

# Chapter 2

## Key issues

2.1 This chapter outlines the provisions of the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (National Redress Bill) and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (National Consequential Bill) in more detail, discusses concerns raised by submitters, and presents the views of the Community Affairs Legislation Committee (committee).

2.2 As discussed in Chapter 1, the bills under examination are significantly similar to the preceding Commonwealth Redress Scheme bills—the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Commonwealth Redress Bill) and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Commonwealth Consequential Bill).

2.3 The committee notes that the changes in the National Redress Bill from the previous Commonwealth Redress Bill can largely be categorised as follows:

- (a) New provisions and minor updates to existing provisions reflecting the now-national nature of the Scheme proposed, including provisions relating to participating jurisdictions and the referral of constitutional powers from the states.
- (b) New provisions and minor updates to existing provisions relating to the psychological and counselling services available under the scheme, reflecting the introduction of a psychological and counselling services payment as an alternative access mechanism to these services for survivors.
- (c) Other new provisions, or provisions otherwise significantly altered from the Commonwealth Redress Bill, relating to:
  - (i) the eligibility of survivors for redress, including those survivors with criminal convictions or who are subject to security notices;
  - (ii) the participation of institutions in the Scheme, including groups of institutions and defunct institutions;
  - (iii) timeframes for production of documents, acceptance of offers and requests for review;
  - (iv) the role of nominees;
  - (v) funding and financial matters, including funders of last resort; and
  - (vi) other administrative aspects of the Scheme, including the National Redress Scheme Rules, annual reporting and reviews.
- (d) Changes in chapter, part or section numbers following reordering of existing, or inclusion of new, provisions in the bill, and minor text changes related to this reordering.

- (e) Other minor text changes which do not change the intent or operation of a provision, such as restructuring a paragraph into bullet points or updating the title of the bill.

2.4 The committee also notes that the National Consequential Bill is identical to the previous Commonwealth Consequential Bill except for the addition of two new schedules (schedules 4 and 5) and minor text changes to reflect the new bill title.

2.5 The committee has focused its examination largely on those parts of the National Redress Bill and the National Consequential Bill which are entirely new, have been subject to a significant change or have otherwise been subject of continued debate or concern among submitters since their introduction in the previous Commonwealth Redress Scheme bills.

### **Establishing the National Redress Scheme**

2.6 The National Redress Scheme will commence on 1 July 2018<sup>1</sup> and will be operated by the Department of Social Services (Department), with the Secretary of the Department acting as the Scheme Operator (Operator).<sup>2</sup>

2.7 At the committee's Budget Estimates 2018–19 (Senate Budget Estimates) hearing on 1 June 2018, the Department told the committee that all aspects of service delivery are in place for this commencement date, pending the Commonwealth Parliament passing the legislation. Furthermore, the Department noted that any changes to the bills proposed would require renegotiation with states and territories, as well as non-government organisations, and would prevent the Scheme commencing on 1 July 2018.<sup>3</sup>

2.8 The National Redress Bill sets out several guiding principles for the actions of the Operator and other officers of the Scheme. These include that:

- redress should be survivor-focused; and
- redress should be assessed, offered and provided:
  - with appropriate regard to:
    - what is known about the impact and nature of child sexual abuse, particularly institutional child sexual abuse;
    - the cultural needs of survivors; and
    - the needs of particularly vulnerable survivors;
  - in a way that avoids, as far as possible, further harm or trauma to the survivor; and

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1 Subject to passage of the bills before that date. If the bills are passed after 1 July 2018, commencement will be on single day to be fixed by proclamation, or 6 months after assent.

2 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (National Redress Bill), cl. 2 and 9.

3 Ms Kathryn Campbell CSC, Secretary, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 80–81.

- in a way that protects the integrity of the Scheme.<sup>4</sup>

2.9 Submissions made to the committee were broadly positive and supportive of the establishment of a National Redress Scheme and its survivor-focused intent. While some organisations have raised concerns regarding aspects of the bills, most have expressed views that the Scheme is an important step towards reparation for the abuse suffered by children while in the care of institutions.<sup>5</sup>

2.10 The committee notes the significant updates, discussed below, which have been made to the bills for the National Redress Scheme in order to better meet the Scheme's guiding principles and to enable the Scheme to commence on time.

### **Participating institutions, groups and jurisdictions**

2.11 The role of participating states, territories, and institutions is crucial to the provision of redress to survivors under the National Redress Scheme and underpins much of its function.

2.12 Chapter 5 of the National Redress Bill sets out how institutions and jurisdictions participate in the Scheme. Since the introduction of the Commonwealth Redress Bill, the provisions of this chapter have been amended to reflect the now-national application of the Scheme. The provisions relating to the opt-in of states to the Scheme were discussed in Chapter 1 of this report.

2.13 For a survivor to be eligible for redress under the Scheme, a participating institution must be responsible for their abuse. All institutions participating in the Scheme will fall into, and will be subject to rules made for, one of the following categories: Commonwealth institutions, participating state institutions, participating territory institutions, and participating non-government institutions.<sup>6</sup> An institution becomes a participating institution, or ceases to be a participating institution, by declaration by the Minister; however, all Commonwealth institutions are participating institutions automatically.<sup>7</sup>

2.14 The National Redress Bill includes new provisions setting out the participation of defunct institutions,<sup>8</sup> lone institutions (non-government institutions not participating as part of a group),<sup>9</sup> and groups of institutions.<sup>10</sup>

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4 National Redress Bill, sub cl. 10. The final principle, relating to integrity, was not included in the Commonwealth Redress Bill.

5 For example: Australian Lawyers Alliance, *Submission 2*; Victorian Aboriginal Legal Service (VALS), *Submission 3*; Anglicare Australia, *Submission 6*; Centre for Excellence in Child and Family Welfare (CECFW), *Submission 10*; Australian Human Rights Commission, *Submission 23*; Bravehearts Foundation, *Submission 33*; among others.

6 National Redress Bill, cl. 108–114.

7 National Redress Bill, cl. 115, 116.

8 National Redress Bill, cl. 117–123.

9 National Redress Bill, cl. 124–131.

10 National Redress Bill, cl. 132–141.

### ***Participating and non-participating defunct institutions***

2.15 Submitters raised a small number of concerns about the new provisions governing defunct institutions.

2.16 The National Redress Bill provides that a defunct institution can participate in the Scheme, and that a nominated representative for that institution is subject to any obligation or liability imposed on the institution under the Scheme.<sup>11</sup> However where an institution is defunct and does not have a representative, it may instead be listed as a defunct institution for one or more jurisdictions. If a jurisdiction's government institution is equally responsible with the defunct institution for the abuse of a survivor, that jurisdiction is subject to funder of last resort provisions,<sup>12</sup> detailed further in this chapter.

2.17 Submitters have raised concerns about survivors whose abuse in a defunct institution was not the equal responsibility of a jurisdiction, noting that these survivors will not be eligible under the Scheme as written.<sup>13</sup> The submission from Australian Government Departments explained that the National Redress Bill 'provides a clear mechanism to allow existing institutions to take responsibility for defunct institutions, therefore maximising participation in the Scheme'.<sup>14</sup> Furthermore, the Australian Government response to the committee's previous inquiry (Government Response) noted in response to a recommendation from Australian Labor Party Senators about defunct institutions:

The Commonwealth, state and territory governments have agreed that the 'funder of last resort' arrangements should only apply where the respective government had some very real responsibility for the abuser having contact with the child. The Australian Government does not have power to act as 'funder of last resort' for non-government institutions where there is no level of responsibility or link to a constitutional limb.<sup>15</sup>

### ***Encouraging institutions to join the Scheme***

2.18 At the date of reporting, six major non-government organisations had announced their commitment to join the National Redress Scheme: the Catholic

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11 National Redress Bill, cl. 117–123.

12 National Redress Bill, cl. 164.

13 CECFW, *Submission 10*, [p. 2]; Maurice Blackburn Lawyers, *Submission 29*, p. 10; knowmore legal service, *Submission 20*, p. 8; Alliance for Forgotten Australians, *Submission 13*, p. 2; Victorian Aboriginal Child Care Agency (VACCA), *Submission 40*, pp. 4, 11.

14 Australian Government Departments, *Submission 1*, p. 11.

15 *Australian Government response to the Senate Community Affairs Legislation Committee report: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions] and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]* (Government Response), May 2018, p. 10.

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Church, the Anglican Church, the Uniting Church, the Salvation Army, YMCA and Scouts Australia.<sup>16</sup>

2.19 Several submissions recommended that non-government institutions be given greater encouragement to join the National Redress Scheme.<sup>17</sup> The Australian Lawyers Alliance recommended that the charitable status of non-government institutions be linked to their participation in the Scheme,<sup>18</sup> while the Law Council of Australia recommended that a right of review for participating institutions may '[enhance] institutional faith in the integrity of the Scheme';<sup>19</sup> this recommendation is discussed later in this chapter.

2.20 In its *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]* Report (Commonwealth Redress Scheme Bills Report), the committee also recommended that:

...the Australian Government should consider reducing the two-year deadline for institutions to opt in to the Redress Scheme, and should consider options to encourage greater participation in the Redress Scheme...<sup>20</sup>

2.21 The Australian Government responded to this recommendation with partial agreement, noting that non-government institutions are being encouraged to participate and that the two-year deadline for participating institutions:

...balances the need to provide survivors certainty that institutions are participating in the Scheme, with the need to provide non-government institutions adequate time to ensure they have the appropriate processes in place to be able to participate in the Scheme.<sup>21</sup>

2.22 The committee commends those non-government organisations which have joined the National Redress Scheme to date, and encourages other non-government organisations to join the Scheme.

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16 Department of Social Services, *National Redress Scheme for people who have experienced institutional child sexual abuse*, <https://www.dss.gov.au/national-redress-scheme-for-people-who-have-experienced-institutional-child-sexual-abuse> (accessed 31 May 2018).

17 Anglicare Australia, *Submission 6*, p. 4; Australian Lawyers Alliance, *Submission 2*, p. 6; Law Council of Australia, *Submission 18*, p. 14.

18 Australian Lawyers Alliance, *Submission 2*, p. 6.

19 Law Council of Australia, *Submission 18*, p. 14.

20 Senate Community Affairs Legislation Committee, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]* (Commonwealth Redress Scheme Bills Report), 28 March 2018, p. 91.

21 Government Response, p. 4.

## **Entitlement, eligibility and scope**

2.23 Part 2-2 of the National Redress Bill makes provisions for entitlement and eligibility for redress under the National Redress Scheme, as well as defining when abuse is within the scope of the scheme and when institutions are responsible for abuse. While this part of the bill is largely unchanged from the Commonwealth Redress Bill, the following amendments have been made:

- (a) Clarification about what abuse is in the scope of the Scheme, reflecting its new national nature.<sup>22</sup>
- (b) Clarification of what redress is provided to a person, reflecting the introduction of a payment for psychological and counselling services.<sup>23</sup>
- (c) The introduction of two new eligibility criteria which require that the redress which would be payable under the Scheme's assessment framework for the kind of abuse be more than nil;<sup>24</sup> and that one or more participating institutions are responsible for the abuse.<sup>25</sup>
- (d) The introduction of new provisions that person is entitled or not entitled to redress, or that their abuse is within scope or not within scope of the Scheme, if prescribed by rule.<sup>26</sup> These provisions mirror existing provisions about prescription of rules relating to eligibility<sup>27</sup> and are discussed below.
- (e) A new clause relating to the responsibility of institutions for abuse, which has been significantly updated from the Commonwealth Redress Bill<sup>28</sup> and is also discussed below.

2.24 Additionally, Chapter 3 of the National Redress Bill sets out special rules to deal with entitlement and eligibility in exceptional cases. While provisions relating to circumstances where an applicant dies before a determination is made or an offer accepted<sup>29</sup> are mostly unchanged from the Commonwealth Redress Bill, new clauses have been introduced which:

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22 National Redress Bill, sub cl. 14(1).

23 National Redress Bill, sub cl. 16(1) and (3).

24 National Redress Bill, para. 13(1)(c).

25 National Redress Bill, para. 13(1)(d). See also: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Commonwealth Redress Bill), para. 17(d).

26 National Redress Bill, sub cl. 12(3) and (4); 14(2) and (3).

27 National Redress Bill, sub cl. 13(2) and (3).

28 National Redress Bill, cl. 15. See also: Commonwealth Redress Bill, cl. 21.

29 National Redress Bill, cl. 58, 59 and 60.

- (a) Make survivors whose abuse occurred in a non-participating state eligible for redress if a Commonwealth or participating territory institution is responsible.<sup>30</sup>
- (b) Apply special assessment for survivors with serious criminal convictions.<sup>31</sup>
- (c) Make survivors not entitled to redress if they are subject to a security notice currently in force from the Home Affairs or Foreign Affairs Minister.<sup>32</sup>

2.25 The new provisions relating to criminal convictions and security notices are also discussed in detail below.

***Kinds of abuse and excluding non-sexual child abuse***

2.26 The exclusion of other forms of non-sexual child abuse—such as physical, psychological, emotional and cultural abuse—from the Scheme was raised in the previous inquiry<sup>33</sup> and remained a key theme through a number of submissions to this inquiry.<sup>34</sup>

2.27 In introducing the National Redress Scheme bills into the House of Representatives, the Minister explained that:

While a person must have suffered sexual abuse to be eligible, the scheme will also acknowledge related non-sexual abuse, for example physical abuse. Sexual abuse rarely occurs in isolation and it is important to deal with the whole of the survivor's experience.<sup>35</sup>

2.28 The committee refers to its discussion of this issue in its Commonwealth Redress Scheme Bills Report<sup>36</sup> and wishes to reiterate its comments. The committee acknowledges the concerns of members of the Forgotten Australians and Stolen Generations, as well as other survivors of physical, psychological, emotional and cultural abuse in care, about their ineligibility for redress under the proposed National Redress Scheme.

2.29 The committee is strongly supportive of the establishment of the National Redress Scheme to address historic cases of institutional child sexual abuse and remains of the view that the impacts of non-sexual abuse, although not addressed by

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30 National Redress Bill, cl. 61.

31 National Redress Bill, cl. 63.

32 National Redress Bill, cl. 64–71.

33 Commonwealth Redress Scheme Bills Report, 28 March 2018, pp. 31–34.

34 See: Alliance for Forgotten Australians, *Submission 13*; CECFW, *Submission 10*; Tuart Place, *Submission 14*; Ryan Carlisle Thomas, *Submission 16*; Care Leavers Australasia Network, *Submission 31*; Ms Ellen Bucello, *Submission 30*; Mr Frank Golding, *Submission 9*.

35 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3.

36 Commonwealth Redress Scheme Bills Report, p. 34.

the Scheme, still require thought and focus from all levels of government and Australian society in general.

***Rules to determine entitlement and eligibility***

2.30 Clauses 12, 13 and 14 of the National Redress Bill each include provisions that allow entitlement, eligibility or scope to be determined by rule respectively.

2.31 A number of submitters to this inquiry, as well as witnesses and submitters to the previous inquiry, have criticised the use of rules in the National Redress Scheme.<sup>37</sup> Submitters either expressed concern that the rules are not currently available for scrutiny,<sup>38</sup> or otherwise recommended that all matters to be contained in rules should be included in the primary legislation.<sup>39</sup>

2.32 The committee made a recommendation in its Commonwealth Redress Scheme Bills Report that:

...the Department should ensure that planned consultations on the rules of the Redress Scheme include survivors' representative groups, and ensure information on rules is communicated as it becomes available.<sup>40</sup>

2.33 The Government agreed with this recommendation, noting in its response that both the Government and the Department have consulted with representatives of survivor groups in developing the National Redress Bill and rules.<sup>41</sup>

2.34 The submission from Australian Government Departments explained that the rules cannot be tabled before the National Redress Bill passes the Parliament and receives assent.<sup>42</sup> However, in response to this recommendation and noting concerns about the content of the rules, the Department has developed a 'fact sheet' explaining how the rule making powers in the National Redress Bill are intended to be exercised. This fact sheet was provided in the submission from Australian Government Departments and outlines the key policies proposed for the rules.<sup>43</sup>

2.35 Additionally, the Explanatory Memorandum for the National Redress Bill (Explanatory Memorandum) notes that the use of rules allows for flexibility and timeliness in the operation of the Scheme:

The need to respond quickly to survivor needs is a key feature of the Scheme as many survivors have waited decades for recognition and justice. The use of rules rather than regulations provides the necessary flexibility to

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37 Australian Human Rights Commission, *Submission 23*; Law Council of Australia, *Submission 18*; CECFW, *Submission 10*; Relationships Australia, *Submission 15*. See also: Commonwealth Redress Scheme Bills Report, pp. 23–27.

38 Australian Human Rights Commission, *Submission 23*; Relationships Australia, *Submission 15*.

39 Law Council of Australia, *Submission 18*, p. 11.

40 Commonwealth Redress Scheme Bills Report, p. 92.

41 Government Response, p. 4.

42 Australian Government Departments, *Submission 1*, p. 4.

43 Australian Government Departments, *Submission 1*, Attachment A.

respond more quickly to unforeseen factual matters as they arise, because rules can be adapted and modified more quickly than regulations or Acts. Prescribing in the Bill or rules that a person is eligible under the Scheme confers a benefit on a survivor to receive redress quickly...There may be classes of survivors that the Scheme has not, or could not, envisage [sic] to include in the Bill, whom can be accommodated via this rule making power. This ensures participating institutions are able to provide redress to all survivors of abuse for which the institution is responsible.<sup>44</sup>

*Rules for non-citizens and child migrants*

2.36 One of the criteria for eligibility for the Scheme is that the survivor is either an Australian citizen or an Australian permanent resident. Some submitters to the inquiry were concerned that this will mean that former child migrants, who may not be Australian citizens, or children who were abused in Australian immigration detention centres, are excluded from the Scheme.<sup>45</sup> These concerns were discussed in the Commonwealth Redress Scheme Bills Report.<sup>46</sup>

2.37 The Explanatory Memorandum states that rules may be prescribed to allow people with other citizenship status, including former child migrants who are no longer residing in Australia, or children abused in Australian institutional settings outside Australia who are not citizens or permanent residents, to apply.<sup>47</sup>

2.38 In response to the recommendation by Australian Labor Party Senators in the previous inquiry that all survivors, including those who do not live in Australia, be eligible for redress, the Government clarified that:

With regard to the eligibility of survivors who do not live in Australia, only people who are Australian citizens or permanent residents will be able to apply for redress. This is in line with other government entitlements. Non-citizens and non-permanent residents will be ineligible to ensure the integrity of the Scheme.<sup>48</sup>

2.39 The committee notes submitters' concerns about the use of delegated legislation to determine eligibility and entitlement for redress under the National Redress Scheme. However, the committee is satisfied that the prescription of rules is appropriate to achieve flexibility and timeliness in the Scheme.

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44 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, Explanatory Memorandum ([Explanatory Memorandum](#)), p. 21.

45 Australian Human Rights Commission, *Submission 23*, p. 6; Australian Lawyers Alliance, *Submission 2*, pp. 7–11; Law Council of Australia, *Submission 18*, p. 10; Maurice Blackburn Lawyers, *Submission 29*, pp. 3–4.

46 Commonwealth Redress Scheme Bills Report, pp. 34–37.

47 Explanatory Memorandum, pp. 7–8.

48 Government Response, p. 9.

***When is an institution responsible for abuse?***

2.40 During the committee's inquiry into the Commonwealth Redress Scheme bills, several submitters raised concerns about how institutions would be found to be responsible for abuse under the Scheme.<sup>49</sup>

2.41 Clause 15 of the National Redress Bill sets out when an institution participating in the Scheme is responsible for abuse. An institution is responsible for a survivor's abuse (whether participating in the Scheme or not) if it was primarily responsible or equally responsible for an abuser having contact with that survivor.

2.42 This clause is substantially similar to the corresponding clause in the Commonwealth Redress Bill, but has been updated as follows:

- (a) 'Primarily responsible' and 'equally responsible' have now been more clearly defined.<sup>50</sup>
- (b) The circumstances that might be relevant for determining the institutions responsibility are more detailed in relation to responsibility for care, custody, legal guardianship and placement of the child into the institution.<sup>51</sup>

2.43 Additionally, the Explanatory Memorandum sets out a number of circumstances where the Operator will determine by rule that an institution is responsible, or not responsible, from the start of the Scheme. These include situations where a government institution had parental responsibility for the child, or the child was a state ward, and the abuse occurred while the child was in the care of a non-government institution; where a survivor's abuse was connected with their membership of a defence cadet unit provided for by Commonwealth legislation; or where the only connection between a government institution and a survivor's abuse was that it regulated or funded the responsible institution, or that the responsible institution was established by or under the law of the relevant government.<sup>52</sup>

2.44 The Explanatory Memorandum notes that the rule-making power in this clause will ensure that institutions that should be responsible are held responsible, but that institutions are not found responsible in unreasonable circumstances.<sup>53</sup>

***Special assessment for survivors with serious criminal convictions***

2.45 During the committee's inquiry into the Commonwealth Redress Scheme bills, the Australian Government had indicated that applicants with criminal convictions may be excluded from the Scheme by way of rule. The committee

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49 Commonwealth Redress Scheme Bills Report, pp. 18–20.

50 National Redress Bill, sub cl. 15(2) and (3).

51 National Redress Bill, para. 15(4)(a)–(c). See also: Commonwealth Redress Bill, para. 12(3)(c).

52 Explanatory Memorandum, pp. 24–25.

53 Explanatory Memorandum, p. 25.

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received a wide range of evidence from submitters and witnesses relating to this proposed exclusion and made a detailed consideration in its report,<sup>54</sup> recommending:

...in finalising the position on the exclusion of serious criminal offenders from the Redress Scheme, the Australian, state and territory governments should consider the value of the Redress Scheme as a tool for the rehabilitation of offenders, and that excluding criminal offenders can have the unintended consequence of institutions responsible for child sexual abuse not being held liable.<sup>55</sup>

2.46 The Australian Government agreed with this recommendation.<sup>56</sup>

2.47 The National Redress Bill introduces a new special assessment for applicants with serious criminal convictions. A person is not entitled to redress if they have been sentenced to imprisonment for 5 years or longer for an offence against a state, territory, Commonwealth or foreign law, unless the Operator determines otherwise.<sup>57</sup> The Minister described that this limitation is in order to 'maintain integrity and public confidence in the Scheme', but noted that a special assessment of survivors with these convictions would 'ensure the scheme retains flexibility and is able to meet prevailing community standards'.<sup>58</sup>

2.48 Where the Operator becomes aware of a survivor's sentence, they must seek advice from a relevant Attorney-General or other nominated official about that offence and whether providing that survivor with redress would not:

- (a) bring the Scheme into disrepute; or
- (b) adversely affect public confidence in, or support of, the Scheme.<sup>59</sup>

2.49 The Operator may then determine that a survivor is not prevented from being entitled to redress if they are satisfied that providing the survivor with redress would not result in either of the above conditions. The Operator must take into consideration the nature of the offence, length of sentence, length of time since the offence, the survivor's rehabilitation, any other relevant information and, with a greater weight, advice from the relevant jurisdiction.<sup>60</sup>

2.50 Submissions received in this inquiry have criticised the limitations placed on survivors with criminal convictions accessing the Scheme, with many organisations making similar arguments to those raised in the previous inquiry about the relationship

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54 Commonwealth Redress Scheme Bills Report, pp. 38–46.

55 Commonwealth Redress Scheme Bills Report, Recommendation 9, p. 94.

56 Government Response, p. 7.

57 National Redress Bill, sub cl. 63(1) and (2).

58 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3.

59 National Redress Bill, sub cl. 63(3) and (4).

60 National Redress Bill, sub cl. 63(5), (6) and (7).

between abuse and later criminality.<sup>61</sup> However, a number of submitters have also praised the Government's approach in these provisions, supporting assessment of individual cases by the Operator and Independent Decision Makers.<sup>62</sup>

2.51 The Department has confirmed that assessment of applicants with a serious criminal conviction is:

...a decision of all governments and balances the need for the scheme to recognise the impact that childhood abuse can have on a person's life with the need to ensure the scheme is not brought into disrepute.<sup>63</sup>

### *Survivors subject to security notices*

2.52 The National Redress Bill also introduces restrictions on entitlement for redress where a survivor is subject to a security notice from either the Home Affairs Minister (where a person's visa has been cancelled on security grounds, where a redress payment may be used to prejudice the security of Australia or a foreign country) or the Foreign Affairs Minister (where the minister refuses to issue, or cancels, an Australian travel document for reasons relating to harmful conduct).<sup>64</sup>

2.53 The National Redress Bill sets out some administrative provisions relating to these security notices, including that:

- (a) Notices should be given to the Operator and to the Secretary of the Human Services Department, are in force until revoked, will be subject to annual review, and may be revoked by written notice.<sup>65</sup>
- (b) Where a survivor becomes subject to a security notice:
  - (i) after making an application and before an offer has made, the application is taken to be withdrawn;
  - (ii) after an offer is made but before an offer is accepted, declined or withdrawn, the offer is taken to be withdrawn.<sup>66</sup>

2.54 The Explanatory Memorandum notes that restricting entitlement to redress in this way ensures that people:

...assessed to be engaged in politically motivated violence overseas, fighting or actively supporting extremist groups, or...likely to engage in

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61 VALS, *Submission 3*; Sexual Assault Support Service (SASS), *Submission 11*; Blue Knot Foundation, *Submission 12*; VACCA, *Submission 40*; National Aboriginal and Torres Strait Islander Legal Service, *Submission 39*; Waller Legal, *Submission 38*; People With Disability Australia, *Submission 28*; Australian Psychological Society, *Submission 17*; Royal Australian and New Zealand College of Psychiatrists, *Submission 21*; among others.

62 See, for example, Relationships Australia, *Submission 15*, p. 5.

63 Ms Campbell, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 81.

64 National Redress Bill, cl. 65, 66.

65 National Redress Bill, cl. 67, 68, 69, 70.

66 National Redress Bill, cl. 71.

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conduct that might prejudice the security of Australia or a foreign country, would not be entitled to redress under the Scheme.<sup>67</sup>

2.55 Some submitters told the committee that while they note the security risk of providing monetary redress to certain people, these security risks do not negate the impact of abuse, and that non-monetary aspects could still be made available to these survivors.<sup>68</sup> Relationships Australia further proposed that access to counselling and psychological services could include countering violent extremism.<sup>69</sup>

2.56 The submission from Australian Government Departments explained that 'not every person whose passport or visa has been refused or cancelled would lose access to redress', but that the provisions would apply in cases where justified on security grounds, and that these arrangements align with Australia's existing counter-terrorism legislative framework, mirroring legislation relating to social security payments.<sup>70</sup>

2.57 The committee is satisfied that these provisions, as well as those relating to survivors with criminal convictions, which have been proposed and agreed by the state, territory and Commonwealth governments, will balance the need for fair and equitable access to redress for all survivors while maintaining public confidence in the Scheme.

### **Applying for and accepting offers of redress**

2.58 The National Redress Bill sets out a number of provisions which outline how to obtain redress under the Scheme, how redress is determined, how offers of redress are made and accepted, the provision of redress, and reviews of determinations.

#### ***Applications for redress***

2.59 The committee notes that the application process set out in the National Redress Bill differs from the process provided in the Commonwealth Redress Bill in a number of respects.

2.60 Clause 19 sets out the requirements that must be included in an application for redress. These requirements are substantially similar to the previous bill, but now also include a requirement that an application specifies where the person lives. Some submitters have observed that the new requirement that an application specify 'where the person lives',<sup>71</sup> if requiring a residential street address, may have unintended impacts on the ability for homeless survivors to apply to the Scheme.<sup>72</sup>

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67 Explanatory Memorandum, p. 55.

68 Australian Human Rights Commission, *Submission 23*, p. 11; Relationships Australia, *Submission 15*, p. 6.

69 Relationships Australia, *Submission 15*, p. 6.

70 Australian Government Departments, *Submission 1*, p. 10.

71 National Redress Bill, para. 19(2)(b).

72 knowmore legal service, *Submission 20*, p. 3; VALS, *Submission 3*, [p. 2]; Bravehearts Foundation, *Submission 33*, [p. 2].

2.61 Clause 20 is new to the National Redress Bill and provides that an application cannot be made to the Scheme if the survivor has already made an application to the Scheme, is subject to a security notice, or is a child who will not turn 18 before the Scheme sunset date. An application also cannot be made if the survivor is in gaol or if it is made in the 12 months before the Scheme sunset date, but the Operator may determine in those instances that there are exceptional circumstances justifying an application being made.

#### *Single application to the Scheme*

2.62 A number of submitters reiterated their concerns from the previous inquiry that only allowing a single application to the Scheme could have unintended negative consequences for survivors, particularly where a survivor applies before all responsible institutions sign up to the Scheme, or the survivor later recalls abuse which they did not include in their application.<sup>73</sup>

2.63 The Australian Government did not agree to the recommendation by Australian Labor Party Senators in the previous inquiry that the number of applications survivors are permitted to submit be reconsidered. The Government Response explained that with only a single application permitted:

...a survivor will only need to disclose their experiences of child abuse in one application, it will provide the opportunity for the survivor to receive closure after a potentially traumatic, but singular, application process. The Royal Commission recommended that survivors should not have to make multiple applications if they were abused in multiple institutions, to achieve equal or fair treatment between survivors.<sup>74</sup>

2.64 Additionally, at Senate Budget Estimates, the Department informed the committee that in order to support a single application from each survivor, applications will be accepted even if an organisation has yet to opt into the Scheme and that the survivor will be contacted 'by a real person' to explain the status of their application. Applicants will also be contacted and supported at each step of the process.<sup>75</sup>

#### *Incarcerated survivors*

2.65 Submitters to the inquiry have disagreed with introduction of a new restriction on incarcerated survivors being able to apply Scheme.<sup>76</sup> However, the Minister noted

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73 knowmore legal service, *Submission 20*; Blue Knot Foundation, *Submission 12*; Relationships Australia, *Submission 15*. See also: Commonwealth Redress Scheme Bills Report, pp. 44–46.

74 Government Response, p. 10.

75 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 86, 87, 97.

76 VALS, *Submission 3*; SASS, *Submission 11*; Blue Knot Foundation, *Submission 12*; Australian Human Rights Commission, *Submission 23*; knowmore legal service, *Submission 20*; Tuart Place, *Submission 14*; Shine Lawyers, *Submission 19*; among others.

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that such a restriction is necessary as it will not be possible 'to deliver many aspects of the scheme to incarcerated survivors'.<sup>77</sup>

2.66 The submission from Australian Government Departments further explained that there are 'risks associated with the confidentiality of applicants in a closed institutional setting such as a prison which may lead to health and safety risks to vulnerable people'.<sup>78</sup>

2.67 Operator discretion to accept an application from an incarcerated person in exceptional circumstances, such as if the applicant is likely to remain in gaol until after the Scheme sunset date, has been positively received by submitters.<sup>79</sup>

### *Child applicants*

2.68 The Commonwealth Redress Bill allowed all children to apply to the Scheme, however during the committee's previous inquiry, as well as during Australian Government consultation with jurisdictions, concerns were raised that legal protections for these child applicants were not sufficient, that a child may not fully understand their rights, and that the full impact of a child's abuse may not be realised until much later in their life.<sup>80</sup>

2.69 The National Redress Bill now provides that only those child survivors who turn 18 before the Scheme sunset date are able to make an application to the Scheme. It also allows the Operator to make rules about the process for those applications. The Explanatory Memorandum explains how the application process will operate for this cohort:

Children who will turn 18 throughout the life of the Scheme may apply for redress; however, their application will not be determined until they reach 18 years of age. This will allow the Scheme to request information from the responsible institution(s) at the time of the application to ensure the information is current, especially in the circumstance where the responsible institution may go defunct before the claim can be determined. Once the child reaches 18, the survivor can choose to proceed with their application, withdraw their application and reapply, or withdraw their application completely. Those child survivors who are waiting for their redress application to be determined will have access to the Scheme's support services throughout this period.<sup>81</sup>

2.70 The Explanatory Memorandum notes that for child survivors who will not turn 18 before the Scheme sunset date, those children and their families will still be

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77 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 3.

78 Australian Government Departments, *Submission 1*, p. 8.

79 Relationships Australia, *Submission 15*, p. 5; knowmore legal service, *Submission 20*, pp. 3–4.

80 Australian Government Departments, *Submission 1*, p. 7; Commonwealth Redress Scheme Bills Report, pp. 77–78.

81 Explanatory Memorandum, p. 29.

able to access the Scheme's legal support services 'in order to consider the child's legal rights, particularly if civil litigation may be a viable alternative'.<sup>82</sup>

2.71 The committee welcomes the updates to the National Redress Scheme to protect children who wish to apply to the Scheme. The committee also notes that the provisions relating to child applicants, as well as applicants in gaol, will be subject to review, as discussed later in this chapter.

### ***Obtaining information for the purpose of determining an application***

2.72 A number of concerns were raised during the committee's previous inquiry about the 14-day timeframe for producing information requested by the Operator for the purpose of determining an application.<sup>83</sup> The committee made a recommendation in its Commonwealth Redress Scheme Bills Report, part of which recommended that:

...in developing the minimum timeframes in the Redress Scheme, for the provision of documents...the Department should consider the special circumstances of survivors in remote communities, those with functional communication barriers and survivors experiencing trauma or mental health episodes linked to their abuse.<sup>84</sup>

2.73 Clauses 24 and 25 in the National Redress Bill provide that the production period for documents must be at least four weeks if the Operator considers the application urgent, or eight weeks otherwise. The person or institution subject to the request may also request to extend this production period.<sup>85</sup> This update to the timeframe for production of documents has been praised by submitters.<sup>86</sup>

2.74 The Commonwealth Redress Bill contained a provision where a refusal or failure to comply with a request for the production of documents would have attracted a civil penalty and there had been concerns raised in the previous inquiry this could have unintended negative consequences for survivors.<sup>87</sup> The committee notes that this provision has been removed from the National Redress Bill.

2.75 Furthermore, the National Redress Bill now makes clear that the Operator is not required to make a determination until information is received from an applicant, but that an application may be progressed or a determination made if information is not provided, or not provided on time, from a participating institution.<sup>88</sup> This clarification was previously contained in the Explanatory Memorandum, but not the provisions, of the Commonwealth Redress Bill.<sup>89</sup>

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82 Explanatory Memorandum, p. 27.

83 Commonwealth Redress Scheme Bills Report, pp. 46–51.

84 Commonwealth Redress Scheme Bills Report, p. 94.

85 National Redress Bill, cl. 24(6),(7) and 25(5)–(8).

86 Law Council of Australia, *Submission 18*, p. 6; knowmore legal service, *Submission 20*, p. 4.

87 Commonwealth Redress Bill, cl. 71; Commonwealth Redress Scheme Bills Report, pp. 49–50.

88 National Redress Bill, cl. 26.

89 Commonwealth Redress Scheme Bills Report, p. 48.

2.76 The National Redress Bill also introduces a new civil penalty for providing false or misleading documents, information or statements to the Scheme. The Explanatory Memorandum states that:

This civil penalty is justified to ensure that Scheme is adequately protected against the risk of fraudulent applications. Large volumes of false claims from organised groups could overwhelm the Scheme's resources and delay the processing of legitimate applications....Should the Scheme not safeguard against potential fraud, institutions may choose not to participate, or may seek to leave the Scheme, leaving legitimate survivors unable to access redress from those institutions. The level of the penalty is sufficiently high to support the principle of deterrence, and ensure that applications made to the Scheme are legitimate and appropriate.<sup>90</sup>

2.77 However, some submitters have raised concerns about whether this provision, and the implication that there is going to be organised fraud in the Scheme, could make survivors nervous about making applications and not being believed and may not meet the Scheme's goal of being survivor focused.<sup>91</sup>

2.78 The committee is satisfied that the provisions for requesting supporting documents under the Scheme are proportionate and sensitive to the needs of survivors, while ensuring that the Operator and Independent Decision Maker have sufficient detail to make an informed determination.

### ***Approving applications and making determinations***

2.79 Clause 29 of the National Redress Bill provides that the Operator must make a determination whether to approve, or not approve, an application for redress and sets out a comprehensive list of requirements if there is a reasonable likelihood that an applicant is eligible for redress. This clause has been subject to a number of updates since the Commonwealth Redress Bill and now includes the following new provisions:

- (a) Determination of whether the psychological and counselling services component of redress will consist of a payment or of access to services provided under the Scheme and, if it will consist of a payment, the amount of that payment.
- (b) Where responsible institutions are part of a participating group, determination of the associates of the responsible institution.
- (c) Where the institution identified in an application is defunct and a participating government institution in the same jurisdiction is equally responsible for the abuse, determine the participating government institution as the funder of last resort.

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90 Explanatory Memorandum, pp. 30–31.

91 Blue Knot Foundation, *Submission 12*; knowmore legal service, *Submission 20*; Tuart Place, *Submission 14*.

(d) Requirements for revoking a determination.<sup>92</sup>

2.80 Specific concerns raised by submitters are considered below.

*Revoking an offer of redress*

2.81 Clause 29 of the National Redress Bill now includes provisions allowing for rules that may require or permit the Operator to revoke a determination. Some submitters have raised concerns about the provisions, including:

- (a) that the clause does not require the Operator to give a reason for revoking a determination;<sup>93</sup> and
- (b) whether, if a determination is revoked and therefore 'taken never to be made', a survivor would be permitted to make a new application.<sup>94</sup>

2.82 The Department's 'fact sheet' on the types of rules which are proposed for the Scheme notes that rules relating to the revocation of determinations:

... will allow a determination to be revoked where the Operator receives new information that affects the determination, and requires a determination to be revoked where that information was about a payment made after the determination. The Operator will be required to make a new determination taking into account the new information.<sup>95</sup>

*Length of time for making a determination*

2.83 Submitters observed that, while determinations are to be made 'as soon as practicable', there is no specific time limit for determinations to be made in the National Redress Bill.<sup>96</sup>

2.84 At Senate Budget Estimates, the Department explained its anticipated timeframe for most offers of redress would be 'around 10 to 12 weeks' and that this would be reduced if the application was 'triaged because the person is elderly or frail'. Furthermore, the Department expected that 'even the most complex applications would be able to [be] processed within a 12-month period'.<sup>97</sup>

*Contents and availability of assessment framework*

2.85 The National Redress Bill sets out the method for determining the amount and sharing of costs of the redress payment and psychological and counselling component for a person. This determination will be made in accordance with the assessment framework, a legislative instrument to be declared by the Minister. The Explanatory

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92 National Redress Bill, cl. 29.

93 Law Council of Australia, *Submission 18*, p. 15; knowmore legal service, *Submission 20*, p. 5.

94 Bravehearts Foundation, *Submission 33*, [p. 3].

95 Australian Government Departments, *Submission 1*, p. 17.

96 For example: Law Council of Australia, *Submission 18*, p. 7.

97 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 99.

Memorandum notes that this legislative instrument will not be subject to disallowance:

... so that the method or matters to be taken into account for the purpose of working out the amount of redress payment for a person are certain for applicants to the Scheme and decision-makers. This declaration would ordinarily be of an administrative character and would not be a legislative instrument without this provision. However, in order to ensure certainty and transparency it is appropriate to make this declaration a legislative instrument.<sup>98</sup>

2.86 Additionally, the National Redress Bill introduces a new provision that the Operator may take into account assessment framework policy guidelines when applying the assessment framework. Unlike the framework, these guidelines will not be a legislative instrument. The Explanatory Memorandum sets out the reason for this distinction:

These guidelines are of an administrative character, the content of which will not be provided in a legislative instrument. The reason for omitting detailed guidelines is to mitigate the risk of fraudulent applications. Providing for detailed guidelines would enable people to understand how payments are attributed and calculated, and risks the possibility of fraudulent or enhanced applications designed to receive the maximum redress payment under the Scheme being submitted. The Scheme has a low evidentiary threshold and is based on a 'reasonable likelihood' test. These aspects of the Scheme are important and provide recognition and redress to survivors who may not be able or may not want to access damages through civil litigation.<sup>99</sup>

2.87 While several submitters were critical that the framework is not currently publicly available,<sup>100</sup> the Department explained that it will be declared as an instrument once the National Redress Bill passes and that it is currently being tested by communications experts based on 'developmental research...undertaken with survivors and their families and advocates'.<sup>101</sup>

#### *The amount of redress payment*

2.88 It was discussed in detail in the Commonwealth Redress Scheme Bills Report that the average anticipated payment to survivors is \$76 000 (before prior payments are taken into account). This proposed figure for the Scheme is \$11 000 more than the average proposed by the Royal Commission.<sup>102</sup>

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98 Explanatory Memorandum, p. 38.

99 Explanatory Memorandum, p. 38.

100 Anglicare Australia, *Submission 6*; Law Council of Australia, *Submission 18*; CECFW, *Submission 10*; Maurice Blackburn Lawyers, *Submission 29*; Shine Lawyers, *Submission 19*; Blue Knot Foundation, *Submission 12*; among others.

101 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 81, 84.

102 Commonwealth Redress Scheme Bills Report, pp. 57–67.

2.89 The National Redress Bill provides that the maximum amount of redress payment is \$150 000 in total, regardless of the number of responsible institutions.<sup>103</sup> This payment will go towards acknowledging and recognising the trauma and pain of most extreme survivor cases.<sup>104</sup> However, it is important to recognise that most recipients of redress will not be eligible for the maximum amount. The committee notes it is important that all official communications relating to the National Redress Scheme should focus on the average payment amount and not the maximum amount.

2.90 The Australian Government has agreed with the committee's previous recommendation that 'communication should reference the average payment amount rather than focusing on the maximum redress payment'.<sup>105</sup> This recommendation followed observations in the previous inquiry that focus on the maximum payment raises expectations of survivors which may unintentionally lead to further trauma.<sup>106</sup>

2.91 Many submitters continue to advocate for a maximum payment of \$200 000 for survivors,<sup>107</sup> while others reiterated an opinion that the Scheme should have a minimum or universal payment.<sup>108</sup>

2.92 The Australian Government explained, in its response to a recommendation from Australian Labor Party Senators that \$200 000 should be the maximum payment, that a \$150 000 maximum is supported by states and territories and that it:

...balances the need to provide a payment that provides a tangible means of recognising the wrongs suffered by survivors, while encouraging institutions to opt in to the Scheme.<sup>109</sup>

2.93 Submitters have also reiterated concerns about the indexation of prior payments, particularly as many survivors have poor financial literacy and may not understand why it is occurring, and because average and maximum payments are not subject to inflation over the lifetime of the Scheme.<sup>110</sup>

2.94 Although several of these submitters have recommended that indexation of prior payments be removed from the National Redress Bill, the submission from Australian Government Department noted:

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103 National Redress Bill, sub cl. 30(2).

104 Australian Government Departments, *Submission 1*, p. 12.

105 Government Response, p. 5.

106 Commonwealth Redress Scheme Bills Report, pp. 60, 92.

107 Australian Lawyers Alliance, *Submission 2*; VALS, *Submission 3*; CECFW, *Submission 10*; Bravehearts Foundation, *Submission 33*; Maurice Blackburn Lawyers, *Submission 29*; Alliance for Forgotten Australians, *Submission 13*; Shine Lawyers, *Submission 19*; Restorative Justice International, *Submission 5*; among others.

108 knowmore legal service, *Submission 20*; Alliance for Forgotten Australians, *Submission 13*; Maurice Blackburn Lawyers, *Submission 29*; CECFW, *Submission 10*.

109 Government Response, p. 8.

110 knowmore legal service, *Submission 20*; Alliance for Forgotten Australians, *Submission 13*; Maurice Blackburn Lawyers, *Submission 29*; CECFW, *Submission 10*.

In light of the recommendations by the Royal Commission that the Scheme should adjust relevant payments for inflation, it is likely that a number of key institutions would choose not to participate in the Scheme if relevant payments were not adjusted to account for inflation.<sup>111</sup>

*The amount of counselling and psychological component*

2.95 In the previous inquiry, many submitters raised concerns about how the counselling and psychological component of redress would be funded and operate.<sup>112</sup> The National Redress Bill now provides that the Operator must apply the assessment framework to work out the amount of counselling and psychological component for a survivor and that this amount must not be more than \$5000.<sup>113</sup>

2.96 While not specified in the National Redress Bill, the *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement) sets out three tiers of counselling and psychological component agreed by participating jurisdictions: \$1250, \$2500 or \$5000, based on the severity of the sexual abuse. This money will either go directly to the survivor to assist them in accessing services privately, or to the participating state or territory where the survivor lives. That state or territory will then have the responsibility to deliver counselling and psychological services in accordance with National Service Standards included in the Intergovernmental Agreement.<sup>114</sup>

2.97 The delivery of counselling and psychological services by states and territories, as well as the perceived adequacy of the counselling and psychological payment, will be discussed later in this chapter.

*Offers and acceptance of redress*

2.98 A major concern raised in the previous inquiry was that the timeframe for accepting an offer of redress, set at 'at least 90 days' in the Commonwealth Redress Bill, was inadequate time for a survivor to properly consider that offer,<sup>115</sup> and the committee made a recommendation that the government consider changing the period of acceptance from 90 days to six months.<sup>116</sup> The National Redress Bill has increased the acceptance period to 'at least 6 months, starting on the date of the offer'.<sup>117</sup>

2.99 Although some submitters have recommended that this acceptance period be extended further to 12 months,<sup>118</sup> the Government Response to the recommendation

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111 Australian Government Departments, *Submission 1*, p. 16.

112 Commonwealth Redress Scheme Bills Report, pp. 67–71.

113 National Redress Bill, cl. 31.

114 *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (Intergovernmental Agreement), p. 13.

115 Commonwealth Redress Scheme Bills Report, pp. 54–56.

116 Commonwealth Redress Scheme Bills Report, Recommendation 8.

117 National Redress Bill, cl. 40.

118 Maurice Blackburn Lawyers, *Submission 29*; knowmore legal service, *Submission 20*; Law Council of Australia, *Submission 18*.

from Australian Labor Party Senators on this matter in the previous inquiry notes that the Independent Advisory Council on redress, jurisdictions and institutions determined that 12 months was 'too long for operational realities of the Scheme' and that survivors will be able to request extensions in certain circumstances.<sup>119</sup>

2.100 The clause which sets out what an offer of redress must contain has also been updated to reflect changes to the counselling and psychological component of redress and the types and responsibilities of participating institutions.<sup>120</sup>

*Deeds of release and liability for institutions and officials*

2.101 Under clause 42 of the National Redress Bill, a person who accepts an offer of redress will be required to release responsible participating institutions, and associates and officials of that institution, from liability for the abuse for which redress is being provided.<sup>121</sup> This deed of release will prevent the survivor, either as an individual or within a group, from bringing or continuing any civil claim against those responsible institutions relating only to that abuse.<sup>122</sup>

2.102 When the bills for the Commonwealth Redress Scheme were first introduced, the then Minister for Social Services, the Hon. Christian Porter, MP, stated that:

The deed of release is perhaps the most important feature in terms of encouraging those critical institutions to opt in to the scheme and thus it is a mechanism by which we can ensure greater coverage for survivors as without it institutions may be exposed to paying compensation through civil litigation in addition to providing redress under the scheme and so might decline to opt in to the scheme. The release will never preclude any criminal liabilities of the institution or alleged perpetrator, nor provide release in relation to any other abuse outside the scope of the scheme.<sup>123</sup>

2.103 However, in the inquiry into those bills, the committee received evidence that there was confusion about the operation of the deed of release provisions and whether a deed of release sufficiently considers matters of future liability, particularly in relation to individuals, and abusers, associated with the responsible institution.<sup>124</sup>

2.104 Clause 42 in the National Redress Bill contains significant updates from the associated clauses in the Commonwealth Redress Bill and now clearly identifies that the following institutions, associates and individuals will be released from liability when an offer of redress is accepted:

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119 Government Response, p. 8.

120 National Redress Bill, cl. 39.

121 Explanatory Memorandum, p. 3.

122 National Redress Bill, cl. 42.

123 The Hon. Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12131.

124 Commonwealth Redress Scheme Bills Report, pp. 82–83.

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- (a) participating institutions determined by the Operator to be responsible for the abuse of the person;
  - (b) participating institutions determined by the Operator to be associates for those responsible institutions; and
  - (c) all officials of those responsible institutions and associates, but not an officer who is an abuser of the person.<sup>125</sup>

2.105 Furthermore, Clause 43 now specifies that a deed of release does not release or discharge any other institution or person from civil liability for the abuse and does not prevent the survivor from bringing or continuing civil proceedings against another institution or person in relation to that abuse.<sup>126</sup> Additionally, a released institution or official is also released from liability to make a contribution to another institution or person for damages payable after civil proceedings brought or continued by the survivor about their abuse; in such an instance, the damages payable to the survivor are reduced by the contribution amount for the released institution or official.<sup>127</sup>

### ***Reviews of determinations***

2.106 Survivors can apply for an internal review of the determination of their application for redress. The Explanatory Memorandum explains that:

The internal review processes will enable applicants to seek review of determinations on applications for redress. The person conducting the review must have had no involvement in the original decision and may affirm, vary or substitute the original decision.<sup>128</sup>

2.107 The committee examined review provisions in detail in its report into the Commonwealth Redress Scheme bills,<sup>129</sup> however there have been a number of small changes to these provisions in the National Redress Bill, including:

- (a) In line with the updated timeline for acceptance of a redress offer, the time by which an applicant can apply for an internal review of a determination has been extended to no longer than 6 months.<sup>130</sup>
- (b) Clarification that the review determination, if it varies or sets aside the original determination, is taken to be the determination made by the Operator,<sup>131</sup> and that if the original determination is upheld and the person had been given an offer of redress following that determination,

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125 National Redress Bill, cl. 42.

126 National Redress Bill, sub cl. 43(c).

127 National Redress Bill, sub cl. 43(d).

128 Explanatory Memorandum, p. 10.

129 Commonwealth Redress Scheme Bills Report, pp. 83–89.

130 National Redress Bill, cl. 34.

131 National Redress Bill, cl. 76.

the acceptance period for the original offer must then be extended by an additional 2 months.<sup>132</sup>

2.108 Some submitters to this inquiry echoed concerns from the previous inquiry about a lack of external review for the National Redress Scheme.<sup>133</sup> However, the Explanatory Memorandum states that:

This follows the recommendation of the Independent Advisory Council on redress, appointed by the Prime Minister, which included survivors of institutional abuse, representatives from support organisations, legal and psychological experts, Indigenous and disability experts, institutional interest groups and those with a background in government. The Independent Advisory Council considered that providing survivors with external review would be overly legalistic, time consuming, expensive and would risk further harm to survivors.<sup>134</sup>

### *New clauses for notifications to institutions*

2.109 In the previous inquiry, concerns were raised by submitters about the level of transparency in the decision-making process for redress applications and communication with participating institutions through that process.<sup>135</sup> The National Redress Bill introduces a number of new clauses which clarify the process of notifying participating institutions about the progress of a survivor's application through the Scheme. These notices are now to be sent to institutions when:

- an application has been withdrawn, if the Operator has requested documents relating to that application from the institution;<sup>136</sup>
- an application has been determined and the institution is specified in that determination as either responsible or not responsible for the abuse, or as the associate of the responsible institution, or as the funder of last resort;<sup>137</sup>
- an offer is made to a survivor and that offer refers to the institution<sup>138</sup> and if that offer is declined;<sup>139</sup> and

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132 National Redress Bill, cl. 78.

133 Australian Human Rights Commission, *Submission 23*; Law Council of Australia, *Submission 18*; Maurice Blackburn Lawyers, *Submission 29*.

134 Explanatory Memorandum, p. 10.

135 *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]*, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]*, Truth Justice and Healing Council, *Submission 79*, p. 13; Scouts Australia, *Submission 35*, p. 3; Anglican Church of Australia, Salvation Army and Uniting Church in Australia, *Submission 30*, p. 2.

136 National Redress Bill, cl. 23.

137 National Redress Bill, cl. 35.

138 National Redress Bill, cl. 41.

139 National Redress Bill, cl. 46.

- an application for review is made, withdrawn or determined in relation to a determination which specified the institution.<sup>140</sup>

2.110 These provisions are in addition to the existing provision which sets out that notice will be given to an institution specified in an offer of redress when that offer is accepted.<sup>141</sup>

2.111 Submitters have also recommended that an institution also be provided with a copy of a survivor's application when it is made.<sup>142</sup> The Department explained that while 'there will be core and basic information that needs to be confirmed' by institutions, those institutions will not be provided with the full application, nor will those institutions be able to reject an application.<sup>143</sup>

### **Receiving redress**

2.112 Survivors who accept an offer of redress may elect to receive one, two or all three components of redress which are offered. If that survivor elects to receive a component of redress, the Operator must pay the redress payment to the person and provide the person with access to, or a payment for, the counselling and psychological component of redress. The responsible institutions for the abuse must also take reasonable steps to provide the survivor with a direct personal response.<sup>144</sup>

2.113 The parts of the National Redress Bill relating to the redress payment remain mostly unchanged from the Commonwealth Redress Bill, except in relation to insurance, while the parts relating to the counselling and psychological component and direct personal responses have been subject to more significant updates. These are discussed below.

### ***Redress payments and institutions' insurance***

2.114 During the inquiry into the Commonwealth Redress Scheme bills, several organisations raised concerns about responsible institutions, those institutions' insurance policies and the capacity of the institutions to meet their obligation to pay redress to survivors.<sup>145</sup>

2.115 The National Redress Bill specifies that nothing in the bill prevents a liability insurance contract from treating a redress payment as being a payment for compensation or damages. The Explanatory Memorandum notes that:

This subclause facilitates the insurers of participating non-government institutions to treat redress payments as compensation or damages under liability contracts. This allows non-government institutions to be assisted by

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140 National Redress Bill, cl. 79.

141 National Redress Bill, cl. 44.

142 Queensland Law Society. In: Law Council of Australia, *Submission 18*, p. 16.

143 Ms Bennett, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 87.

144 National Redress Bill, cl. 47.

145 Commonwealth Redress Scheme Bills Report, pp. 28–29.

insurers to meet their liability for redress under existing insurance contracts.<sup>146</sup>

### ***Counselling and psychological component***

2.116 The counselling and psychological component of redress will be provided to a survivor either as access to services (if the survivor lives in a participating jurisdiction which has been declared a provider of counselling and psychological services) or as a counselling and psychological component payment.<sup>147</sup> The National Redress Bill also introduces new provisions which protect the counselling and psychological component payment and which mirror similar provisions relating to the redress payment.<sup>148</sup>

2.117 Participating jurisdictions may notify the Minister of their arrangements to deliver counselling and psychological services under the Scheme and request to become a declared provider of these services; and the Minister may make declarations, by notifiable instrument, about a jurisdiction becoming, or ceasing to be, a declared provider of these services. At 1 June 2018, the Australian Capital Territory, New South Wales and Victoria had all indicated that they would become providers under the Scheme.<sup>149</sup>

2.118 Submitters have expressed concern that the introduction of a monetary figure for the counselling and psychological component in the National Redress Bill, discussed earlier in this chapter, may result in counselling and psychological care provided through a participating jurisdiction being limited or capped.<sup>150</sup> At Senate Budget Estimates, the Department verified that there was no 'tally system' that required a counselling and psychological component payment made to a participating jurisdiction to be 'used up', and that a state will provide services to survivors irrespective of whether they received \$1250, \$2500, or \$5000. Instead, this money 'will go into...existing structures those states have' such as victim support units and public health networks.<sup>151</sup> Furthermore, the National Service Standards for counselling and psychological care, included in the Intergovernmental Agreement, provide that jurisdictions must provide a minimum of 20 hours of counselling and psychological care over the course of the survivor's lifetime.<sup>152</sup>

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146 Explanatory Memorandum, p. 47.

147 National Redress Bill, cl. 51.

148 National Redress Bill, cl. 52, 53. See also: National Redress Bill, cl. 49, 50.

149 Ms Bennett, Department of Social Services, *Proof Committee Hansard*, 1 June 2018, p. 82.

150 Alliance for Forgotten Australians, *Submission 13*; Relationships Australia, *Submission 15*; CECFW, *Submission 10*; Shine Lawyers, *Submission 19*; among others. A small number of submitters also continue to recommend the use of a 'Gold Card' for medical and counselling and psychological services for survivors: see Bravehearts Foundation, *Submission 33*, and Ms Bucello, *Submission 30*, for example.

151 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 82, 89.

152 Intergovernmental Agreement, p. 22.

2.119 The Australian Government agreed to the committee's recommendation from the previous inquiry that consideration be given to 'mechanisms to ensure ongoing counselling is available to survivors, should they need it'. The Government Response details other programs funded by the Department to support vulnerable people, such as Find and Connect, which is a targeted service for Forgotten Australians and former child migrants, Family and Relationship Services, and therapeutic and practical assistance to people who suffer from psychological trauma through the Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule.<sup>153</sup>

2.120 Furthermore, the Australian Government agreed to the committee's recommendation that affected family members are referred to existing counselling services in cases where it is necessary to meet the critical needs of the survivor. The Government Response reported that, while Redress Support Services are primarily for people making an application to the Scheme, where it is in the best interest of the survivor, support services may assist affected family members and that this could include referral to other services.<sup>154</sup>

### *Direct personal responses*

2.121 In the previous inquiry, many submitters raised concerns about the content, nature and delivery of direct personal responses to survivors.<sup>155</sup>

2.122 The National Redress Bill provides that the Minister will declare a direct personal response framework to guide the delivery of responses,<sup>156</sup> and more clearly sets out what constitutes a direct personal response from an organisation:

A direct response from a participating institution to a person is any one of the following:

- (a) an apology or a statement of acknowledgement or regret;
- (b) an acknowledgement of the impact of the abuse on the person;
- (c) an assurance as to the steps the institution has taken, or will take, to prevent abuse occurring again;
- (d) an opportunity for the person to meet with a senior official of the institution.<sup>157</sup>

2.123 The general principles guiding provision of direct personal responses, although reordered, have not changed in the National Redress Bill.<sup>158</sup>

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153 Government Response, p. 6.

154 Government Response, p. 6.

155 Commonwealth Redress Scheme Bills Report, pp. 71–73.

156 National Redress Bill, cl. 55.

157 National Redress Bill, cl. 54.

158 National Redress Bill, cl. 56.

***Redress support services***

2.124 In introducing the National Redress Bill, the Minister reported that:

Redress support services will be available to all applicants, including specialised support for Indigenous people, people with disability, and people from culturally and linguistically diverse backgrounds.

Support services will be available nationally, and use face-to-face, telephone, online and outreach services to ensure coverage.<sup>159</sup>

2.125 The committee's Commonwealth Redress Scheme Report examined in detail the types of support services available to survivors.<sup>160</sup>

2.126 The National Redress Bill adds additional functions, not included in the Commonwealth Redress Bill, which allow the Operator to arrange for support and assistance services for applicants and prospective applicants to the Scheme,<sup>161</sup> and to enter into, vary and administer contracts, agreements, deeds or understandings on behalf of the Commonwealth in relation to those support or assistance services.<sup>162</sup>

2.127 The Intergovernmental Agreement outlines the three types of specialist support services which will be provided under the Scheme:

- (a) Redress support services—trauma-informed and culturally appropriate community-based support services to provide assistance with engaging with the Scheme. This may include assistance in making an application, referrals to other services (such as counselling), and support during delivery of a direct personal response.
- (b) Financial supports—through existing Commonwealth-funded services with specific information for survivors applying to the Scheme.
- (c) Legal services—to be provided through a legal service provider engaged by the Commonwealth. Legal assistance may include advice on eligibility requirements and participating in the scheme or on the effects of accepting an offer and signing a civil liability release.<sup>163</sup>

2.128 At Senate Budget Estimates, the Department explained that many of the support services which were established and funded to support survivors during the Royal Commission will transition to new funding arrangements and continue providing supports to survivors with whom they already have connections with. However organisations with a conflict of interest, such as those who are participating institutions in the Scheme, will not be transitioned as Redress Support Services.<sup>164</sup>

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159 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, p. 5.

160 Commonwealth Redress Scheme Bills Report, pp. 78–81.

161 National Redress Bill, sub cl. 9(3).

162 National Redress Bill, sub cl. 9(4).

163 Intergovernmental Agreement, p. 13.

164 Department of Social Services, *Proof Committee Hansard*, 1 June 2018, pp. 87, 96.

2.129 The submission from Australian Government Departments further outlined the service delivery framework and infrastructure which has been, or is in the process of being, developed by the Department to support survivors, including communications materials, plain English policy explanations, dedicated case management and specialist redress staff, and a remote service strategy.<sup>165</sup>

## **Other relevant provisions in the National Redress Bill**

### *Independent Decision Makers*

2.130 The National Redress Bill provides that the Operator will appoint appropriately qualified Independent Decision Makers as assessors for the Scheme.<sup>166</sup> Some submitters have expressed doubts about the independence of these assessors and have questioned whether current or former officials of participating institutions may be appointed as Independent Decision Makers.<sup>167</sup>

2.131 The submission from Australian Government Departments indicated that state and territory governments have been asked to nominate candidates and confirmed that successful Independent Decision Makers will be required to:

- be independent from participating institutions 'to ensure fairness and transparency';
- declare any potential conflicts of interest, undertake a national police history check, a working with children check and a social media check;
- have knowledge and experience in social welfare, case management and/or the legal sector, and an ability to develop an understanding and knowledge of the survivor cohort and the history of the Royal Commission; and
- undertake comprehensive training to ensure they are trauma-informed.<sup>168</sup>

### *Nominees*

2.132 The National Redress Bill sets out provisions for the appointment of nominees to act on behalf of an applicant for the purposes of the Scheme.

2.133 The Commonwealth Redress Bill proposed two categories of nominees: correspondence nominees and payment nominees. However, some submitters raised concerns that the purpose and role of nominees in that bill were not clearly defined and that applicants would not have the ability to request a change to or revoke the appointment of their nominee, and the Department told the committee that it was reviewing those provisions.<sup>169</sup>

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165 Australian Government Departments, *Submission 1*, pp. 4–5.

166 National Redress Bill, cl. 185.

167 Maurice Blackburn Lawyers, *Submission 29*, p. 11; Relationships Australia, *Submission 15*, pp. 3–4.

168 Australian Government Departments, *Submission 1*, p. 6.

169 Commonwealth Redress Scheme Bills Report, pp. 53–54.

2.134 The National Redress Bill has replaced the previous nominee provisions and now proposes two new categories of nominees:

- (a) Assistance nominees—can do any act on behalf of an applicant in relation to the Scheme, except for making an application, accepting or declining an offer of redress, or any act for the purposes of the appointment, suspension or revocation of a nominee, or any act prescribed by rule.<sup>170</sup>
- (b) Legal nominees—must have powers under a law of the Commonwealth, or a state or territory, to make decisions of the applicant (i.e. have legal guardianship or power of attorney) and may do any act on behalf of the person for the purposes of the Scheme.<sup>171</sup>

2.135 Other provisions relating to the role, appointment and functions of nominees remain largely unchanged in the Redress Scheme; however an applicant may now request to have the appointment of an assistance nominee (but not a legal nominee) revoked.<sup>172</sup> Submitters were generally supportive of the updates to nominee provisions.<sup>173</sup>

#### ***Protected information under the Scheme***

2.136 The National Redress Bill introduces a small number of new provisions for the use of protected information under the Scheme.

2.137 Clause 97 provides for obtaining, recording, disclosing and using protected information for permitted purposes, such as disclosure to by an official to a government institution for law enforcement, for child safety and wellbeing, or for a purpose prescribed by the rules (i.e. compliance with current reportable conduct schemes); and disclosure by a person to a government institution if a law requires or permits that person to do so and the institution has functions for that purpose.<sup>174</sup>

2.138 Clauses 102 to 104 introduce provisions for the use and disclosure of assessment framework policy guidelines. The Explanatory Memorandum notes that these are necessary:

...to ensure that the assessment framework policy guidelines are appropriately protected from unauthorised use and disclosure, as the guidelines provide additional matters that the Operator may take into account when applying the assessment framework...which may contain graphic and triggering descriptions of abuse.<sup>175</sup>

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170 National Redress Bill, cl. 85.

171 National Redress Bill, cl. 86.

172 National Redress Bill, para. 82(1)(b).

173 People With Disability Australia, *Submission 28*; Relationships Australia, *Submission 15*; knowmore legal service, *Submission 20*.

174 Explanatory Memorandum, p. 66.

175 Explanatory Memorandum, pp. 68–69.

2.139 The National Redress Bill also introduces a clause which protects individuals who have disclosed protected information in good faith from civil or criminal proceedings, disciplinary actions, and from breaches of codes of conduct or professional ethics or standards.<sup>176</sup>

2.140 Additionally, the clause which relates to the disclosure of protected information to a court or tribunal has been updated in the National Redress Bill to reflect that a person must also not be required to disclose the assessment framework policy guidelines and to add a small number of exceptions which allow disclosures for the purpose of giving effect to the Act.<sup>177</sup> The Explanatory Memorandum notes the importance of this clause:

The objects of the Scheme are to provide an avenue for a payment that acknowledges a wrong that might otherwise be pursued through civil litigation. The Scheme would be undermined if it were able to be used as a form of discovery in court proceedings. It would also overload the administrative arm of the Scheme which would result in delays to the process of assessing applications under the Scheme.<sup>178</sup>

2.141 Submitters raised the following concerns in relation to the amended protected information provisions in the National Redress Bill:

- The Law Council of Australia noted some implications of protection information provisions on survivors, including the potential of self-incrimination.<sup>179</sup>
- The Office of the Australian Information Commission suggested that some protected information provisions in the bill could be narrowed and could benefit from further explanation of whether authorisations to disclose information are reasonable, necessary and proportionate to achieving a legitimate aim, in the context of the overall objectives of the Scheme.<sup>180</sup>

### ***Financial matters***

2.142 The National Redress Bill includes a small number of new provisions, and minor amendments to existing provisions, relating to financial matters such as liability for funding and debt recovery.

2.143 The financial provisions relating to liability for funding in the National Redress Bill are similar to those included in the Commonwealth Redress Bill, but include several significant amendments including:

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176 National Redress Bill, cl. 106.

177 National Redress Bill, cl. 105.

178 Explanatory Memorandum, p. 69.

179 Law Council of Australia, *Submission 18*, p. 8.

180 Office of the Australian Information Commissioner, *Submission 36*, p. 2.

- (a) The late payment penalty for institutions has been reduced by half from that in the Commonwealth Redress Bill.<sup>181</sup>
- (b) A new liability provision for corporate state or territory institutions has been introduced.<sup>182</sup>
- (c) New provisions relating to the Commonwealth's contribution to counselling and psychological services for jurisdictions which are declared providers have been introduced.<sup>183</sup>

2.144 There are also several minor amendments relating to the introduction of the counselling and psychological component payment and new institutions categories.

2.145 Internal review is not available where an amount of financial liability has been determined by the Operator. In the previous inquiry, some submitters had raised concerns about institutions' liability for funding redress under the Scheme and recommended that institutions have a right to request review of any determination of responsibility and financial liability.<sup>184</sup> However, the Explanatory Memorandum now clarifies that:

Internal review is not available for this decision. By agreeing to participate in the Scheme a participating institution accepts that the Operator will make determinations in relation to the redress payment and the counselling and psychological component they are required to pay. Each participating institution is aware from when they agree to participate in the Scheme that the maximum redress payment is capped at \$150,000 and the counselling and psychological component of redress may consist of either access to counselling and psychological services or a payment, depending on the participating State where the applicant lives at the time of their application.<sup>185</sup>

2.146 The provisions relating to debt recovery have also been subject mostly to minor text changes since the Commonwealth Redress Bill, but include one new clause relating to the repayment of any recovered amounts to participating organisations where appropriate.<sup>186</sup>

### ***Funders of last resort***

2.147 In the committee's Commonwealth Redress Scheme Bills Report, it was noted that funder of last resort provisions would be updated for a National Redress Scheme

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181 National Redress Bill, cl. 154. See also: Commonwealth Redress Bill, cl. 60.

182 National Redress Bill, cl. 158.

183 National Redress Bill, cl. 158, 159.

184 Commonwealth Redress Scheme Bills Report, p. 85.

185 Explanatory Memorandum, p. 90.

186 National Redress Bill, cl. 172.

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and that there was no constitutional basis for the Commonwealth being a universal funder of last resort.<sup>187</sup>

2.148 The funders of last resort provisions in the National Redress Bill now reflect the national nature of the Scheme and clearly set out where a participating government institution acts as a funder of last resort for a defunct institution. This part of the National Redress Bill provides that:

- (a) A participating government institution is a funder of last resort for a defunct institution if it determined to be so.<sup>188</sup>
- (b) A defunct non-government institution, not participating in the Scheme, is listed, varied or revoked for one or more participating jurisdictions, by notifiable instrument by the Minister.<sup>189</sup>
- (c) Where a participating government institution is equally responsible with a defunct institution for the abuse of a survivor and is the funder of last resort for the defunct institution, that government institution is liable to pay for all aspects of redress and administration payable by the defunct institution.<sup>190</sup>

2.149 When introducing the National Redress Bill, the Minister explained the purpose of the funder of last resort policy as included in the bill:

...is to pick up shortfalls in funding where an institution no longer exists. It is not intended to pick up liability for institutions that have the capacity to opt in and choose not to.<sup>191</sup>

### ***Reporting on and reviewing the operation of the Scheme***

2.150 One of the recommendations made by this committee in its report into the Commonwealth Redress Scheme bills related to the types of information to be included in the annual report on the operation of the Scheme. The Government Response agreed with the committee's recommendation and noted that the requirements of the annual report would be specified in the rules for the National Redress Bill.<sup>192</sup>

2.151 The National Redress Bill reflects that the annual reporting requirements will be prescribed by rule.<sup>193</sup> In the previous inquiry, the committee had recommended that the annual report on the operation of the Scheme include detailed data 'to understand the experiences of people going through the Redress Scheme and to provide a basis of

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187 Commonwealth Redress Scheme Bills Report, pp. 22–23.

188 National Redress Bill, cl. 163.

189 National Redress Bill, cl. 164.

190 National Redress Bill, cl. 165.

191 Minister for Social Services, *House of Representatives Hansard*, 10 May 2018, pp. 4–5.

192 Government Response, p. 7.

193 National Redress Bill, cl. 187.

any necessary refinements to the Scheme'. The Australian Government agreed with this recommendation and noted that matters for annual report prescribed by rule will include:

- the number of people who applied for redress in the year;
- the number of people who were determined to be eligible for redress in the year; and
- details relating to redress payments that were paid in the year.<sup>194</sup>

2.152 Furthermore, the provisions relating to reviews of the scheme have been significantly amended to provide for both second anniversary and eighth anniversary reviews.<sup>195</sup> The second anniversary review must include consideration of many aspects raised and suggested by submitters in the previous inquiry, such as the extent to which the scheme is accessed and payments made under the Scheme.<sup>196</sup> The submission from Australian Government Departments noted that there is a specific commitment to review the child applicant policy and the processes regarding applications from people in gaol and applicants with serious criminal convictions, as well as the impact of the Scheme's design on Indigenous survivors.<sup>197</sup>

### **National Consequential Bill**

2.153 The National Consequential Bill contains two new schedules which were not in the Commonwealth Consequential Bill.

2.154 Schedule 4 makes provisions relating to the disclosure and protection of information under the National Redress Scheme. It inserts a new item into the *Freedom of Information Act 1982* which makes protected information under the Scheme not required to be disclosed under Freedom of Information; and inserts two paragraphs in the *Social Security (Administration) Act 1999* to allow a person to obtain, record, disclose or otherwise use protected information if it is done for the purposes of the Scheme. The Explanatory Memorandum notes that exempting information from Freedom of Information disclosure:

...supports the trauma informed approach of the Scheme, ensuring that survivors' information is adequately protected. It also protects institutions' information against fraudulent applications made to the Scheme. The exemption protects the integrity of the operation of the Scheme, removes any uncertainty about the operation of the information publication scheme regarding the assessment policy guidelines, and makes it transparent that protected information under the Scheme is exempt under the Freedom of Information Act.<sup>198</sup>

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194 Government Response, p. 7.

195 National Redress Bill, cl. 192.

196 Commonwealth Redress Scheme Bills Report, pp. 89–90.

197 Australian Government Departments, *Submission 1*, pp. 8–9.

198 Explanatory Memorandum, p. 112.

2.155 Schedule 5 inserts a new item into the *Age Discrimination Act 2004* which will exempt the National Redress Scheme from unlawful age discrimination and allow the Scheme to apply an age limit. The Explanatory Memorandum explains that:

Applying an age limit to the Scheme addresses the risk of children signing away their future civil rights when they may have limited capacity to understand the implications, and when the impact of the abuse may not fully be realised, and reduces the risk of monetary payments to minors being misused. The Scheme's support services will be available to child survivors who must wait until they turn 18 years to receive redress under the Scheme.<sup>199</sup>

### **Other related matters**

2.156 Other matters not strictly contained in the National Redress Bill but related to the operation of the National Redress Scheme were raised by submitters.

2.157 Some submitters to the inquiry recommended that the Independent Advisory Council on Redress be maintained, or otherwise included directly in the National Redress Bill.<sup>200</sup> The committee notes that the Intergovernmental Agreement provides that the Commonwealth Minister responsible for redress may reconvene the council for particular advisory purposes at any time in the future.<sup>201</sup>

2.158 The Queensland Law Society proposed that the provisions relating to liability, representatives of unincorporated institutions, and management committees be clarified, noting:

While in practice this may be of little consequence as the Operator could no doubt simply look to the representative (and the representative look to the unincorporated association), it seems to be in the interests of clarity in the law for the Bill to indicate where the liability rests.<sup>202</sup>

2.159 The National Social Security Rights Network questioned whether, despite the provisions in the National Redress Bill and National Consequential Bill, a redress payment could be subject to an asset test for a survivor's social security entitlements, as 'there are no provisions...that propose payments under the redress scheme be exempt from social security asset assessments'.<sup>203</sup>

### **Committee view**

2.160 The committee firmly believes that the introduction of a National Redress Scheme for Survivors of Institutional Child Sexual Abuse is a vital step in addressing cases of historical child sexual abuse.

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199 Explanatory Memorandum, p. 112.

200 Relationships Australia, *Submission 15*, p. 3; SASS, *Submission 11*, p. 3.

201 Intergovernmental Agreement, p. 9.

202 Queensland Law Society, *Submission 25*, pp. 1–2.

203 National Social Security Rights Network, *Submission 22*, [p. 2].

2.161 The committee is strongly supportive of the objects of the National Redress Scheme to recognise and alleviate the impact of past institutional child sexual abuse and to provide justice for the survivors of that abuse.

2.162 The committee is pleased to see that all states and territories have agreed to participate in the National Redress Scheme, making the Scheme truly national. The committee recognises that several non-government organisations have already announced their participation and encourages non-government organisations in all jurisdictions to join the National Redress Scheme so that all eligible survivors are able to receive redress.

2.163 The committee recognises the significant work by territory, state and Commonwealth governments in negotiating and developing the National Redress Scheme over the past 18 months. It acknowledges the considerable efforts made by these governments to address many of the concerns raised by survivors and institutions about the implementation and operation of a Scheme, as well as important amendments made to the Scheme since the introduction of the Commonwealth Redress Scheme bills in 2017.

2.164 The committee also recognises that the majority of recommendations from the committee's previous inquiry, including those in minority reports, have been accepted in full or in part in the development of the National Redress Scheme bills.

2.165 The committee further recognises that any changes made to the National Redress Bill would require renegotiation with each of the participating states, jeopardising the Scheme's start date of 1 July 2018.

### **Recommendation 1**

**2.166 The committee recommends these bills be passed.**

**Senator Slade Brockman**

**Chair**