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

Second Reading

Resumed from an earlier stage of the sitting.

HON ALISON XAMON (North Metropolitan) [5.09 pm]: As I said before question time, it is important that we provide appropriate counselling and mental health support services for adult survivors of childhood sexual abuse. The royal commission recommended that counselling and psychological services be available to survivors for the duration of their lives. A lump sum of $150 000, which is the maximum payment, is not likely to be able to pay for that.

An apology is part of this legislation. If wanted, the scheme provides for a direct personal response. It can be in writing, a combination of writing and face-to-face or just face-to-face. This is a really important aspect of the scheme! Of course, many survivors will not be interested in a direct apology and that is absolutely fine. The commonwealth act provides guiding principles. If a face-to-face meeting is agreed upon, a survivor must be given the opportunity to choose from representatives of different genders, cultural backgrounds or other relevant characteristics. It is also good and important that people who live outside the metropolitan area will be appropriately catered for and supported.

The scheme is available only to Australian citizens and permanent residents. I think this is problematic and unfair. To receive criminal injuries compensation, people need to demonstrate only that the crime occurred within Western Australia, yet non-citizens have been excluded from the National Redress Scheme. Why is this the case? What was the policy reason behind the decision to exclude non-citizens from the National Redress Scheme if they have been sexually abused in institutions within Western Australia?

The commonwealth's original intention was that the scheme not be available to people in prison or to those with serious criminal convictions. My understanding is that the commonwealth was concerned that if redress was provided for offenders, it would run the risk of scandalising the scheme, which was a highly inappropriate position. It completely ignored the role that child abuse plays in later offending behaviour. We know that child sexual abuse is a cycle and that some imprisoned perpetrators of child sexual abuse are also victims of institutional child sexual abuse. The lack of understanding of that was appalling! The Greens unequivocally believe that redress should be available to all survivors of institutional child sexual abuse. I will give credit where credit is due and acknowledge the role the Western Australian Attorney General played in arguing for amendments to the scheme to ensure that this gross injustice received some sort of amendment. It is not quite as we wanted it, which was that it would not be an exclusionary process for people to be able to access the National Redress Scheme, but at least the national scheme operator—that is, the secretary of the Department of Social Services—has the discretion to allow the application to be made. My understanding is that advice will be sought from the state Attorney General about whether the operator should determine that the person be prevented from being entitled to redress by reason of the National Redress Scheme being brought into disrepute or adversely affecting public confidence or support for the scheme. I am interested in hearing whether the government feels that this meets the honourable aims of the state Attorney General in trying to have this issue addressed. I am pleased that prisoners will no longer be prevented from applying, but I would prefer that they be permitted to apply like any other applicant. I reaffirm that it was not the decision of this state to do this; it was due to positions taken by other states. I think that these provisions diminish the scheme's national consistency. Furthermore, I can understand people being concerned that the Attorney General, who is a representative of one of the institutions required to pay redress under the scheme, will be responsible for recommending whether an application be considered.

Another concern, which I think will come up in the amendment that will be before us, is the "one application only" rule. Tragically, it is not uncommon for survivors to have been assaulted in more than one institution. However, under the current redress scheme, they will not be entitled to a larger payout. The maximum of $150 000 for penetrative abuse or $50 000 for contact abuse will still stand. I am concerned that many institutions will, effectively, be rewarded by having to pay only a portion of their financial accountability. Applicants can submit only one application to the redress scheme, even if they suffered abuse in multiple institutions. This is unnecessarily restrictive and is likely to cause significant distress to survivors. It will also lessen the amount that each institution will have to pay as a result of the abuse. Frankly, it does not seem fair.

I want to comment on criminal injuries compensation. As I mentioned earlier, the National Redress Scheme avenue must be exhausted before criminal injuries compensation can be considered, which is consistent with section 21 of the Criminal Injuries Compensation Act 2003. Criminal injuries compensation can be determined if national redress is refused or if the person refuses the redress payment component of a redress offer for the abuse. They will have already put themselves through the process of making an application to the National Redress Scheme. Criminal injuries compensation cannot be used to top up a redress payment. However, the second reading speech

stated that a national redress payment is likely to be higher than a criminal injuries compensation payment. National redress payments will be up to $150 000 and will be banded. The worst cases will receive $100 000 to $150 000, mid-range cases will receive $50 000 to $100 000, and other cases will receive up to $50 000. Again, there is no minimum payment. Criminal injuries compensation payments are available for offences committed after the scheme was introduced in 1971. Depending on the date of the offence, maximum payments are between $2 000 and $75 000, with the latter aggregated to $150 000 for multiple offences, which is a provision that is not available under the National Redress Scheme.

We will discuss this more when we get to the amendment proposed by Hon Nick Goiran. On the issue of appeals and reviews of decisions, although determinations can be reviewed, such as whether to grant redress and how much redress is granted by an independent decision-maker, the lack of external merits review or judicial review of a determination has been raised as a concern. Appeals are to the operator; and independent assessors, importantly, who were not involved in the original decision, consider the appeal. A deliberate decision was made to not have appeals to the Administrative Appeals Tribunal, and I understand this was to keep the process a low-burden one.

There are some other concerns. I understand that if a survivor has no home address, they can provide a postal address. I asked this question in the briefing and I was assured that it would be an available option. The address could potentially be that of a support person or an organisation. I would appreciate confirmation that this is the case because it was raised specifically with me that there was a deep concern that the requirement of having an address could potentially exclude homeless people from being able to apply. If that has effectively been addressed and it is not a concern, it would be good to get it on the record. Another concern raised is, of course, that the scheme does not let children apply, which is contrary to the recommendations of the royal commission. However, I understand that approximately 75 per cent of applicants are expected to be over 51 years of age. According to some stakeholders, the time frame for accepting or rejecting an offer is still too short, although the federal government has at least increased it from the initial 90 days to six months. That is certainly an improvement.

In conclusion, of course the Greens welcome this scheme. Of course we do; it is something that we have long advocated for and it finally enacts critical recommendations of the royal commission. Of course we support the government's decision to sign up. We are pleased that it made a considered response. I acknowledge that the scheme is not perfect and acknowledge the work that was done to try to improve it. For example, I referred to the Attorney General's efforts to try to ensure that prisoners are not completely excluded from the scheme. That was a distinct improvement. We want to have the best possible scheme for Western Australian survivors and we will continue to advocate for improvements when we see that they are warranted. I cannot overstate how anxious people are to ensure that the mistakes that occurred with the WA redress scheme are not replicated.

The ACTING PRESIDENT: Members, could you keep it down to a dull roar, thank you. I am struggling to hear Hon Alison Xamon. Hon Alison Xamon has the call.

Hon ALISON XAMON: Thank you, Mr Acting President. I want to stress it is really important that we recognise we are dealing with an inherently vulnerable and traumatised group of people who have already been through so much. We need to ensure that the process is as accessible, affordable and simple as we can make it. We need to ensure that timely advice is given to people on the best option available to them. We need to ensure that the multiple options that should be available to them, whether that be civil litigation, criminal injuries compensation, or the National Redress Scheme, are genuinely available and that they are able to access what will have the best outcome. We know that many survivors are going to watch what happens before they decide to apply so it is important that they see from the outset it is safe, fair and just. Again, the Greens remain extremely strong supporters of the concept of redress and we hope that this will go some way to addressing people's pain and trauma. We owe it to the thousands of Western Australians who have been haunted by their lost childhoods to get this right. I want to acknowledge those institutions that have embraced the recommendations of the royal commission and have taken the responsibility to sign up and get this right as seriously as they have. I am disappointed to still be receiving correspondence from some institutions that are clearly holding out and are trying to suggest that they should not have to take any responsibility. Sorry, people; the world has moved on and you need to own up to the legacy of the history of your organisations. I really hope we get some healing for people, which means we will have to be vigilant about ensuring the process, as we move forward, is the best we can get and also ensuring that this legislation is the best we can get.

HON NICK GOIRAN (South Metropolitan) [5.25 pm]: I rise to speak on the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 and I indicate that I support the second reading of the bill. The National Redress Scheme stems from abuse that was first identified in the 1950s but it took another 50 years before a royal commission, which took place in 2012, was called and given the terms of reference to reveal the extent of such abuse. The five years that followed saw numerous victims bravely present their circumstances to the royal commission, culminating with a final report in December of last year. The report consisted of 17 volumes and contained 189 recommendations. Earlier, in September 2015, the royal commission

released the "Redress and Civil Litigation Report". For civil litigation, we have seen the states and territories adopt the royal commission's recommendation to remove the limitation period for those sexually abused in an institutional context. The National Redress Scheme has been introduced for victims who choose not to pursue civil litigation. The National Redress Scheme commenced receiving applications from 1 July this year but, for Western Australians, the current bill will see them begin to be compensated on or after 1 January 2019—of course, that is in the event that the bill passes through the Parliament prior to that date.

I emphasise at this point that I, at least as much as any other member in this place, do not want to see the passage of this legislation delayed. In the public domain and in correspondence to various Western Australian constituents, comments made by the Attorney General of this state suggest that I have taken the contrary position. Let me say once again for the public record that nothing could be further from the truth. No member in this place will be more keen to see this bill passed. There may be members who will be as keen, but no member will be keener than me. I do not want to see it delayed. However, and this comes to the unfortunate series of events that occurred some weeks ago when members of the government chose to interpret my comments incorrectly, I do not support the hasty passage of this bill without it receiving proper scrutiny and, above all, I do not want to see the passage of this bill lead to an injustice—one or more—to any victim of sexual abuse. Clause 16(3) of the bill does just that. It expunges a victim's rights to have their full losses addressed simply because they receive a monetary payment from the National Redress Scheme. I think it is worth me setting out several examples to fully underscore this point.

Given I have limited time, I will give members four examples for their consideration. The first example is a victim of abuse who suffers the abuse in more than one institution where there is more than one offender, and they make an application to the National Redress Scheme.

Of course, the National Redress Scheme allows for only one application to be made. Under the state's current criminal injuries compensation legislation, a victim is entitled to make multiple applications when there are separate offenders and incidents of abuse. The second example is if a victim wishes to submit medical reports in support of their National Redress Scheme application, they are not entitled to be paid or reimbursed for the cost of those reports. However, under our criminal injuries compensation legislation, a victim is entitled to be paid and reimbursed for those medical reports. The third example is if a victim is bashed during the sexual abuse and suffers dental damage requiring, let us say, $10 000 worth of dental work, no allowance is made under the National Redress Scheme. However, under our state's criminal injuries compensation legislation, an allowance is made for the required dental treatment. The fourth example is that if the award made to the victim under the National Redress Scheme is inadequate, there is no provision for an appeal of that decision, only an internal review; however, under our state's criminal injuries compensation legislation, a victim can appeal a criminal injuries compensation assessor's decision to a District Court judge and, furthermore, they can submit additional evidence. It follows that the victim must be given the right to have his or her criminal injuries compensation application considered and for the criminal injuries compensation assessor to have that discretion to ensure that the victim is adequately compensated.

I have an amendment on the notice paper and I want to take a moment to explain it to members. The bill before us has five parts. Four parts of the bill I take no issue with. It is the fourth of the five parts that I take issue with. The first three parts in effect, for lack of better words, sign up Western Australia to the national scheme. The fifth part allows for regulations to be made. But it is the fourth part that creates the potential for injustice for victims of sexual abuse. The fourth part is something that the Western Australian government will be doing that no other state in the nation is doing. Let us be clear about that, members, because it has been put to me that several members have been lobbied by the government and it has yet confirmed to them that this is the only state where this will be taking place. In no other jurisdiction in Australia have other Parliaments sought to expunge the right of victims of crime to make an application for criminal injuries compensation or their equivalent scheme. We will be the only jurisdiction in the nation doing this. If the bill passes unamended, let us be clear that Western Australia will have the most mean-spirited scheme in the nation. Why? It is because of part 4 of the bill. No other state has part 4 of the bill in its legislation. We are the only ones that will be doing this because the government has put that before us. I understand some of the reasons that the government might want part 4 in the bill, and I am supportive of elements of part 4, but there is a portion, in particular clause 16(3), that will create an injustice in many applications—not all applications, but in many applications. In those circumstances, Western Australian victims of child sexual abuse will be worse off than a victim in Victoria, for example. I do not believe that that is the intention of any member of this place, but we need to be mindful that that is what we would be doing if we allowed the bill to pass unamended.

The government has provided a response to my amendment to some members of this place. I do not know how many members have received the government's response, but I was not provided with it. It always staggers me—this is not the first time this has happened—why governments, when they are trying to advocate for a particular position, do not give the information to the member with the primary concern to try to have that addressed. Be that as it may, one of the honourable members has kindly provided me with a copy of the government's response to

my amendment. I will just take a few moments to take members through the five objections to my amendment that the government has provided. It states that there are five reasons members should not support the amendment and why the government does not share my concern. Firstly, the government states that it cannot see any circumstances foreshadowed by the amendment that would mean any survivors are worse off under this bill. These are not my words, these are the printed words from a document provided by the Western Australian government to members of this place. It says —

- Firstly, the Government cannot see any circumstances foreshadowed by the amendment that would mean any survivors is worse off under its bill.

None. I have already given four examples earlier, but the government cannot see —

Hon Sue Ellery: Honourable member, will you take an interjection?

Hon NICK GOIRAN: Yes. I am conscious of the fact that I have limited time, but yes.

Hon Sue Ellery: You don't have to take it if you don't want it. The reason we say that is of course because people get a choice and access to advice on how they might want to exercise that choice.

Hon NICK GOIRAN: I will get to that, because that is one of the government's later points, but the first thing it states is that the government cannot see any circumstances that would mean a survivor is worse off under this bill. There are circumstances in which a victim is going to be worse off under this bill. As I indicated earlier, a Victorian victim of child sexual abuse will be in a different situation from a Western Australian one. Why? It is because we have part 4 of the bill. No-one else has part 4, it is just us who will be doing it. There are a number of circumstances in which the government should be able to see that there is a problem. One example is when there are multiple institutions. I emphasise the point that a person can make only one application for national redress. If a person has been abused in two, three, four or five institutions, they can make one application for national redress. The maximum amount they can get for that is $150 000. In Western Australia, if a person has been abused in two, three, four or five institutions, they can make two, three, four or five applications for criminal injuries compensation, and depending on the year in which the offences took place, they will be entitled to a far larger sum than under the National Redress Scheme. The government will, in due course, respond, as it has, at a later point and say, "You have got the option whether you want to do that." I will get to that in a minute. The second thing about the circumstances in which survivors would be worse off is that the government confuses the fact that the scope of redress payments is actually less than the scope of a criminal injuries compensation payment. I am not saying the amount; I am saying the scope of payments available. In other words, the language used by the National Redress Scheme is that it will provide a monetary payment that recognises the wrong suffered—that is the language of the federal scheme—but of course in Western Australia, we do not do that. In criminal injuries compensation we provide compensation for injury and loss. They are two different things from monetary payment, which requires wrong suffered. The scope is different and it does not address when multiple institutions are involved. Also, it is the case that not all losses are covered by this scheme. One example I gave earlier was that of dental treatment. That is not covered by the National Redress Scheme, but it is covered by the criminal injuries compensation scheme. Medical report fees are not covered by the national scheme but are covered by the criminal injuries compensation scheme.

The second objection that the government gives to my amendment is that it is open—this is effectively the comment that was made by way of interjection moments ago—to a victim to reject the National Redress Scheme offer and apply for criminal injuries compensation. The government says that victims have a choice. When I heard that put to me earlier today, I was somewhat staggered and exasperated to hear it. The government's bill—this is not my amendment—will force a person to go with the National Redress Scheme. They will not have the choice of simply saying, "I don't want national redress. I'll go with a criminal injuries compensation claim first." There is a provision in this bill that states that if the assessor thinks an applicant has an entitlement to the National Redress Scheme, they will defer the application. They will not look at the application until national redress has dealt with it. For the 10 years while this scheme exists—this assumes that the scheme is not extended—a person has to apply for national redress first. A person then goes through that whole process. The government's response to my concern was, "At the end of that process, it is very simple: the victim rejects the offer and proceeds with a criminal injuries compensation claim." The position of government is that we will re-traumatise victims by having them go through an application process for no purpose other than to jump over the hurdle that the government has provided and at the same time we will waste the time of the National Redress Scheme assessors for them to come along and make an assessment, only for the victim to reject it and say, "Sorry, I'm going ahead with my criminal injuries compensation scheme." It shows a lack of respect and understanding for the trauma that the victims have already been through to suggest to them, "Play along with this little game that we've got going here. Go along and put your National Redress Scheme claim in. You know full well you're not going to be able to get your medical report fees and your dental fees and all of your losses and so forth. But that's okay because you were abused in

three institutions. At the end of all that, we want you to reject it and then go ahead with your three applications for criminal injuries compensation." That is the government's solution to the problem that I have put before it.

Hon Sue Ellery: What the member just said then is disrespectful.

Hon NICK GOIRAN: That was the solution that was put to me earlier today, honourable member, and, I might say, they are the words that have been put in here.

Hon Sue Ellery: To describe it as "the government's position is to play a game with people", that is disrespectful.

Hon NICK GOIRAN: That is what is happening with the government's legislation. I am asking the honourable member to change it so that there will not be this game.

Hon Sue Ellery: If you accept the link, which is we want the abusers to pay, not the state—the abusers—then you would put the first position being the redress scheme rather than the state.

Hon NICK GOIRAN: I am supporting that. I have already said that I support Western Australia signing up. Let us not get confused here: I am supporting signing up to the redress scheme; I am supporting the government's amendment that states "make sure they have to go to redress first." I have no problem with that. I am saying, at the end of that process, there are some elements of compensation that a person cannot get in the National Redress Scheme; they simply cannot.

Hon Sue Ellery: That is right.

Hon NICK GOIRAN: At the end of all that, a person should be able to go back to the criminal injuries compensation assessor and say, "I'd like to have that other compensation that I would have otherwise been entitled to."

Hon Sue Ellery: I get your point, but do you see that this scheme is about sexual abuse and not other abuse? There are differences between them. No-one is denying that there are not differences. In the end, what is the easiest, most supported advice provided, and, if you like, supported along the process? What is the best way for those people to get closure to what has been, for many of them, 40 to 50 years and more of that sort of trauma? You are entitled to take a different view on what the legislation will do, but I think it is disrespectful of you to suggest that the government is being disrespectful to these people, because it is not.

Hon NICK GOIRAN: I accept that it is not the government's intention to play a game with them and I accept it is not the government's intention to cause this trauma, but I am simply pointing out to the government that if it does not amend this bill, it will be playing a game with them and it will be re-traumatising for people to say to them, "The solution at the end is to just reject the National Redress Scheme offer of payment and apply and be assessed for CIC." They are the government's words in this document that was provided to members, other than me. That is disrespectful to the victims. I am asking the government to rectify that. It can do so by supporting my amendment.

The third explanation that is provided by government is also perplexing. It states that what I have brought up is not really an issue because the government says 73 per cent of applicants were abused pre-1985. The reason the government says that is if a person put in a criminal injuries compensation claim prior to 1985, sadly, they were entitled to a pittance of compensation—that is not the government's fault; that has been the scheme for years—so they receive somewhere between $2 000 and $15 000. Basically the government says, "For 73 per cent of people, we're sweating the small stuff here. Who cares about $2 000 and $15 000?" Can I say, number one: why are we being so mean-spirited as to deny these victims of sexual abuse their $2 000 or $15 000? If the argument of government is that the amount is so small, let us give it to them. That is what they are entitled to at the moment. Why would we block them from being able to do that?

The second point I make to government is that its figures apply to 73 per cent of applicants. I say: do not be so mean-spirited to those 73 per cent. The other point is: what about the other 27 per cent? The implication is that, therefore, 27 per cent of applicants were abused post-1985, in which case there are larger amounts of compensation available. Do we care about the 27 per cent or, again, are we being cute with regard to the 73 per cent and saying, "That's just a small amount of money"? I again plead with the government to not be mean-spirited about the small amounts it says applies to 73 per cent of applicants and give due consideration to the significant amounts that might be available to the other 27 per cent of applicants.

The fourth reason the government says that the amendment is not necessary or should not be supported is simply false. The government stated —

> Fourthly, the amendment proposed undermines the principles of:
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> - 'responsible institution pays', which underpins the NRS; or

That is the National Redress Scheme —

- CIC —

That is criminal injuries compensation —

> being a mechanism of last resort, to be pursued where all other avenues for obtaining compensation have been exhausted.

Members, that is utter rubbish. Whoever has documented that in government should be ashamed of themselves for writing such rubbish and trying to mislead members in this place. My amendment does absolutely nothing of the sort. If members understand the amendment, they will see that an applicant is still required to go to the National Redress Scheme first. Who pays for the National Redress Scheme payment? The institution. The very principle that the government says is so important, which I agree with—that the responsible institution should pay—is supported by my amendment. I support the government's amendment that will ensure that that happens.

The government also says that criminal injuries compensation should be the mechanism of last resort. Again, I agree with that. That is what I am trying to do. I am saying, "Go to the National Redress Scheme first. If there's anything that you haven't been compensated for at that point, as the last resort come to the criminal injuries compensation assessor and get your last-resort compensation." But that is not what the government is doing. The government amendment would have a person go to the National Redress Scheme and then the door is shut, the gate is closed, and they are not able to have any further compensation. There is no possibility of any last-resort criminal injuries compensation. What the government has said with respect to the fourth point is utterly false. I encourage the government to clarify for the record that that is indeed the case, whether in reply or when we go into Committee of the Whole House.

The final point that has been made by the government with respect to the amendment is the fifth one, which simply states in effect that other jurisdictions cannot be compared. I will read for members word for word—verbatim—what the government said about the fifth point. It states —

> …it is not possible to fairly compare the policy position taken by the WA Redress Bill with the operation of other jurisdictions' legislation because:
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> - There is significant variation in the legislative basis and policy intent of jurisdictions' CIC or victims of crime payment regimes.
> - Jurisdictions' CIC or victims of crime payment regimes provide differing maximum payments and entitlements, which will result in different outcomes for survivors.
>
> The approach taken in the Bill has been done with consideration of the specific provisions of the WA CIC Act, and with the principles of the CIC Act and NRS in mind.

That is the government's fifth response. To say that we cannot compare jurisdictions is a blatant attempt by the government to distract from the truth. We can compare Western Australians with Victorians and New South Welshmen. The simple fact is that no other jurisdiction in our nation—none—has part 4 of the bill. We have part 4 of the bill because the government has decided to bring it in. What does part 4 do? It makes sure that a victim of crime is unable to receive any compensation under the state scheme—whether we call it criminal injuries compensation or a victims of crime payment regime—if they receive an award, irrespective of the amount, from national redress. That is what we can compare. We know that to be the case and the government knows that to be the case. To come along and say that we cannot really compare jurisdictions because each jurisdiction has a different jurisdictional amount is irrelevant. I am not talking about the amount that the Victorians or New South Welshmen might get. That is for their states to sort out. The point is that a Western Australian would ordinarily be entitled to make an application for criminal injuries compensation and claim for both injury and loss. But this government, if we go ahead with the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018, will ensure that people will not be able to do that simply because they receive an amount of redress payment.

In the final few minutes—I indicate to members that I intend to conclude just in time for the dinner recess—I want to take up something that in effect flows on from the comments of Hon Alison Xamon. During Hon Alison Xamon's second reading contribution—I concur with her comments—she took members through how a national redress payment will be made, showing the different columns and explaining that it basically depends on whether a person's type of sexual abuse was penetrative abuse, contact abuse or exposure abuse. There are different amounts for different types of abuse and so forth. I concur with all her comments and concerns about the very, shall I say, sterile way in which the federal scheme deals with this. I want to say this to members: later in her contribution, Hon Alison Xamon talked about the amount available for counselling and the psychological component for redress. The point that she made, which was a very good one, is that a person might be in need of a significant amount of psychological counselling, irrespective of whether they were the victim of penetrative abuse, contact abuse or exposure abuse. However, the national scheme provides different amounts for those people. Victims of penetrative abuse can receive $5 000, victims of contact abuse can receive $2 500 and victims of exposure abuse can receive $1 250.

Members, it is not uncommon for a victim of abuse, irrespective of whether it is exposure abuse or penetrative abuse, to be in need of, let me say, $10 000 worth of psychological counselling and assistance. The National Redress Scheme does not provide $10 000 worth; it provides a maximum of $5 000. The amount for contact abuse is $2 500 and the amount for exposure abuse is $1 250. Under the amendment put by the government, once a person has their $5 000 or $1 250, that is it. They should not under any circumstances think that they will get one cent from the criminal injuries compensation scheme because clause 16(3) states that their award will be refused. However, if members support my amendment, people will be able to get the $10 000, less the amount that they have already received. If a person needs $10 000 worth of psychological counselling because of their exposure abuse and the National Redress WA scheme has given them $1 250, they will be able to get $8 750, but only if members support my amendment. If members do not support my amendment, basically a gun will be put to such victims' heads. They will be told to either accept the National Redress Scheme and that is it or take their chances with the criminal injuries compensation scheme, the one option that definitely will not be available to them. Why? Because they live in Western Australia. As Western Australians, one option that will not be available is to get $1 250 from the National Redress Scheme and the other $8 750 from criminal injuries compensation—"No, we're not accepting that because you're a Western Australian." Western Australians will be treated as second-class sexual abuse victims, whereas people in other states will be treated as first-class sexual abuse victims. That is in effect what will happen here if the bill goes through unamended, and that is something I cannot support.

I believe in my heart of hearts that members agree with the principle of what I am saying. There is no capacity for a victim to double dip, if that is members' concern, because they will only be able to come forward and make an additional claim for loss for anything that has not already been captured by the National Redress Scheme. If we leave the bill as it is, some victims of child sexual abuse—I emphasise some, not all—will be worse off. The position of the government in its final response—that they will not be worse off because they will always have the option of rejecting the National Redress Scheme and going ahead with their criminal injuries compensation—shows disrespect to the victim because it will make them go through a pointless application, and it shows disrespect to the national redress assessors by simply giving them some more work so that the final outcome is a rejection and the victim can go on with a criminal injuries compensation claim. Surely, as Legislative Councillors, we are not in the business of creating systemic re-traumatising processes for victims of crime. Surely, we are not that. I do not believe that is anyone's intention, but that is the way the legislation will work in practice if there is no amendment.

I conclude my remarks by once again underscoring that the second reading of the bill has my support. The second reading of the bill has always had my support; there was never a circumstance in which it did not have my support. But equally, although I support the second reading of the bill—I do not want to see it delayed, because I want payments flowing to victims from 18 January 2019—I do not want the bill to pass through hastily, without proper scrutiny and amendment, because it will create injustice in some cases.

In summary, although the intention of the bill is apparent, there is the potential for the bill to have an unfair impact on victims. For me, if one victim is worse off with this bill, it means that we as Legislative Councillors will have failed. My proposed amendment is simple and it does nothing more than ensure that the current rights of victims of crime to claim for loss are protected. I seek the support of members when we get into Committee of the Whole House.

HON MARTIN ALDRIDGE (Agricultural) [5.58 pm]: For those members who thought they were going to dinner early, I am sorry to disappoint them. I thank the members who have spoken before me and who at times gave quite extensive contributions to debate on the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018. I rise as the lead speaker for the National Party to put on the record our support for the legislation, notwithstanding that we will need to work through some amendments when we get to the committee stage of the bill, depending on, of course, further advice that is provided by the government when we arrive at that point.

Many members have spoken about the National Redress Scheme being born out of the Royal Commission into Institutional Responses to Child Sexual Abuse, which I think reported, if I am not mistaken, in 2016 and obviously resulted in an act of the commonwealth Parliament passing in 2017 to establish the National Redress Scheme, which came into effect on 1 July 2018 for a period of 10 years. Having been given a copy of the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, I understand that the intergovernmental agreement was executed by the Premier of Western Australia, Hon Mark McGowan, MLA, on 12 July 2018 and countersigned by Hon Michael McCormack, MP, Acting Prime Minister of Australia at the time. I want to make references to the intergovernmental agreement because it has been subject to debate and reference today. I refer to the inside cover of the intergovernmental agreement and the section under the heading "Recitals".

Sitting suspended from 6.00 to 7.30 pm

The ACTING PRESIDENT (Hon Robin Chapple): I give the call to—sorry; we will get there in a moment—Hon Martin Aldridge, sorry, and his continuing remarks.

Hon MARTIN ALDRIDGE: Thank you, Mr Acting President. There is something to be said about not being very memorable in politics!

The ACTING PRESIDENT: From the chair, I can assure you that you are memorable, and it was my failure.

Hon MARTIN ALDRIDGE: Before the recess, I had risen to my feet and indicated the National Party's support of the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill before the house tonight, notwithstanding there is obviously some consideration to be undertaken during the second reading debate and the Committee of the Whole House stage of the bill, and noting that the supplementary notice paper has been updated today with proposed amendments by Hon Nick Goiran and Hon Michael Mischin.

Before the recess, I was making some references to the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, which was obviously struck in Western Australia's case and executed by the Premier on 12 July this year. The beginning of the intergovernmental agreement sets out five paragraphs, which I want to quote from because I think they are relevant to the underpinnings of the bill before us tonight. Under a section headed "Recitals" there are five paragraphs, which state —

1. The Commonwealth and participating state and territory governments wish to enter into this Intergovernmental Agreement (Agreement) to record the Parties' agreement on certain aspects of the National Redress Scheme for institutional child sexual abuse (the Scheme). The development and implementation of the Scheme is a shared responsibility of the Commonwealth and participating state and territory governments.
2. The Parties enter into this Agreement in recognition of the importance of establishing a national redress scheme. This Agreement and establishment of the Scheme is an acknowledgement that sexual abuse suffered by children in institutional settings is wrong and should not have happened.
3. This Agreement continues the cooperation between the Parties on the establishment of a National Redress Scheme for institutional child sexual abuse, and outlines each Party's commitment towards achieving a survivor-focused, best practice, and simple Scheme.
4. The Parties agree the objective of providing redress for survivors of child sexual abuse is to recognise and alleviate the Impact of past institutional child sexual abuse and related abuse, and to respond to the recommendations contained in the *Redress and Civil Litigation Report* of the Royal Commission into Institutional Responses to Child Sexual Abuse.
5. This Agreement reflects the commitment of the Parties to support the implementation of the Scheme and in turn, provide support and justice for survivors.

They are, in my view, the five key paragraphs of the seven contained in that part of the intergovernmental agreement. Further on in schedule A, on page 18 of that document, it refers to the estimated liability of each jurisdiction. Interestingly, Western Australia sits fairly mid-range in terms of the number of survivors and therefore the percentage of liability. Obviously, this relates just to the state per se as opposed to other institutions that operate within the state. They estimate the number of survivors in Western Australia to be 2 395 and the percentage of liability 9.22 per cent. The three states that are obviously larger than Western Australia in both survivor and liability terms are Queensland, Victoria and New South Wales. The states with a lesser number of survivors and therefore liability are South Australia, Tasmania, the Northern Territory and the ACT. Interestingly, the commonwealth weighs in at only 3.68 per cent on total liability. That surprises me in some respects but not in others considering, I guess, the commonwealth responsibilities in comparison with state responsibilities and therefore its overall responsibility over time in terms of institutions and the care of others.

That is a direct quote from the intergovernmental agreement. I thank the members of the several departments I met with earlier in the week to receive a briefing on this bill. I was advised that the National Redress Scheme has received some 1 100 applications to date despite the fact that two jurisdictions—South Australia and Western Australia—are not currently operational, but South Australia has passed a bill through its Parliament, which is obviously not yet operational. As I understand it, Western Australia is the last jurisdiction to pass this legislation. Overall, it is estimated there are some 6 000 Western Australians, although as I said earlier, 2 359 are estimated to fall within the responsibility of the state of Western Australia. I am advised that the Western Australian approach is comparable with those of South Australia, Queensland and Tasmania. Interestingly, I learnt about a different approach taken by New South Wales and Victoria with their text-based referral to the commonwealth legislation, which is obviously a different approach. That was taken in the case of our jurisdiction and certainly was the first time I had had any interaction with such a mechanism. I find it interesting that a state Parliament would, essentially, divest powers to the commonwealth before understanding what that

divestment exactly was. If I am not mistaken on this count, that is basically what happened in New South Wales and Victoria, where they may have had some certainty around some things but they, essentially, referred their powers before knowing exactly, and perhaps more explicitly, what it was that they were referring.

Hon Sue Ellery: Honourable member, part of that was because they had not had a redress scheme of their own and they were keen to quickly demonstrate their commitment to the principles.

Hon MARTIN ALDRIDGE: Yes, okay.

It is the intention of the state government for the scheme to commence on 1 January 2019. I jumped on the National Redress Scheme website earlier today, which has information about each jurisdiction and the organisations that have voluntarily opted in and been approved to join the scheme. As it stands today, the only applications that can be made in Western Australia, as I understand it, relate to commonwealth institutions. This bill will allow state institutions and non-government institutions in Western Australia to voluntarily opt in. I do not have a copy of the website in front of me, but it reflected that the scheme had already received an application from Scouts Western Australia, which has not yet progressed and is pending the outcome of this bill. I was surprised at how few institutions have opted in to the scheme in jurisdictions that have passed their legislation and already have the scheme operating. I was expecting a laundry list of religious organisations and organisations involved with young people, but at best there were six, seven or eight. Commonwealth and state institutions obviously incorporate a lot of different bodies and entities, but there were very few outside of those. Perhaps it is because, only six months into the operation of the scheme, we are fairly early on in the piece and that will increase over time.

Hon Alison Xamon interjected.

Hon MARTIN ALDRIDGE: Yes.

That struck me when I looked at the website earlier today. Scouts Western Australia's participation is quite advanced because, by the looks of it, it has made an application before the bill has even passed both houses of Parliament and it can be assessed and processed by the scheme.

Other members have canvassed quite well how the scheme will work, but to summarise, the National Redress Scheme can provide three things: a monetary payment, access to counselling and psychological care, and a direct personal response from the responsible institution, if the victim so desires it.

I want to acknowledge the Standing Committee on Uniform Legislation and Statutes Review's inquiry into this legislation. By all accounts, it was under a fair bit of pressure to consider this bill and report in a timely manner. I think the minister referred this bill on 13 September when she delivered the second reading speech and stated that it ought to be referred to the standing committee. The reporting date was 30 October, which was extended to 21 November. However, I understand that the committee reported earlier—on 8 November—so it did not use all the time the Council had approved through that extension motion.

I know that members are keen to get on to the Committee of the Whole House stage of the bill and pursue some more specific matters, but I want to touch on a few things that have been raised. In her contribution this afternoon, Hon Alison Xamon raised the role of knowmore in providing independent legal advice to potential applicants. It was not something that I pursued in my briefing, but Hon Alison Xamon raised points that are pertinent to the debate. I was surprised to hear in her contribution that the earliest we might see a physical presence of this organisation in Western Australia is around 2019–20. That surprised me because, if I am not mistaken, if the abuse occurred in a commonwealth institution there would be nothing preventing that application today. It is concerning that this organisation has no physical presence in Western Australia, and none is planned until 2019–20, as Hon Alison Xamon told the house. However, some commitments have been made to try to fast-track its presence in Western Australia. I certainly cannot say I have an expert view or experience with these matters, but I would have thought that one of the first parts of seeking legal advice would be to present your circumstances and situation as an applicant to a legal adviser. For a range of victims, I think that would be preferable in a one-on-one environment. Some victims may like another medium, such as a telephone consultation or something else, to give them some distance from the person they are talking to about very personal issues, which can be distressing to them. It concerns me that for the time being this organisation has no physical presence in Western Australia. When it has a presence, I will be interested to know how that organisation, which is charged with the responsibility of providing independent legal advice to applicants, will venture outside the Perth metropolitan area and engage with regional communities and regional applicants, some of whom live in the remotest parts of Western Australia and may not have English as their first language. A range of issues and circumstances may well impact the rate of applications made by regional Western Australians. I would certainly be interested in knowing more about that during the passage of this bill, particularly given that over the next nine and a half years 6 000 people could apply. I would have thought that a physical presence in Western Australia would be warranted sooner rather than later.

The other issue I wanted to talk about has been canvassed considerably by Hon Nick Goiran. The notice paper has amendments in his name about the intersection between the Criminal Injuries Compensation Act 2003 and the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018. In the last 48 hours, since Hon Nick Goiran gave notice of these amendments, this has become fairly contentious. I think we still have a way to go to understand the approach taken by the government through clause 14 of this bill, which will extinguish an applicant's right to compensation under the Criminal Injuries Compensation Act 2003 once they accept a redress payment. I am sure that will be well canvassed in the minister's reply and the Committee of the Whole stage. I would be interested to know from the government's perspective the types of impediments that a victim will face when the abuse was not just limited to sexual abuse or was not limited to just one organisation or institution, some that could be inside the scheme and some that could be outside the scheme. I am quite aware that Parliament has already lifted the statute of limitations for civil actions, but there are obviously impediments to victims pursuing that type of compensation. I want to be sure that this is the right approach. I am told that Western Australia's approach is quite unique compared with other jurisdictions that have already passed similar laws to the one we are considering tonight. I want to understand that issue better and satisfy myself that it will not erode the rights of the people of Western Australia to rightfully and lawfully claim compensation that is owed to them.

After reading and reflecting on some of the debate in the other place during the passage of this bill, I understand that one of the arguments presented is that the state does not want to be liable for compensation paid through the Criminal Injuries Compensation Act for institutions. I understand that there is a very low rate—I think less than 10 per cent, if I am not mistaken—of recovering compensation from other parties. If that is the issue, I think we should perhaps focus on that. What is stopping the state from recovering compensation? Obviously, there will be clear examples in which, perhaps, a perpetrator cannot be identified or is deceased or an organisation no longer exists. The state would be liable in a range of scenarios because compensation could not be recovered from those individuals or organisations. If that is the problem, I want to be convinced that eroding a person's right to compensation is the right thing to do versus fixing the criminal injuries compensation scheme to make it easier for the state to recover. I think the Attorney General singled out the Catholic Church in the other place; he did not want to be picking up the bill for the historic failings of the Catholic Church. We need to work through those things.

Hon Alison Xamon raised issues with clause 12 of the bill, which relates to information sharing. Again, it triggered me to look at these matters, but, unfortunately, I did not have the advantage of time to go back to the advisers for another briefing. I turn my attention to clause 12(4), which states —

> Nothing in a law of the State prevents —
>
> (a) a participating State institution from giving information to the Operator as referred to in subsection (2); or
>
> (b) a State agency from giving information to another State agency as referred to in subsection (3),
>
> unless that law is prescribed by the regulations under this Act.

This is very much an all-encompassing subclause of this clause —

> Nothing in a law of the State prevents —

When we move into committee, I want to refer the minister, and perhaps the advisers, to two acts of this state—the Parliamentary Papers Act 1891 and the Parliamentary Privileges Act 1891. I would like to know the operation of this provision with respect to the two principal acts that give rise to parliamentary protection and privilege, and whether the passage of this bill will have any impact on parliamentary privilege. If it will, are we aware of that? Is it appropriate to erode, and to what extent, that parliamentary privilege? Some may argue that the first thing is to establish when we may have an intersection between the information sharing that is envisaged under clause 12 of the bill and parliamentary privilege. As members would be aware, a range of information is held by not only Parliament, but also the executive that is subject to parliamentary privilege. We would not have to go back too far to read some of the reports of this house to realise that not just documents of this house and its committees are subject to parliamentary privilege. I want to make sure that if indeed it will have an impact on parliamentary privilege, the house is aware of that impact and we do it with full awareness.

With those few things, I know that there will probably be some considerable consideration of this bill in Committee of the Whole and I really want to get to that sooner, rather than later. I reinforce that the National Party will support the bill and we look forward to the Committee of the Whole stage of the bill.

HON SUE ELLERY (South Metropolitan — Leader of the House) [7.54 pm] — in reply: I begin by thanking all members for their contributions to the debate and for their support of the National Redress Scheme for

Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018. I thank the Standing Committee on Uniform Legislation and Statutes Review for the work that it has done, and in particular for completing its consideration of the bill well in advance of the extended date that it sought for reporting.

I also acknowledge that everyone, from my observation, has come at this bill with a genuine recognition of the enormous hurt and importance of this matter to thousands of Western Australians who have fought for so long to have their history recognised and atoned for, and this bill goes some way to achieving that. I think it is important to acknowledge that everyone is coming at this with a genuine desire to provide those people with the closure, to the extent that it brings that to many of them, and atonement that they are seeking.

I will come back and address the issues raised by the respective members in due course, but two amendments have been proposed and are reflected on the supplementary notice paper. The first one goes to whether we can build into the legislation a requirement to table certain information. Although I am not in a position to support on behalf of the government that it be included in the legislation, I can give a commitment on behalf of the government that the information can be tabled in Parliament. However, we would be averse to including that in the legislation, and I will come to the reasons when we get to it.

In a little while and during the Committee of the Whole I will go into the detail of the amendments proposed by Hon Nick Goiran. I think that the amendments that the honourable member has drafted, despite and in spite of his unquestioned commitment to resolving the issues in the legislation, do not achieve all the things that he sought. I think we ought not lose sight of the policy, which is a deliberate and considered one; it is appropriate that the institutions, and not the taxpayers of Western Australia, should be the threshold for where the payment comes from. That is a critical and quite deliberate policy of the legislation. Of course, when a matter is resolved financially through the criminal injuries system, the taxpayers of Western Australia pay. That is quite deliberate as well, and it may well be that in certain circumstances that is required. However, it is the government's quite deliberate, considered policy that in the first instance the threshold ought be that it is the institutions that pay and any system we set up to give effect to redress needs to encourage that. I would be concerned that the amendments proposed by Hon Nick Goiran go some way to diluting that. That needs to be —

Hon Nick Goiran: That is false.

Hon SUE ELLERY: Honourable member, I appreciate that we have different points of view on this. I am coming at this genuinely recognising in particular the honourable member, because I know his history of advocating for victims of these kinds of abuse. I know that he did it for a long time before he entered Parliament, and I know that even when the honourable member entered Parliament and was a member of the previous government he was a strong advocate for people who have been through this kind of abuse. I am being genuine when I say that I recognise his contribution and his intent. I think the member is coming at this with the best of reasons and I do not diminish his contribution at all. We have different points of view. I am happy to provide the house with the detailed reasons for the government not supporting the member's amendments, but it is not because we are seeking to play games or are disrespectful of the people who have been through so much. It is for none of those reasons. We genuinely believe this is the best way to give effect to the policy that was agreed to by all jurisdictions and the best way to ensure that the institutions responsible meet the costs, not the taxpayers of Western Australia. We will disagree, honourable member. I will not accuse the honourable member of making false claims and I ask him to not accuse me of making false claims.

I will begin by responding to the issues raised by members who sought responses from the government. Hon Michael Mischin canvassed the arguments around reviewing intergovernmental agreements. The honourable member has drafted an amendment that is on the notice paper through which he seeks mechanisms for continued Western Australian parliamentary scrutiny of the intergovernmental agreement and the outcomes of reviews that are provided for in clause 36 of the IGA in the legislation to determine whether participation in the National Redress Scheme is, in fact, worthy of being continued and is in the interests of the state.

By way of background, intergovernmental agreements are agreements made at the Council of Australian Governments or between states, territories and the commonwealth government to implement national laws, schemes and policies. They are often a precursor to the passage of legislation at either commonwealth or state and territory level. They make clear that the outcomes have heads-of-government support and have greater currency and force than ministerial reports or communique texts, which may not always contain detailed policy and/or operational matters. The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 gives effect to an IGA. This is a scheme that is the shared responsibility of the commonwealth, state and territory governments. As part of the governance arrangements contained in the IGA, the parties may review the operation and effectiveness of the agreement following statutory reviews at two and eight years, as prescribed in the legislation.

As a general proposition, IGAs are non-justiciable and are not legally enforceable; part 11 of the agreement confirms this without taking anything away from the parties' commitment to the agreement. Intergovernmental agreements that are entered into at an executive government level cannot and do not purport to bind the state Parliament; it would be inappropriate to give legislative effect to any review that may occur, but such legislation might jeopardise the IGA's non-justiciable status. Administratively, the government can undertake—I can give the undertaking—to table these reviews and/or provide information to the Parliament, as it is expected that these reviews will in fact be made publicly available. However, this may occur following the statutory reviews of the legislation at two and eight years, and those reviews are not mandatory.

Parliament still retains all its normal mechanisms to seek information about the review process. I am advised that no other jurisdictions have put one of these provisions in place. The executive frequently enters into IGAs on a range of matters across a range of portfolios, including those that require a referral of powers to the commonwealth government and that have been reviewed by the Standing Committee on Uniform Legislation and Statutes Review or previous versions of that committee. The idea of giving statutory effect to a review of an IGA has not been canvassed or recommended, and I note that the Standing Committee on Uniform Legislation and Statutes Review did not recommend it in this instance either, so to do so tonight would be a significant departure from past practice.

Hon Michael Mischin also raised the issue of whether there is a perceived inequity in that persons who have experienced institutional child sexual abuse can access the National Redress Scheme and its many supports, but people who have experienced sexual abuse that was not institutional, or other forms of abuse, do not have that access. We had a version of this debate the last time we talked about the National Redress Scheme, and we need to remind ourselves of the context of this debate. This legislation is the direct result of the Royal Commission into Institutional Responses to Child Sexual Abuse. Yes, it has been narrowed down to sexual abuse within institutions; that was the nature of the royal commission and that is what this bill is a response to.

It is worth noting that the royal commission report had some things to say about support for people who have experienced other forms of abuse. In the course of its hearings, the royal commission heard about all manner of forms of abuse. I recall that during the campaign around the Western Australian state redress scheme, a man spoke to me on the steps of Parliament; there was a rally out the front.

Hon Alison Xamon interjected.

Hon SUE ELLERY: Indeed. He was an older gentleman who was a child when the abuse happened. He was also a victim of child sexual abuse in an institution. One of the most insidious forms of abuse that he experienced was when the Christian Brothers made the boys in their care make the leather and ball bearing instruments that were used to beat the boys. The boys were forced to make the actual implements that the Christian Brothers would use to beat them. If members do not think that is a serious form of abuse, it clearly is. Of all the terrible things that happened to that 60 or 70-year-old—some truly appalling things happened—being compelled to make the instruments of torture that would be used against him was I think the one that stuck in his head the most. If that had been all that had happened to him—in saying that I do not mean to diminish what happened to him—he arguably would not be covered by this legislation, but a whole range of other things happened to him and I know he would be covered. That is not to say that those other forms of abuse are not important and do not deserve recognition and atonement for; but we need to be clear about what we are dealing with here: the direct result of a royal commission into institutional child sex abuse. That is what this legislation is about. If the argument is that it is a lesser piece of legislation because of that, so be it; no-one is pretending that this is the answer to everything, but it is a direct result of what every state government and the commonwealth government agreed to do in response to the royal commission.

There are, indeed, existing support services and organisations that can be accessed by people who have experienced abuse, both state and community based. Some of them, including Tuart Place, have been referred to tonight. The government is committed to implementing the recommendations of the royal commission. Many of those recommendations will bring benefits to the broader community as well, because it has changed the way we look at institutional care. It has forced all those sorts of organisations to raise the bar on accountability measures; Hon Martin Aldridge referred to Scouts WA, for example. It has changed the way a whole range of organisations take those things into account—not just organisations that provide residential care, but all organisations that deal with children. It has raised the bar on the kinds of things that need to be taken into account and the levels and measures of accountability. To that extent it has already had and will continue to have much more of a positive ripple effect beyond just dealing with a system of putting in place atonement for those who are victims or survivors of child sexual abuse. When this government released its response to the royal commission in June this year, it set out its commitment to prevent abuse occurring in the future, and to swiftly react and address abuse should it occur in the future. We have to acknowledge that human beings are human beings. Although it is appropriate that we put in place measures to mitigate this, while there are still human beings who will commit horrible crimes on children

I do not think any of us could say that this will eliminate it forever. We have, however, taken important steps to lift the bar. The government's commitment is to respond appropriately and sensitively to past abuse.

Hon Michael Mischin also raised a number of things about the findings of the Standing Committee on Uniform Legislation and Statutes Review report; I will talk about some of those. He referred to finding 8, which states —

> The Committee finds that there is no provision for the Western Australian Parliament to have disclosed to it the results of the Commonwealth review —

I have touched on this a bit already —

> of the National Redress Scheme for Institutional Child Sexual Abuse to which the State is a party and for which the Parliament is being asked to refer powers.

I can advise the house that the national redress act contains the provision that as soon as practicable after the end of each financial year, the National Redress Scheme operator must prepare and give an annual report on the operation of the scheme during the year to the Minister for Families and Social Services for presentation to the federal Parliament. The commonwealth Department of Social Services has confirmed that the annual reports will be tabled in the Australian Parliament. Section 92 of the federal act requires the scheme to be reviewed after two and eight years. The arrangements for the conduct of those reviews are still being finalised and will be discussed at future scheme governance meetings. There is a scheme governance meeting in December and I am advised that I can give a commitment on the Attorney General's behalf that the government could commit to tabling these reports in the Western Australian Parliament. We will have to take into account to a certain extent whether there are confidentiality provisions. I personally cannot see how that could be the case, given we are talking about a report that will in any event be tabled in the federal Parliament. If it is going to be tabled there, it will not contain anything that could not be tabled in a state jurisdiction. On behalf of the Attorney General, I can give that commitment. He will raise that issue with other jurisdictions as well at the December meeting.

An issue was also raised about whether there is effectively a lack of parliamentary oversight to any amendments made to the national redress act between the tabling of the committee's report here and when the bill receives assent. We are advised that no amendments are planned to the National Redress Scheme commonwealth act between the committee reporting and when the WA National Redress Scheme bill might receive assent. No legislation is currently before the Australian Parliament that will substantially amend the national redress act. The Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 proposes one minor amendment to the national redress act under division 2, by removing the reference to the Federal Circuit Court of Australia and replacing it with the Federal Circuit and Family Court of Australia. That is a result of the changes to those jurisdictions that have been made by the federal government. That does not change the mechanics of the scheme and it does not go to any of the essential policy elements of the scheme; it is about making sure that the federal bill refers the act to the right jurisdiction.

Hon Michael Mischin made the point that the committee examined whether clause 6 constituted a Henry VIII clause. He made the point, which I think is a valid one. Essentially, Parliament needs to make a judgement. Clause 6 is not a substantive provision. Rather, it is a provision that is an expression of parliamentary intent to assist in the interpretation of the WA bill. Other states' legislation has similar provisions and used the words for "avoidance of doubt". Those words do not appear in clause 6 because as the Parliamentary Counsel's Office advises, WA drafting techniques—about which I will say nothing—and conventions do not use such words. It might also be noted that the equivalent provision to clause 6 appears in some other states' legislation as part of the provisions referring to the commonwealth Parliament's amendment powers. In the WA bill and the Queensland bill, for example, this interpretive provision is in two separate clauses and again it reflects the drafting mores, if you like, of the respective jurisdictions.

The substantive clause is clause 5. Together with the definition of express amendment, it is the operative clause. It might be noted that the definition of express amendment includes a reference to instruments; that is, the amendment power would enable the commonwealth Parliament to amend the commonwealth redress act to include a provision authorising commonwealth amendments to be made that amend the text of the commonwealth act. Again, in this context, it might be noted, firstly, that the other states' legislation includes these provisions, and, secondly, that section 144(9) of the commonwealth act includes a similar definition of express amendment. However, it should also be noted, firstly, that the commonwealth act does not include a provision authorising the commonwealth instruments to amend the text of the commonwealth act, and, secondly, I am advised that other commonwealth legislation does not contain such a provision. However, the WA bill must include these provisions in clauses 3 and 5 because otherwise under section 144 of the commonwealth act WA would not be a participating state. For the information of members, I also note two things. Firstly, the inclusion of commonwealth instruments in the definition of express amendment goes to some extent further than such state amendment referrals in other non-redress state legislation under section 51(xxxvii) of the commonwealth Constitution. However, this was in the

New South Wales, Victorian and commonwealth acts before WA was involved in the detailed negotiations and drafting. There is no provision in the commonwealth act allowing commonwealth amendments to the act's text to be made. The proposition that the commonwealth is going to amend the text is not provided for in the commonwealth's act. An argument was put that we would be putting at risk our sovereignty because the commonwealth could alter its act. On the basis of this advice, no provision in the commonwealth act will allow the commonwealth amendments to the act's text to be made. Secondly, neither clause 5 nor clause 6 in the WA bill is a Henry VIII clause. If the commonwealth Parliament or commonwealth government wanted to amend the commonwealth act itself in such a way, the state's agreement under the IGA would be required.

Hon Michael Mischin asked about the extent to which the Attorney General had negotiated to make the scheme better. The national redress act provides that a person cannot make an application to the scheme if incarcerated. However, this does not apply if the scheme operator determines that exceptional circumstances apply to the person that justify an application being made. Before determining whether there are exceptional circumstances, the scheme operator must follow a process prescribed in the scheme rules. A person is automatically considered to have exceptional circumstances and is able to make an application to the scheme if they are likely to be in prison for the life of the scheme, or are so ill that it is reasonable to expect that the person will not be able to make an application or respond to a request for information following their release from jail. In these circumstances, the views of the relevant Attorneys General are not required to be sought, as the person would be able to apply to the scheme. For all other incarcerated persons, the rules provide that the scheme operator must seek the views of the Attorney General of the state in which the relevant abuse occurred and the Attorney General of the state or territory in which the offence was against the law of that jurisdiction. When considering whether there are exceptional circumstances, the operator must give greater weight to the advice of the Attorney General in the jurisdiction in which the abuse occurred. The Attorney General's position on incarcerated persons being able to apply to the scheme will be considered on a case-by-case basis. If the person is or has previously been imprisoned for five years or more, the scheme's criminal convictions policy will also be applied to determine whether the applicant should be eligible to receive redress. In such circumstances, the criminal convictions and incarcerated survivor policies will be applied concurrently when seeking the views of the relevant Attorneys General.

In respect of the criminal convictions policy, the national redress act provides for special assessment of a person who has been convicted of an offence and has been sentenced to imprisonment for five years or longer. Initially, the commonwealth government proposed a blanket exclusion of persons with serious criminal convictions that would have prevented any access to redress. As it is recognised that sexual abuse as a child can be a factor in influencing a person's future offending—I think that point was made by several members—the WA Attorney General strongly opposed this blanket exclusion and negotiated to ensure that the scheme is more just and equitable. These negotiations resulted in persons with a serious criminal conviction being able to apply for an exemption to the scheme's policy. In order to determine whether to provide an exemption, the scheme operator must seek the views of the Attorney General in the jurisdiction in which the relevant abuse occurred and the Attorney General in the jurisdiction in which the offence was against the law of that jurisdiction. The scheme operator will consider the Attorney General's advice, as well as factors such as the nature of the offence, the length of time since the offence was committed, and the rehabilitation of the person. The scheme operator must give greater weight to the advice of the Attorney General in the jurisdiction in which the abuse occurred. The scheme operator may determine that a person is not prevented from being entitled to redress if satisfied that providing redress would not bring the scheme into disrepute or adversely affect public confidence. The Attorney General's position on redress to persons with a criminal conviction will be considered on a case-by-case basis.

In respect of responsibility for redress for former child migrants, the commonwealth government's initial position was that it was not responsible for providing redress to survivors who were brought to Australia under historical child migrant programs. The Attorney negotiated with the commonwealth to ensure that the commonwealth will in fact share responsibility for redress to that category of survivors in Western Australia. For practical purposes, this means that when the responsibility for redress is shared between a non-government institution and government and that non-government institution still exists, the non-government institution will contribute 50 per cent of the payment and the state and commonwealth governments will contribute 25 per cent each. When the responsible non-government institution is defunct and there is agreement to act as the funder of last resort, both the state and commonwealth governments will share equally the funder of last resort responsibility—that is, 50 per cent each. This will ensure that the commonwealth takes responsibility for its role in bringing children to Australia and acknowledges the duty of care it had for child migrants. The commonwealth government's contribution to redress for Western Australian child migrants over the scheme's life is estimated to make a significant contribution to what Western Australians taxpayers might have to pay were that not in place, to the value of some $9.3 million over the life of the scheme.

I turn now to the contribution of Hon Alison Xamon about knowmore legal service. I am advised that knowmore is contemplating bringing forward its planned opening to earlier next year. There will be a redress governance board

meeting in early December, and the Attorney General will be at that meeting and will use that as an opportunity to advocate for Western Australian survivors, including the earlier opening of the knowmore office. The Attorney General has not yet written to knowmore requesting that it open its office sooner, but is considering doing that in the immediate future. Hon Martin Aldridge asked whether access was available now via phone, and, yes, it is.

In respect of information sharing, the commonwealth legislation allows for sharing of information for the purposes of the scheme. It also allows for sharing of protected information in certain other circumstances; for example, if it is necessary to prevent or lessen a serious threat to an individual's life, health and safety, see section 93, and for the enforcement of criminal law for the safety and wellbeing of children, see section 96. The applicant can authorise their abuse to be disclosed to relevant policing authorities. In certain circumstances, the scheme will make a blind or de-identified report to police; for example, if it is believed that the alleged abuser is still working with children. Although the act allows for rules to be made regarding information sharing, currently the rules contain no such provisions. However, the ability to include these provisions in the rules is necessary to ensure flexibility to adapt to circumstances that are not yet contemplated. The rules will be subject to the governance mechanisms; therefore, states will have to agree to or vote in amendments. The commonwealth act provides penalties for misuse of protected information, which are set out at sections 99, 100 and 101. The penalty is imprisonment for up to two years.

In respect of funding for the Offices of the Public Advocate and Public Trustee, both offices have been provided with additional resources to identify clients who might be eligible for the National Redress Scheme. These resources will enable these offices to help their clients to apply for redress or to work with the redress support services to apply for redress. The Public Trustee could be nominated by the applicant to assist with all redress matters and correspondence.

The honourable member raised a question about the policy reasons for not including non-citizens in the scheme's eligibility. The National Redress Scheme for Institutional Child Sexual Abuse Act 2018 provides that in order to be eligible, a person must be an Australian citizen or permanent resident at the time of making an application. That policy position was determined by the commonwealth government. I understand that eligibility requirement was considered necessary to mitigate the risk of fraudulent claims and maintain the integrity of the scheme, particularly given the comparative size of payments under the scheme and the lower evidentiary burden required of survivors making applications. Opening eligibility to non-citizens and non-permanent residents would increase the difficulty of verifying the identity of applicants, and would likely result in a number of fraudulent claims. Accepting applications from non-citizens and non-permanent residents would require primary documentation and verification from foreign governments and Australian embassies, and would increase the overall processing times of legitimate applications by diverting the scheme's resources.

Hon Nick Goiran used his contribution to extensively canvass the reasons for his amendment on the notice paper. His amendment seeks to create a limited entitlement for payment for loss under the Criminal Injuries Compensation Act 2003. I said at the beginning of my contribution that it is important that we do not lose sight of the important policy that it is the abuser institutions, not the taxpayers of Western Australia, that need to be the first port of call to foot the bill for this kind of abuse. The amendment proposed by Hon Nick Goiran defines "injury" and "loss" as under the Criminal Injuries Compensation Act. It identifies that the victim has suffered an injury as a consequence of the commission of an offence. In this case the victim's injury is or involves abuse, as defined in clause 13 of the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 and section 6 of the national redress act, and that the victim has accepted a National Redress Scheme payment component. It removes the entitlement to an award of compensation under the Criminal Injuries Compensation Act in relation to the injury suffered as a consequence of the offence, and provides that the criminal injuries compensation assessor may make a compensation application only in relation to any loss suffered by the victim. Under the existing Criminal Injuries Compensation Act, a criminal injuries compensation assessor is able to make awards for injury and loss. It appears that Hon Nick Goiran's amendment splits injury and loss, and seeks to create a distinction that would enable the assessor to make awards for loss and not injury with respect to criminal injuries compensation applications based on child sexual abuse when the applicant has already received a National Redress Scheme payment. It purports to insert a degree of discretion to enable the assessor to make awards for loss. The rationale, we are told, is that not to do this would be unfair to victims who would lose their statutory right to lodge and have determined a criminal injuries compensation claim simply because they have received however much from the National Redress Scheme, and that there is an unjustified inconsistency with other jurisdictions as Western Australia would be the only jurisdiction that would bar a victim from having a criminal injuries compensation application determined on its merits simply because they receive any sum of money from the National Redress Scheme. The honourable member made the point that the WA bill is the only bill that has part 4, and that that distinguishes it from other jurisdictions.

Clause 14 of this bill provides that a person is not entitled to receive criminal injuries compensation in relation to an offence if the offence is or involves abuse and the person has accepted a National Redress Scheme payment in

relation to that. Clause 15 provides that the criminal injuries compensation assessor must defer consideration of an application pending the outcome of the National Redress Scheme application. Clause 16 deals with the effect of making a National Redress Scheme application on a criminal injuries compensation application. When a person applies to the National Redress Scheme and that application is yet to be determined and then makes a criminal injuries compensation application, the assessor is to defer the application pending the outcome. Alternatively, when a person applies for criminal injuries compensation and then the National Redress Scheme, the criminal injuries compensation application must be deferred. In both circumstances the criminal injuries compensation application will be taken to be refused once the person accepts a payment under the National Redress Scheme. If a person is found by the National Redress Scheme not to be eligible or entitled to redress or if they decline, only then can the criminal injuries compensation application proceed. These provisions will apply for the life of the National Redress Scheme.

It is not possible for the bill to simply provide that a National Redress Scheme payment is compensation for the purposes of the Criminal Injuries Compensation Act, as to do so would have unintended consequences on the ordinary operation of the Criminal Injuries Compensation Act by placing in doubt the broader construction of the term "compensation" in the Criminal Injuries Compensation Act, which has been adopted by the courts. Secondly, it could raise constitutional invalidity issues under section 109 of the commonwealth Constitution because of the potential for inconsistency between section 49(1) of the national redress act and any provision inserted into the bill that attempted to provide that National Redress Scheme payments are to be considered as compensation. Consequently, the position and provision reflected in the bill reflects the outcome of the discussions about how we might get what has been described as the interrelationship or meshing between the criminal injuries compensation scheme and the National Redress Scheme. The clauses in the bill now before us reflect those discussions, and seek to resolve any inconsistencies between the bill, the redress act and the legislative and policy basis of the National Redress Scheme and the criminal injuries compensation scheme. Criminal injuries compensation is intended to be pursued only if all other avenues for obtaining compensation have been exhausted; it is a mechanism of last resort.

I will quote from Baker v His Honour Judge Stone of the District Court of Western Australia, which reads —

> … the limited public resources engaged by the Act are directed to victims of crime who would not otherwise be compensated for their injury or loss … [it is] intended that the victim should exhaust other means of compensation available to him or her before there is any recourse to payment from the public purse.

The National Redress Scheme has been established as a low evidentiary scheme—for example, medical evidence is not required—that provides therapeutic elements for survivors, funds for counselling and an apology. It is quite deliberately a low evidentiary scheme for a number of reasons: firstly, to minimise the number of times survivors have to tell their story; secondly, to avoid an adversarial court-type experience for people who have already been through so much; and, thirdly, in recognition of the movement of time—that is, there may not be documentation available to provide the kind of evidentiary material that might otherwise be involved in a matter that is litigated.

The National Redress Scheme, unlike the criminal injuries compensation regime or the previous state-based Redress WA scheme, operates on a responsible-entity basis, meaning that the institution or institutions responsible for the person coming into contact with their abuser will provide redress. The criminal injuries compensation regime does not operate on the same basis; it is generally the state that makes the payment using the taxpayers of Western Australia's money regardless of where the abuse occurred. Although criminal injuries compensation assessors can seek to recover a criminal injuries compensation payment made by the state on behalf of the offender, this is often difficult or impossible as the offender does not have the means to pay. In any event, conducting that activity—trying to track down and recover the payment—is itself an exercise that has a cost, so there is a further cost to the state and taxpayers. The approach in part 4 of the bill before us also aligns with the current approach taken by criminal injuries compensation assessors and the operation of section 21 of the Criminal Injuries Compensation Act. Applicants are currently requested by criminal injuries compensation assessors to pursue other avenues—workers' compensation, insurance or whatever—ahead of their criminal injuries compensation application being considered. It is already the case that the criminal injuries compensation scheme in Western Australia operates as the place of last resort, so that the taxpayers pick up the bill as the last resort. It is also broadly consistent with the policy approach of the National Redress Scheme, under which prior payments for the same abuse by the responsible institution will be deducted from the National Redress Scheme.

Under the bill as it appears before us today, without the amendment proposed by Hon Nick Goiran, a survivor has a number of options available to them and, as part of the National Redress Scheme, may access free legal advice to assist in making the decision about the avenue to pursue. Those options include pursuing civil litigation through the courts, as the previous statute of limitations that applied has been removed. Some people may still choose that path, but that is an adversarial path, and many people would be looking for an alternative to that. Secondly, they can apply to the National Redress Scheme with the ability to accept or reject the payment offered. If they reject

the National Redress Scheme offer of payment, they can apply to the criminal injuries compensation scheme and be assessed for that. If they accept the National Redress Scheme payment, once the scheme is closed they can apply to the criminal injuries compensation system for assessment. The National Redress Scheme is likely to produce a better financial outcome than the criminal injuries compensation scheme.

Hon Nick Goiran: Sorry, did you say "likely"?

Hon SUE ELLERY: Yes. That is particularly so for persons with historical abuse claims, which means that they may be eligible for relatively small amounts. For those members who do not appreciate it, the amount a person is eligible to claim is linked to the payment that was available at the time. Something that these days may be worth $20 000 may be worth $2 000 depending on when it happened—it is directly linked to when it happened. We know that for many, many people we are talking about historical abuse. It is not necessarily the case that the amount available to someone who suffered that abuse today would be anywhere near what someone who had experienced earlier abuse would be eligible for—it will be a much lower amount the further back one goes. It is the case that the majority of applicants to the National Redress Scheme are in the older age ranges. We know that approximately 73 per cent of applicants to the scheme to date are over the age of 51. For a person who is 51 to be eligible for redress under the scheme, their abuse must have occurred prior to 1985. A significant majority of redress applicants would therefore in fact be subject to relatively low criminal injuries compensation payments and would be unlikely to receive any top-up payments if the proposed amendments were to be included. That is because the redress payment is likely to have exceeded the statutory maximum criminal injuries compensation payment available. People who have experienced more contemporary abuse are more likely to have the evidence and records required to pursue civil litigation, which may produce better financial outcomes than either the National Redress Scheme or the criminal injuries compensation scheme. Many Redress WA recipients—these are the Western Australians who applied under the previous Western Australian redress scheme—who subsequently applied for criminal injuries compensation did not receive an additional criminal injuries compensation payment, as their redress payment put their previously received compensation at or above the criminal injuries compensation maximum payment available.

Hon Nick Goiran also made the point that there is an unjustified inconsistency with other jurisdictions. I note how long I am taking to provide this second reading reply and I know we will have to repeat the arguments somewhat in committee—I appreciate that—but members did raise these issues in their contributions to the second reading debate and I do want to canvass them. It is quite technically complicated, so I hope members forgive me if I am taking the time and perhaps stretching my vocal capacity to keep talking.

Hon Michael Mischin: I am listening. I think it is important to be put on the record.

Hon SUE ELLERY: I thank the member. There was a view that it created an unjustified inconsistency with other jurisdictions. Hon Nick Goiran made the point that, from his point of view, ours is the only jurisdiction that would bar a victim from having a criminal injuries compensation application determined on its merits simply because they receive any sum of money from the National Redress Scheme. I know the honourable member said he did not want to hear this, but it is not possible to compare apples with apples.

Hon Michael Mischin: Why not?

Hon SUE ELLERY: I am about to tell members.

Hon Michael Mischin: They are both apples, aren't they?

Hon SUE ELLERY: Apples and oranges—Hon Michael Mischin is quite right; he picked me up. I thank Hon Michael Mischin; where would I be without him?

It is not possible to fairly compare the policy position taken by the WA bill and precisely match its operation against other jurisdictions' legislation. There is significant variation in the legislative basis and policy intent of other jurisdictions' equivalent criminal injuries compensation schemes or victims of crime payment regimes. Jurisdictions can and have taken different policy positions on how their criminal injuries compensation or equivalent scheme intersects with redress. Jurisdictions' criminal injuries compensation schemes or victims of crime payment regimes provide differing maximum payments and entitlements, which results in different outcomes for survivors. The approach taken in the bill followed consideration of the very specific provisions of the WA Criminal Injuries Compensation Act and the principles applied here under the Criminal Injuries Compensation Act and the principles set out in the National Redress Scheme.

If it is of interest to members, I will outline the approaches that have been taken by other jurisdictions. New South Wales does not consider that its equivalent Criminal Injuries Compensation Act would be affected by section 49 of the national redress act, because the relevant New South Wales provisions are worded more broadly than "compensation". That allows the New South Wales victim support scheme to consider and deduct as necessary any amount paid or entitled to be paid to a victim under any law. The New South Wales victim support scheme provides for counselling, financial support and a recognition of payment. Caps are set for how much money can

be spent on each. I am advised that if a person receives a National Redress Scheme payment and then applies to the New South Wales victim support scheme, the national redress payment would be deducted from any recognition payment made by the New South Wales scheme.

Victoria has considered the effect of section 49(1) of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 and is of the view that its victims' assistance scheme would not be affected. That is because the Victorian scheme must take into account any compensation, assistance or payments of any other kind that the applicant has received when calculating awarded victims' assistance. The maximum that may be awarded under the Victorian scheme is $60 000, plus up to $10 000 if special financial assistance is required. The average award under the Victorian scheme is $7 700. Members can see that if they are making a comparison about what someone might get under the National Redress Scheme versus the Victorian scheme, it is interesting what the average award is.

Hon Nick Goiran: Did you say "average"?

Hon SUE ELLERY: Yes.

Hon Nick Goiran: So some people will get more than that.

Hon SUE ELLERY: Of course, that is what average means. Some people will get less.

Hon Nick Goiran interjected.

Hon SUE ELLERY: The Queensland policy position is not to deduct redress payments from victims' assistance payments. That was a policy decision of that government. The maximum financial assistance under the Queensland scheme is $75 000. Its financial assistance can be provided for a range of things, including medical and counselling costs, loss of earnings et cetera.

South Australia's victims of crime legislation appears to be broad and, therefore, section 49(1) of the national redress act does not affect that jurisdiction's ability to consider National Redress Scheme payments when making a victims of crime payment. However, South Australian officials advise they have not looked in detail at the intersection between the National Redress Scheme and victims of crime assistance. The maximum payment there, depending on when the offence occurred, is $150 000.

The other point to make is that the National Redress Scheme is likely to produce better financial and therapeutic outcomes than the criminal injuries compensation scheme, particularly for people with historical abuse claims. There are other reasons that would make it more attractive to people. It comes with the apology and with ongoing counselling, none of which are provided under the criminal injuries compensation scheme. The point I made earlier is that, essentially, we see the amendment as undermining or diluting the principle that it is the responsible institution that pays. That is the principle that underpins the National Redress Scheme or the criminal injuries compensation scheme as being a mechanism of last resort to be pursued when all other avenues have been exhausted.

The honourable member provided a number of scenarios in which he suggested the potential applicants could be disadvantaged if the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill proceeds in its present form without his amendment. He made the point that under the National Redress Scheme, a person cannot be compensated for medical reports. That is because the National Redress Scheme does not require a person to provide such a report. That is part of the low evidentiary threshold process, which does not require a person to submit to assessment and incur expenses for reports. That does not preclude someone from providing that but they are not required to. They are not required to because there is no built-in coverage of those costs.

The second example he gave was that if a person suffers a physical injury during an event of sexual abuse, the National Redress Scheme recognises it as part of a consequence of the incident. The National Redress Scheme payment takes into account related physical injury and provides a portion of the payment for this. The proposed amendment suggests that the treatment expenses would be, effectively, hived off and assessed separately by the office of the criminal injuries compensation scheme. That means the taxpayer would bear the cost in almost every case, as there is almost never a convicted offender to pursue for recovery. Even when there are convictions, the offenders are often elderly or have no money. Loss under the Criminal Injuries Compensation Act includes loss of income caused by the injury, so the state's potential liability could be high and this contradicts the responsible entity–pays principle of redress.

The third point the honourable member made was that the National Redress Scheme offer could not be appealed if considered inadequate. The National Redress Scheme provides a procedure for review that is final. There is only one appeal of a criminal injuries compensation award, which is final. It is an appeal to the District Court, taking the survivor into a full court context with all the reliving of the trauma et cetera.

Hon Nick Goiran: That is not true. They do not give evidence at those appeals. It is done on the papers and in addition to that, they get to provide additional evidence, so the comparison is false.

Hon SUE ELLERY: I do not know that Hon Nick Goiran is in a position to say the process of going through that is any less traumatic than otherwise.

The fourth point was around multiple offenders. The purpose of the National Redress Scheme is to make one single application to deal with the abuse in childhood. It is a comprehensive application to deal with all the abuse that occurred. Any fragmentation of that would require the survivor to provide material such as reports and detailed statements of the events and the impact to be able to distinguish the separate events. In addition, the maximum payment available under the National Redress Scheme is significantly higher than the criminal injuries compensation maxima for historical abuse, and the applicant is therefore not likely to be disadvantaged. In a case in which the applicant believed they would be disadvantaged by the National Redress Scheme payment offer, of course, the bill will allow them to decline the offer and to pursue criminal injuries compensation.

The honourable member also made the point that the he did not want to subject survivors to a re-traumatising process and that the bill as drafted would do this by requiring the person to first pursue the National Redress Scheme and then criminal injuries compensation. However, the honourable member's amendment would, similarly, require an applicant to make two applications, first to the National Redress Scheme and then a second application to the criminal injuries compensation scheme, which will require medical reports of diagnoses to determine that the claimed losses were suffered as a consequence of the offending. In that respect, I do not think his amendment would achieve the purpose that he wanted it to.

With respect to the comments made by Hon Martin Aldridge, the first one was about the scope of abuse that is captured. It is true that the scheme recognises sexual abuse and related non-sexual abuse. The person must have experienced sexual abuse to be able to apply to the scheme. The cases we are dealing with are a very deliberate response to the Royal Commission into Institutional Responses to Child Sexual Abuse. Irrespective of the merit of it, we are not responding to something beyond the royal commission. I agree with the honourable member, the scope is narrow, quite deliberately, as was the scope of the royal commission. Hon Martin Aldridge asked about the recovery of criminal injuries compensation payments from institutions. The only recovery process under the criminal injuries compensation scheme is when there is a convicted offender. The criminal injuries compensation process does not allow for recovery from an institution; it is at the individual level. The National Redress Scheme extends responsibility to institutions. Under the criminal injuries compensation scheme, it is the personal liability of the offender and, as I have already outlined, in these cases many offenders will be very old and many will not have any money. The National Redress Scheme quite deliberately is a vessel to ensure that institutions are held to account.

Hon Martin Aldridge also picked up on some issues raised by Hon Alison Xamon about information sharing provisions and parliamentary privilege. The answer to the question of whether clause 12 will impinge on parliamentary privilege is no. It will not. Any regulations would prevent specific information that is considered sensitive and not appropriate for sharing from being shared. The Western Australian government is considering what provisions would need to be in the regulations. The New South Wales regulations are a guide to the kind of regulations that may be prescribed. I table the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Regulation 2018 from the New South Wales jurisdiction.

[See paper 2205.]

Hon SUE ELLERY: The member asked whether the knowmore organisation will have a presence in Western Australia. I am advised that it is talking about bringing its presence forward. The Attorney General will raise the issue at the governance meeting that he will attend in December. I think the honourable member also asked about interpreting services. The redress support services provide interpreting services and will work with survivors and knowmore. The commonwealth government is also looking to translate materials into a number of languages, including Indigenous languages. I think that is everything, but if it is not, we can cover it during the Committee of the Whole House stage.

With those comments, I thank members for their support. I will end where I began. Irrespective of the position members might take on the amendments, everybody is coming at this with a genuine desire to achieve a decent outcome for people who have been treated so badly for so long.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon MICHAEL MISCHIN: We are dealing with clause 1, but because of the nature of this bill, which is a text adoption of the commonwealth National Redress Scheme for Institutional Child Sexual Abuse Act 2018, the inquiry can be relatively wideranging. I have a few questions about the operation of the scheme formulated by the commonwealth legislation. Before I get on to those, what level of consultation took place on the crafting of this bill and the approach taken in it, both from a constitutional point of view involving the referral of powers, and also to clauses that are peculiar to Western Australia, such as the interaction with the criminal injuries compensation regime?

Hon SUE ELLERY: I am advised that we provided an answer to a parliamentary question that set out the full list. I think it was in the last week we sat. In any event, consultation occurred with the office of the criminal injuries compensation assessor, the State Solicitor's Office, the Department of Justice and the office of the Commissioner for Victims of Crime.

I might ask, if I may—I have stood for too long—would it be all right if I sit at the table to answer questions?

The DEPUTY CHAIR (Hon Matthew Swinbourn): That is fine.

Hon NICK GOIRAN: The minister just gave a list of a few organisations she says the government consulted with. Is that the full list that she has been provided with?

Hon SUE ELLERY: That is a list I have been provided with tonight, but I provided an answer to a parliamentary question. There may be a longer list, but that is what I have been provided with now.

Hon NICK GOIRAN: I assume that Hon Michael Mischin would like a full answer when he asks a question and not be provided with a partial list. For the benefit of the record, I indicate that on 6 November this year, the minister told the chamber that consultation on the legislation occurred with 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 the Minister for Child Protection; and the commonwealth Department of Social Services.

Hon MICHAEL MISCHIN: Is that correct, what Hon Nick Goiran has —

Hon Sue Ellery: I do not have the question and the answer in front of me. I recall providing the answer and that the list was longer than the names I read out tonight. I am sorry, but I do not have the answer to the question given the other day with me and my advisers appear not to have it with them. I have no reason to believe that the answer just read out by Hon Nick Goiran is incorrect.

Hon Nick Goiran: I will table it.

Hon MICHAEL MISCHIN: That might be handy.

Hon NICK GOIRAN: I am happy to table the answer since the minister does not have the information. I seek leave to table the answer to the question without notice provided on Thursday, 1 November 2018.

Leave granted. [See paper 2206.]

Hon MICHAEL MISCHIN: I understand from that list that Hon Nick Goiran has read out that among those agencies consulted was the Department of Treasury. What was the purpose of consulting it?

Hon SUE ELLERY: I am advised that it had been consulted earlier in discussions about the general redress scheme and what it might cost the state. It was consulted again on the preparation of the bill as a continuation of that original consultation about what it might end up costing the state.

Hon MICHAEL MISCHIN: What is Treasury's prognosis of what it will cost the state?

Hon SUE ELLERY: I am advised that the Attorney General has made public commentary already to the effect that the cost of redress and civil litigation could be as high as $640 million. I am advised that the estimated impact of the state's involvement in the National Redress Scheme will be reflected in this year's midyear review.

Hon MICHAEL MISCHIN: Did the minister say $640 million?

Hon Sue Ellery: I said up to $640 million.

Hon MICHAEL MISCHIN: Is that over the 10-year life of the scheme?

Hon SUE ELLERY: It is as well as the cost of civil litigation. There are two components. I do not have a number for the member for the redress scheme alone. I am advised that because we do not yet know which path people are likely to choose, it is difficult to separate the two, but to the extent that it is both desirable on the part of the government and appropriate, there will be a reference to it in the midyear review.

Hon MICHAEL MISCHIN: I thank the minister for that. When the minister says that it will be the cost in toto of the two components, which includes civil litigation, what does the minister mean by civil litigation? Is that the state's liability in the event that it is sued by someone for the damages that have been caused to them quite apart from redress?

Hon SUE ELLERY: Correct, as well as the costing of undertaking that activity by the state. It will include the resourcing cost as well as the liability.

Hon MICHAEL MISCHIN: Earlier this year, we dealt with the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. Is any of the potential exposure of the state under that legislation included in the $640 million?

Hon SUE ELLERY: I am advised yes.

Hon MICHAEL MISCHIN: I entirely accept that until claims start to flow through, we will not know, but the government has calculated that give or take—over the course of the next 10 years anyway—the combination of removing limitation periods for historic child sexual abuse, the cost of the National Redress Scheme and any litigation against the state for damages in any event will be in the order of $640 million.

Hon SUE ELLERY: Correct.

Hon NICK GOIRAN: If the limitation period has been lifted, does the state's liability for civil litigation not continue indefinitely?

Hon SUE ELLERY: The answer to the member's question is yes. The figure of up to $640 million is projected for the 10 years of the scheme and civil litigation over that 10-year period. The member's original proposal about the ongoing liability of the state is correct.

Hon NICK GOIRAN: The up to $640 million estimate is restricted to a 10-year period and it combines liability for the redress scheme and the civil litigation that might occur during that 10-year period. How many applicants does Treasury say it anticipates will make up the $640 million of claims?

Hon SUE ELLERY: Approximately 5 700 Western Australians are expected to access the scheme. However, of course, they could also choose civil litigation instead, but we do not know how many of them will do so. Redress for approximately 2 400 people is expected to be the responsibility of the WA government. The remainder, approximately 3 300 people, are likely to be the responsibility of the Western Australia–based non-government institutions. Of the 3 300, the WA government has anticipated to share responsibility for providing redress with the non-government institutions in approximately 1 000 cases. I need to reiterate to the chamber that these are estimations. I am sure that members would appreciate that it is not possible to be precise in advance. However, the estimated participant numbers are based on the Finity Consulting report that was commissioned by the commonwealth government as an update to the report that Finity conducted for the royal commission's "Redress and Civil Litigation Report", as well as an analysis of the WA redress data.

Hon NICK GOIRAN: Is the $640 million estimate for the state civil litigation and redress scheme over 10 years for 3 300 anticipated applicants?

Hon SUE ELLERY: I am advised that yes, it is for the National Redress Scheme, but it is not possible to predict how many, if any, would choose civil litigation instead. It is based on the best possible advice available, but to a certain extent it is not possible to project more precisely.

Hon NICK GOIRAN: We are saying that the 3 330 applicants are for redress. Is the minister saying that of those 3 330, some might choose civil litigation and it is impossible to estimate how many, or is she saying that there are applicants in addition to the 3 330 who would pursue civil litigation?

Hon SUE ELLERY: It is the former.

Hon NICK GOIRAN: All right. The $640 million estimate has been based upon 3 330 individuals, which would, on average, mean $192 000 per applicant.

Hon SUE ELLERY: Honourable member, I am sorry; we might be referring to different numbers. Redress, for approximately 2 400 people, is expected to be the responsibility of the Western Australian government. We then anticipate sharing some of that with non-government institutions in approximately 1 000 cases.

Hon NICK GOIRAN: So there are 3 330 redress people altogether and the government is saying that there will be 2 400 for the state government and another approximately 1 000 that are shared responsibility?

Hon SUE ELLERY: Yes, so we get to a total of 5 700 Western Australians. I will just go through it again, because I appreciate that the honourable member does not have it in front of him. Approximately 5 700 Western Australians are expected to be able to access the redress scheme. For approximately 2 400, redress is expected to be the responsibility of the WA government. The remaining approximately 3 300 are likely to be the responsibility of

Western Australian–based non-government institutions. Of those 3 300, the Western Australian government anticipates sharing responsibility with the non-government institutions for providing redress in approximately 1 000 cases.

Hon NICK GOIRAN: That makes much more sense. The minister mentioned an affinity report. Is that capable of being tabled?

Hon SUE ELLERY: We do not have it with us tonight, but yes, I can give an undertaking to table it when we next sit.

Hon RICK MAZZA: Minister, I just want to know: how many WA government institutions are actually going to opt into this scheme?

Hon SUE ELLERY: I am advised all of them.

Hon RICK MAZZA: Which is how many?

Hon SUE ELLERY: I do not have a number, but it is every government agency that had a responsibility in this area. Every government agency has opted in.

Hon RICK MAZZA: I get that, minister, but surely we have a number for how many government institutions are opting into this redress scheme. Surely there is a number somewhere.

Hon SUE ELLERY: I do not have the list of every single public sector agency here, but we can get the list for the member.

Hon RICK MAZZA: Thank you.

Hon MICHAEL MISCHIN: Just on that, I presume there are some government agencies that have nothing to do with child sexual abuse, so it is only those that have had care of children on behalf of the state. I would have thought that independent statutory authorities would make up their own minds about these sorts of things; they cannot be compelled by a government to opt into the scheme. What are the consequences of these agencies opting into the scheme? Is there a financial investment involved in that regard, or is it simply saying that they are part of it because the state is carrying the cost of any exposure of those agencies?

Hon SUE ELLERY: I am advised that the state is opting in. On behalf of every single agency against which an action might be taken, the state will assume responsibility. If there is no action against a particular agency, there is no action that it needs to take, but the state will assume responsibility for any action taken against any agency.

Hon MICHAEL MISCHIN: Insofar as the state's financial exposure is concerned, is there any financial contribution on the part of the state towards the cost of the operation or administration of the scheme by the commonwealth government?

Hon SUE ELLERY: The scheme operates on a responsible entity–pays basis, in which if the WA government is found to be the responsible institution for the advice—I think that is a slightly different question from the one the member asked—it will pay the value of the monetary redress payment, less any prior payments; counselling and psychological care contributions of between $1 250 and $5 000, based on the assessed severity of the abuse; a $1 000 contribution towards legal advice for applicants; and the administration fee, which is calculated at 7.5 per cent of the monetary payment before any prior payments are deducted. Additional funding is being made available to the Department of Justice to enable the establishment and ongoing operation of the redress response coordination unit. The Department of Communities has also been approved for additional funding, as it is anticipated that it will be responding to the most requests for information under this scheme.

Hon MICHAEL MISCHIN: The administration fee has been set at 7.5 per cent. That would mean that for a redress payment to an applicant of $100 000—just the bare amount, without considering any of the other potential expenses—we would be looking at paying the commonwealth government $7 500 just to shuffle the paperwork. Is that the idea?

Hon SUE ELLERY: I am advised that before any states make a contribution, the commonwealth government is putting up $160 million towards the administration. I am also advised that the figure of 7.5 per cent was agreed to by all the jurisdictions as being the fairest way to manage it. Although I appreciate the expression "to shuffle the paperwork", it is of course more complex than that.

Hon MICHAEL MISCHIN: I hope so, but I am still curious how the figure of 7.5 per cent was arrived at and also the basis for modelling that shows we have 5 700 potential applicants to the scheme. I understand the minister does not have the report that was prepared, but I would be interested to know the sort of factors that were taken into account in arriving at that sort of an estimate and that sort of a figure. Is it based on some extrapolation of the evidence that was received by the royal commission or some rule of thumb about the percentage of abuse that has

taken place in an average institution and multiplied by the number of institutions in Western Australia over time? How did we arrive at that figure?

Hon SUE ELLERY: I did supply an answer about five or 10 minutes ago that referred to the Finity Consulting report that we have undertaken to table. It referred to the data that was analysed out of the Redress WA scheme and it has also looked at the Queensland scheme. The member would be aware, of course, that there were other state-based jurisdictions including Tasmania and Queensland, and the royal commission data itself. Finity did one report as part of the royal commission's work into redress and civil litigation and there was a subsequent Finity report as well. We are in a position to table the first Finity report of two. That combined with the others is how the figure of 5 700 was arrived at—it might be more, it might be less.

Hon RICK MAZZA: Just so I am clear on this, I understand that the commonwealth is providing $160 million for fixed administration costs and another $130 million for support services over 10 years. This 7.5 per cent, is it 7.5 per cent that the state will pay the commonwealth when it pays compensation, or is it 7.5 per cent that the commonwealth will pay the state for its administration?

Hon SUE ELLERY: It is the state paying the commonwealth. Support services are very different from the administration of the claim. Support services go to the counselling services and the legal advice, for example. That is different from the administration of the claims. As I said earlier, I am advised that this was agreed by all the jurisdictions. I expect there was a fair bit of argy-bargy about what was the right amount for the states to be contributing, but that was agreed between all the states.

Hon NICK GOIRAN: How many Redress WA applicants were there under the WA scheme?

Hon SUE ELLERY: I am advised there were approximately 5 000 applicants and of those, approximately 2 500 were sexual abuse–related claims.

Hon NICK GOIRAN: On 6 November, in answer to a question without notice, the minister indicated —

> The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 was drafted based on similar legislation that had been introduced into and passed by the Parliaments of New South Wales, Queensland, South Australia, Tasmania and Victoria.

Which of those states has an equivalent to part 4 of the bill that refuses an award of compensation if a redress payment is accepted?

Hon SUE ELLERY: None. I thought I canvassed that in my second reading reply.

Hon NICK GOIRAN: The minister did touch on some of those things in her second reading reply, and I thank her for that; it was quite helpful. Interestingly, she never mentioned anything about Tasmania. What is the situation there?

Hon SUE ELLERY: I did not have any advice. I am advised that it had not responded to the request for information at the time that the information was made available to me.

Hon NICK GOIRAN: Earlier, when the minister said that none of those states has an equivalent to part 4, does that include Tasmania?

Hon SUE ELLERY: I am advised that its act does not contain a similar provision.

Hon NICK GOIRAN: If the bill passes unamended, we would be the only state in which an applicant would be refused an award of compensation if a redress payment is accepted.

Hon SUE ELLERY: On the advice that is available to me—I think it is the third time I have said it—that is correct.

Hon NICK GOIRAN: If a victim experienced exposure abuse, is their entitlement under the redress scheme for psychological counselling limited to $1 250?

Hon SUE ELLERY: I am advised that is correct.

Hon NICK GOIRAN: If the actual cost for such counselling is $10 000, will they be able to receive a redress component of $10 000?

Hon SUE ELLERY: I am advised that the amount of redress payment for a person is worked out using the following criteria: regarding exposure abuse, as part of the payment for recognition of sexual abuse, an amount of $5 000; as part of the criteria of recognition of the impact of sexual abuse, an additional $5 000; depending on the particular circumstances, recognition of related non-sexual abuse another $5 000; and then depending on the circumstances, recognition that the person was institutionally vulnerable, another $5 000. However, it does need to be noted that that is before any deductions for previous payments.

Hon NICK GOIRAN: The question before the last, I asked: if a victim experienced exposure abuse, is their entitlement under the redress scheme for psychological counselling limited to $1 250? The minister said, "Yes." I then asked: if the actual cost for such counselling is $10 000, will they be able to receive a redress component of $10 000? The minister has now taken us to a different part of the redress payment scheme. If their limit to psychological counselling is $1 250, they cannot claim $10 000 of psychological counselling?

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: If it was not for part 4 of the bill, would they be able to apply for $10 000 under criminal injuries compensation if the offence occurred after 1 January 1983?

Hon SUE ELLERY: Would the honourable member just repeat that question so that the adviser can hear it?

Hon NICK GOIRAN: Two questions ago, I asked the minister whether, if a victim experienced a disclosure abuse, their entitlement under the redress scheme for psychological counselling would be limited to $1 250, and the answer was yes. The follow-up question, after a bit of confusion, was if the actual cost for such counselling was $10 000, would they be able to receive a redress component of $10 000, and the answer was no. My question now is whether, if it were not for part 4 of the bill, they would be able to apply for the $10 000 under criminal injuries compensation if the offence occurred after 1 January 1983.

Hon SUE ELLERY: Given the date that the honourable member referred to, the assessor's advice is that the relevant amount would be $15 000. Therefore, depending on how much payment they had received by way of other schemes, and without the provisions in part 4 in the legislation, they could be compensated for the gap costs.

Hon NICK GOIRAN: If my amendment was passed, would they be able to apply for the true cost of their psychological counselling?

Hon SUE ELLERY: I am advised that if part 4 was not in the final bill—that is, if the amendment was passed—then in theory, yes. However, the evidentiary requirements are significantly higher under the criminal injuries compensation process—it is a higher evidentiary bar than under the redress scheme. There is also an investigative process; documents would need to be provided; they would need to establish that the treatment received was required as a direct consequence of the abuse they suffered; and of course they would be telling their story a second time.

Progress reported and leave given to sit again, on motion by Hon Sue Ellery (Leader of the House).