

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

Explanatory Notes

Short title

The short title of the Bill is the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018.

Policy objectives and the reasons for them

The Royal Commission into Institutional Responses to Child Sexual Abuse's (Royal Commission) Redress and Civil Litigation Report was released on 14 September 2015. The Report recommended establishment of a single national redress scheme to provide eligible applicants with three elements of redress: a monetary payment, access to counselling and psychological care, and a direct personal response from responsible institutions.

The Federal Government subsequently announced it would create a redress scheme, established through legislation, and invite states, territories and non-government institutions to opt in. The Federal Government's National Redress Scheme for Institutional Child Sexual Abuse (the National Scheme) has three core elements broadly consistent with the Royal Commission's recommendations.

On 30 April 2018, the Premier and Minister for Trade publicly announced the Queensland Government would opt in to the National Scheme. To opt in to the National Scheme states must either refer powers to the Commonwealth Parliament or adopt the relevant Commonwealth law, in accordance with the Commonwealth Constitution.

Under the National Scheme, applications will be received and assessed by the National Scheme Operator, which is a function of the Federal Government. It is expected that the National Scheme Operator may request, from participating institutions, information that may be relevant to determining applications when:

- an applicant has identified the institution as being involved in the abuse;
- the National Scheme Operator reasonably believes the institution may be responsible for the abuse; or
- the National Scheme Operator has reasonable grounds to believe the participating institution has information that may be relevant to determining the application.

As an institution participating in the National Scheme, the Queensland Government may be required to provide information to the National Scheme Operator in response to requests for information, to assist the Scheme Operator determine applications. Such information is likely to be held by Queensland Government agencies responsible for operating relevant institutions.

In order to streamline administration of the National Scheme, the Queensland Government will establish a 'central contact point' to facilitate communication between all relevant Queensland Government agencies and the National Scheme Operator. The Queensland Government central contact point will be established in the Department of Child Safety, Youth and Women (DCSYW). As the central contact point, DCSYW will coordinate and manage information

requests from the National Scheme Operator and liaise with relevant Queensland Government agencies.

The Queensland Government also intends that redress payments not be deducted from payments available to people under the *Victims of Crime Assistance Act 2009* in relation to the same abuse, and legislative amendment is required to achieve this intent.

The objectives of the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (the Bill) are to:

- enable the National Scheme to operate in Queensland by adopting the relevant Commonwealth law;
- introduce a framework to enable appropriate information sharing by Queensland Government agencies for the purposes of the National Scheme; and
- amend the *Victims of Crime Assistance Act 2009* to provide that redress payments may not be deducted from victim assistance payments under that Act.

Achievement of policy objectives

The Bill will achieve its objective of enabling the National Scheme to operate in Queensland by:

- providing for the adoption of the proposed Commonwealth Act, the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (National Redress Act); and
- referring the amendment reference, which provides for express amendments to the National Redress Act, to the Commonwealth Parliament.

The Bill will facilitate appropriate information sharing by:

- empowering the chief executive (child safety), as the Queensland Government central contact point for the National Scheme, to request and receive relevant information from other State agencies for providing back to the National Scheme Operator, where it is for the purposes of the National Scheme;
- enabling the chief executive (child safety) to give information to a State agency for the purpose of assisting compliance with a request made by the National Scheme Operator;
- clarifying that participating State institutions may give information to the National Scheme Operator for the purpose of complying with a request for information under the National Scheme.

The Bill will also ensure that redress payments may not be deducted from victim assistance payments by amending the *Victims of Crime Assistance Act 2009* to provide that redress payments under the National Scheme are not ‘relevant payments’.

Alternative ways of achieving policy objectives

The Bill is essential to provide for the adoption of the National Redress Act and enable appropriate information sharing by Queensland Government agencies for the purposes of the National Scheme. There is no alternative way of achieving the policy objectives.

Estimated cost for government implementation

Participation in the National Scheme will have significant resource implications for the Queensland Government. The Queensland Government has committed \$500 million for the purpose of providing redress payments to people who experienced child sexual abuse in institutions run by the Queensland Government.

Additional costs will also be incurred by the Queensland Government in operationalising the National Scheme and performing associated functions.

In accordance with the *Queensland Government Guide to Better Regulation*, the regulatory impact of the proposals has been self-assessed under category (c). The proposal is excluded from regulatory impact analysis as it relates to the internal operations of the Queensland Government.

Consistency with fundamental legislative principles

Section 4(2) Legislative Standards Act 1992 – Whether legislation has sufficient regard to the rights and liberties of individuals

Clauses 11, 12 and 13 — chief executive may request information; information sharing; and interaction with other laws

The introduction of provisions (at clauses 11, 12 and 13) to allow the sharing of personal and sensitive information for the purposes of the National Scheme are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.

While the National Scheme is intended to operate on a low-threshold basis for evidence, and information requested to support a person's application will often relate to the applicant, Queensland requires an enabling framework for the sharing of information between State agencies and the central contact point in DCSYW, and also the National Scheme Operator, to ensure required information can, where available, be shared, collated and provided to the National Scheme Operator to assist the Operator in determining applications for redress.

An enabling framework will also enable third-party information held by a Queensland Government agency to be shared with the central contact point and National Scheme Operator where relevant to determining an application for redress. The ability to share personal information, including third party information, is considered justified as it will be provided in very limited circumstances to enable the Queensland Government to support a person's application for redress for institutional sexual abuse they have suffered.

Limitations and safeguards will apply to the sharing of personal information, including, for example, that the chief executive may only ask another State agency for information if it is for the purposes of the National Scheme. The Bill provides that specific exclusions to information sharing for the purposes of the National Scheme are also able to be prescribed by regulation.

Consultation

All recommendations of the Royal Commission, including the recommendations regarding a national redress scheme, were informed by the Royal Commission's extensive consultation with stakeholders. This included:

- over 8,000 private sessions with people who experienced institutional child sexual abuse;
- 57 public hearings to examine particular institutions' responses to allegations of child sexual abuse; and
- broader consultation with governments, institutions, experts and interested individuals by inviting them to express their views at roundtables and contribute to issues papers and consultation papers.

The Federal Government also established an Independent Advisory Council in late 2016 to inform development of the redress scheme, including people who have experienced institutional abuse, representatives from support organisations, legal and psychological experts, Indigenous and disability experts, and those with a background in government.

The Queensland Government has conducted a series of meetings and roundtables with key stakeholders to inform its response to the reports of the Royal Commission into Institutional Responses to Child Sexual Abuse, including its recommendations related to a National Redress Scheme.

Broader community consultation has not been undertaken on the provisions in the Bill as it relates to internal operations of the Queensland Government and operationalises the Queensland Government's announcement to opt-in to the National Redress Scheme.

Consistency with legislation of other jurisdictions

All state and territory governments have announced that they will opt in to the National Scheme.

To participate in the National Scheme, a state must refer powers to the Commonwealth Parliament in accordance with section 51(xxxvii) of the Commonwealth Constitution. This involves:

- at least one state doing an initial 'reference of scheduled text' to enable the Federal Government to introduce a national Bill; and
- subject to the passage of a national Bill, all remaining states 'adopting' the National Redress Act.

On 16 May 2018, the New South Wales Parliament passed its referral legislation. As the New South Wales Bill provided for the required initial reference of scheduled text to the Commonwealth Parliament, Queensland's Bill varies from New South Wales by providing for the adoption of the National Redress Act. Queensland's Bill is otherwise generally modelled on the New South Wales Bill and its provisions largely reflect those of the New South Wales Bill.

Notes on provisions

Part 1 Preliminary

Clause 1 states that the Bill, when enacted, may be cited as the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (the Act).

Clause 2 sets out key definitions to apply throughout the Act.

Part 2 Adoption and reference of matters

Clause 3 provides for the adoption of the Commonwealth's *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (National Redress Act) and the associated amendment reference to the Commonwealth Parliament to provide for express amendments to the National Redress Act.

Clause 3 also provides for the extent to which the amendment reference has effect and the period of time for which the adoption and the amendment reference have effect.

Clause 4 provides detail regarding the manner in which the National Redress Act can be amended. Specifically, it outlines when the National Redress Act may be expressly amended, or have its operation otherwise affected, by provisions of Commonwealth Acts and provisions of Commonwealth instruments.

Clause 5 provides that the amendment reference does not include certain matters relating to State redress mechanisms.

Clause 5 (1) defines *State redress mechanism* to mean a scheme, program or arrangement established by the State Parliament, State government or by any government or non-government institution or other entity for or in relation to persons who have suffered institutional child sexual abuse in the State. It also defines *State redress mechanism* to mean the jurisdiction of a court or tribunal to grant compensation or support for or in relation to victims of crime, including crime relating to institutional child sexual abuse.

Clause 5 (2) provides that the amendment reference does not include the matter of making a law to the extent that it would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism.

Clause 5 (3) provides that clause 5 (2) does not cover any matter to which the adoption relates; the release or discharge of civil liability under the National Scheme; the disclosure or use of evidence or other information provided or obtained under the National Scheme; or the making, enforcement or protection of payments under the National Scheme.

Clause 6 provides that the amendment reference does not include the matter of making a law to the extent that it would substantively remove or override a provision of the National Redress Act that requires the agreement of the State. A matter requiring agreement by the State could include, for example, declaring a State institution to be a participating institution.

Clause 7 provides for the termination of the adoption or amendment reference. Specifically this clause provides that the Governor may, at any time, by proclamation, fix a day as the day on which the adoption or the amendment reference or both are to terminate. It further states that the Governor may also, by proclamation, revoke a termination proclamation and outlines the circumstances in which a revoking proclamation will have effect and the impacts of it.

Clause 8 clarifies the effect of terminating the amendment reference before terminating the adoption. Specifically clause 8 makes it clear that in these circumstances, the termination of the amendment reference does not affect:

- laws that were already made under the amendment reference before termination (whether or not they have come into operation before that termination); or
- the continued operation of the National Redress Act as in operation immediately before that termination or as subsequently amended or affected by:
 - laws previously made under the amendment reference that come into operation after its termination; or
 - provisions of Commonwealth Acts or instruments which are not affected by the termination.

Part 3 Other provisions for the operation of the scheme in the State

Clause 9 sets out key definitions to apply throughout Part 3.

Clause 10 authorises a regulation or, subject to the regulation, the Minister to give directions as to how the agreement of the State is to be given or withdrawn or may be evidenced for the purposes of, and consistently with, the National Redress Act and the National Scheme.

Clause 11 empowers the chief executive to, by notice given to a State agency and for the purpose of the scheme, ask the agency to give the chief executive particular information in the agency's possession or control. This power to request information from State agencies is to enable the chief executive (child safety) to perform the role of central contact point for the National Scheme. As information may only be requested for the purpose of the National Scheme, it is intended that information will also only be used and disclosed by the chief executive for the purposes of the National Scheme. The clause provides that the notice must state the day by which the particular information must be given to the chief executive and also stipulates that the State agency must comply with the request for information. The clause clarifies that a person does not commit an offence merely by failing to comply with a request for information.

Clause 12 provides that a participating State institution may give information to the National Scheme Operator in response to a request made by the Operator under the National Redress Act. It also provides that the chief executive may give information to a State agency for the purpose of assisting any participating State institution to comply with a request made by the National Scheme Operator under the National Redress Act. It is intended that this provision will enable the chief executive to provide any information to a State agency for this purpose, not only information obtained from the National Scheme Operator. For example, it is intended that this would enable the chief executive to advise a State agency that the applicant was a child in out-of-home care, which may otherwise be a barrier to the State agency accessing records

and providing information within required timeframes.

Clause 13 clarifies that nothing in a law of the State prevents information sharing in accordance with sections 11 and 12 of this Act unless that law is prescribed by regulation as an exemption.

Part 4 Miscellaneous

Clause 14 provides the Governor in Council may make regulations under this Act.

Part 5 Amendment of Acts

Division 1 Amendment of this Act

Clause 15 clarifies that division 1 amends this Act.

Clause 16 amends the long title of this Act to remove the reference to amending the *Victims of Crime Assistance Act 2009*.

Division 2 Amendment of Victims of Crime Assistance Act 2009

Clause 17 clarifies that division 2 amends the *Victims of Crime Assistance Act 2009*.

Clause 18 amends the definition of ‘*relevant payment*’ contained in the dictionary at schedule 3 to clarify that a *relevant payment* for an act of violence does not include a redress payment under the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* paid or payable in relation to the act of violence.

Schedule 1 Scheduled text of the Bill for a Commonwealth Act

Schedule 1 sets out the text of the Bill for the proposed Commonwealth *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.