon SUE ELLERY: I am not able to provide the member with a precise answer as to whether he advocated that particular point that the honourable member just raised. I can advise that he was advocating on behalf of all victims, irrespective of whether they were incarcerated as a consequence of the path their life took. He advocated on behalf of all victims. I can give an undertaking that I will ask the Attorney General about that precise point, but I do not have advice available to me at the table.

Hon AARON STONEHOUSE: I will follow on from the questions around section 49(2) of the commonwealth's national redress scheme act, which deals with the payment being absolutely inalienable. Would that protect a redress payment from confiscation for a confiscable offence that occurs under the Criminal Property Confiscation Act by a drug trafficker, for example?

Hon SUE ELLERY: We might give an undertaking to double-check this, but the advice that I am provided with is that if it is cash, it would be protected. I am going to check on the case of that cash being effectively converted into property, and whether that would definitely not be protected. If cash is lying around, we are going to check whether that is excluded.

Hon AARON STONEHOUSE: I am very interested in that because I am not sure if the minister or other members are aware of this, but if a person is declared a drug trafficker, all their property is confiscable, including their house, the money in their bank account and the clothing on their back. To be declared a drug trafficker, a person needs to be merely in possession of a rather arbitrary quantity of drugs—I cannot remember the exact schedule but I think with cannabis it is three kilograms or 20 plants, which are not measured by their size or weight and could be merely seedlings. I am sure that Hon Alison Xamon will agree with me when I say that many people who abuse drugs may have taken that action because they were a victim of some kind of trauma in their life. There could potentially be overlap between victims of child sex abuse and people who abuse or habitually use illicit substances. I would be interested in that information if the minister can provide it.

Hon NICK GOIRAN: As we cast our eye over the various provisions in this bill during this clause 1 debate, it is the case that some clauses might be suitable for deletion, some might be suitable for amendment and, in some spaces, it might be necessary to add new clauses. I will look ahead to clause 15, minister, which is a clause that I have spoken to several members about. It is my understanding that clause 15 in effect forces people who would ordinarily apply for a criminal injuries compensation claim to first go to the National Redress Scheme; is that right?

Hon SUE ELLERY: The answer is yes, and that is consistent with existing section 21 of the Criminal Injuries Compensation Act.

Hon NICK GOIRAN: Given that we have section 21 of the Criminal Injuries Compensation Act, why is clause 15 necessary?

The CHAIR: Order! In this case, I am not convinced that this relates to a debate on clause 1. This is a specific question that might well be reserved for when we come to clause 15. I am inclined to suggest that it needs to be deferred until then unless the member has some specific reason for raising it at this stage.

Hon NICK GOIRAN: If I can explain, I would like to deal with this now for the reason that I do not want to get to clause 15 and find that there is some kind of understanding that clause 15 is actually not necessary because of section 21 of the Criminal Injuries Compensation Act, and we then have to amend other clauses that we have already passed. I would much rather have that clarity here at clause 1 than deal with it at clause 15. As you will be aware, Mr Chairman, there are a number of clauses in part 4 of the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 and they are interrelated with the Criminal Injuries Compensation Act.

The CHAIR: Minister, before I give you the call, I think detailed consideration of this matter is properly reserved for consideration of clause 15, but I notice that you are prepared to entertain it and have sought some advice. If you wish to respond at this time —

Hon Sue Ellery: I would really like to progress clause 1.

Hon NICK GOIRAN: Minister, has the government consulted with the Law Society of Western Australia in respect of this bill?

Hon SUE ELLERY: At the beginning, when we went into Committee of the Whole, there was an exchange about who had been consulted. Although I did not have in front of me a list of the organisations that had been consulted, the honourable member had asked a question during question time last week or the week before and he very helpfully provided to the house the answer to that question, which set out the organisations that had been consulted. As the honourable member knows, because it was his question and he tabled the list, the Law Society was not included in that list.

Hon NICK GOIRAN: That question that the minister answered on behalf of the Attorney General was asked on 1 November 2018. The minister might be aware that today is 22 November 2018, so I re-ask the question: has the government consulted with the Law Society in respect of this bill?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: Why has the government not consulted with the Law Society of Western Australia in respect of this bill?

Hon SUE ELLERY: The government consulted with the respective agencies on how to draft a bill to give effect to a national scheme as a direct recommendation of a royal commission that ran over several years and that consulted very broadly with all sorts of individuals, advocacy groups and stakeholder groups. The provisions set out in the bill before us have been widely and nationally canvassed, and the government considered —

Hon Nick Goiran interjected.

The CHAIR: Order! The minister is addressing the Chair.

Hon SUE ELLERY: The government considered all the recommendations of the royal commission. In respect of the provisions set out in the Western Australian bill, the government consulted with agencies to seek advice on how best to give that effect. I am not able to provide the honourable member with any more information than that about why the Law Society or anyone else who was not on that list was not consulted.

Hon NICK GOIRAN: Will the minister find out from the Attorney General why he did not consult with the Law Society in respect of this bill?

Hon SUE ELLERY: I will ask him the question.

Hon NICK GOIRAN: Has the government consulted with any victim advocacy groups in respect of this bill?

Hon SUE ELLERY: The list of government agencies that were consulted at the time the answer was provided in Parliament on 1 November still stands. Since then, no additional consultation has occurred.

Hon NICK GOIRAN: I understand the minister is telling us that, as at 1 November 2018, the people the government had consulted in respect of this legislation were: officers from the State Solicitor's Office; the Parliamentary Counsel's Office; the Department of Justice, including the office of the criminal injuries assessor and the office of the Commissioner for Victims of Crime; the Department of the Premier and Cabinet; the Department of Treasury; the offices of the Premier, Attorney General and Minister for Child Protection; and the commonwealth Department of Social Services—and no-one else. Since that time—some three weeks later—the government has consulted with no-one. It seems quite remarkable and very difficult to believe that, in the last three weeks, even with amendments put on the supplementary notice paper, the government has consulted with nobody else. That is what we are being told. That is very hard to believe, but how can we test these things any further? We simply have to rely on what the government tells us at this time. When the matter is next before the chamber, perhaps we will find out that some other information is available to us. I would not be at all surprised if the government has to come back here, correct the record and say, "Actually, we have consulted with a few other people in the last three weeks", but for the purposes of the continuation of this debate, we will have to rely on the advice that no other consultation has taken place.

Earlier, I asked the minister about claims for amounts of money that might be made under a criminal injuries compensation claim for reconstructive nose surgery. The minister was very annoyed that I had asked that question and indicated that it was not possible to provide any information and that it was not possible for that information to be made available to her at that time. It is a little like the dental costs. Because the government is not prepared for deliberation on this bill, does not have the information at its disposal and has not done the work, I will assist the minister once again. Despite all the hundreds and thousands of employees available to the minister, I have managed, with my mere two full-time equivalent staff, to find some information about reconstructive nose surgery. Unfortunately, I have to say that those amounts for reconstructive nose surgery are significant. In recent times, the office of the criminal injuries compensation assessor has awarded $15 000 for reconstructive surgery of the nose. I hasten to add that that also includes counselling. As I indicated earlier, we know from previous discussions, either on Tuesday night or yesterday, that the counselling components would not be more than $3 000. The government provided that information earlier this week. We can infer that the reconstructive surgery amount was $12 000. That is one example that I have been able to provide the chamber with that the minister was unable to provide. The second example is, to be precise, $14 412.60. In that instance, it included nose reconstruction costs of $12 500 and the rest was for psychotherapy. The psychotherapy cost in that particular instance would have been just a fraction under $2 000, with the very significant amount being the nose reconstructive surgery costs of $12 500. That would seem to support what the government told us earlier this week—that the psychotherapy cost is generally not over $3 000. In fact, there is no recollection of it ever being more than $3 000. The point is that the nose reconstructive surgery cost was $12 500, but in the earlier example, a figure of $15 000 was given. If we allow a $3 000 amount for psychotherapy, we find that the reconstructive surgery amount is about $12 000. It seems to me that from those two examples, and in the absence of the government providing us with any information this afternoon, we can operate on the basis that nose reconstructive surgery is approximately $12 000. We can also operate on the understanding that nose reconstructive surgery is not claimable under the National Redress Scheme, although the government has yet to confirm that. Is the minister able to indicate to the chamber whether nose reconstructive surgery is claimable under the National Redress Scheme that WA is about to sign up to with this bill?

Hon SUE ELLERY: I think I answered a series of questions yesterday about —

Hon Nick Goiran interjected.

Hon SUE ELLERY: I am trying to provide an answer, Chair.

Hon Michael Mischin interjected.

The CHAIR: Interjection is not required. The minister.

Hon SUE ELLERY: Thank you. I am trying to provide —

Hon Nick Goiran interjected.

The CHAIR: Member! I have just indicated that interjection is not required when the minister is specifically and deliberately indicating that she is addressing the Chair alone.

Hon SUE ELLERY: I provided an answer yesterday about whether or not the scheme allowed for specific claims or specific treatment and the answer was no. Consistent with that answer, no, there is not a specific capacity to claim under the redress scheme for the particular treatment that the member just referred to.

Hon NICK GOIRAN: The minister says that there is not a specific ability to do so, so what is the non-specific way in which people can claim?

Hon SUE ELLERY: I think we are getting back to the debate that we had yesterday. Applicants can claim for a payment under the scheme, which is recognition of the abuse that occurred to them. The effect that that abuse had on them may have taken many different forms, including different forms of injury. In putting information to the redress scheme, they may, if they choose, provide particulars about particular injuries they suffered and treatment they sought as a result. However, they are not required to; medical reports are not required. They need to tell their story. The system will process that with a series of checks and balances, which we have already canvassed in the debate, and the claim will then be determined one way or the other. There is no requirement to identify specific injuries and specific treatment; nor is there the capacity to apply for specific recompense for specific injuries and specific treatments.

Hon NICK GOIRAN: If the minister has at her disposal the table that sets out the amount of redress payments that can be made and the way in which they are calculated, she will find that in section 5 of the "National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018", there are six columns. Is the minister referring to column 4 at the moment?

Hon SUE ELLERY: I am not referring to any column. However, I certainly agree that we have canvassed this table previously in the debate.

Hon NICK GOIRAN: The minister indicated that there is no specific way in which a person can claim for nose reconstructive surgery, but she implied that there is a non-specific way. She talked about the lump sum payments that are made. I draw to her attention that there are six columns and I ask her to identify which column the nose reconstructive surgery would fall under.

Hon SUE ELLERY: It does not. The point that I think is perhaps mischievously being misunderstood is that this is a redress scheme for historical abuse. It was designed in such a way as to minimise the amount of trauma that people have to go through. It was also designed in such a way as to recognise that, for many victims, documentation may not be available about what occurred to them at the time or, even if they did receive treatment, information may not be available about that treatment. I have not relied on the table to which the honourable member is referring to answer his specific answers. I am not relying on it now. However, the table has been referred to in earlier debate.

Committee interrupted, pursuant to standing orders.

[Continued on page 8535.]

Sitting suspended from 4.15 to 4.30 pm