



Australian Government

Australian Government response to the
Senate Community Affairs Legislation Committee report:

Inquiry into the 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]

May 2018

Introduction

The Australian Government welcomes the Senate Community Affairs Legislation Committee's (the Committee) report to the Inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017.

On 26 October 2017, the former Minister for Social Services, the Hon Christian Porter MP, introduced both bills in the House of Representatives. On 30 November 2017, the Senate referred the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 to the Senate Community Affairs Legislation Committee for inquiry and report.

The Committee received 92 submissions and held two public hearings in February and March 2018. The Australian Government Departments of Social Services (DSS) and Human Services (DHS) appeared at the Inquiry's hearing in Canberra on 16 February 2018, and DSS also appeared at the Inquiry's hearing in Melbourne on 6 March 2018.

The bills establish a Commonwealth Redress Scheme for survivors of institutional child sexual abuse. This was a first step in acknowledging that child sexual abuse suffered by children in Commonwealth institutional settings was wrong and should not have happened. The bills were drafted to ensure a Commonwealth Scheme could be implemented in the event state and territory governments and non-government institutions did not opt in to a National Scheme in time for commencement on 1 July 2018.

The development of the Scheme and the legislation were strongly informed by the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The bills were also informed by the work of the Independent Advisory Council, which provided expert advice into policy and implementation considerations. The Independent Advisory Council includes survivors of institutional child sexual abuse, representatives from support organisations, as well as legal and psychological experts, Indigenous and disability experts, institutional interest groups and those with a background in government.

The best outcome for survivors of child sexual abuse, however, is for the redress scheme to be national in its coverage, with maximum participation from all responsible institutions in all jurisdictions. Data from the Royal Commission showed that the sexual abuse of children has occurred in over 4,000 institutions across Australia, indicating the importance and breadth of a National Redress Scheme.

The Australian Government does not have constitutional power to legislate for a National Redress Scheme. A referral of power by the states to the Commonwealth under section 51(xxxvii) of the Constitution is the most legally sound way to implement a nationally consistent scheme and maximize participation.

Since the introduction of the Commonwealth bills, detailed negotiations with states and non-government institutions have continued to encourage them to opt in to the Redress Scheme in order to ensure the maximum coverage for survivors across Australia.

On 9 March 2018, the New South Wales and Victorian governments announced that they will join the Scheme and provide redress to people who were sexually abused as children in those states in places like state operated schools and out of home care.

On 19 March 2018, the Australian Capital Territory government announced it will join the Scheme. On 30 April 2018, the Queensland government also announced their participation in the Scheme. This will allow non-government institutions in these jurisdictions, such as churches and charities, also to join the Scheme.

Now that the Australian Government has a commitment from these four jurisdictions to join the Scheme, the Commonwealth will progress a bill to establish a National Scheme and will no longer proceed with the Commonwealth bills.

In order for the Government to pass a bill to establish a National Scheme in time for a 1 July 2018 commencement date, a State must introduce and pass legislation referring their powers to the Commonwealth. Once the referral legislation has passed, the Commonwealth Parliament can then pass relevant national legislation.

The Australian Government is continuing its negotiations with the other states and territories with the hope the others will opt in soon.

Officials from DSS provided evidence during the Committee's public hearings on the progress of the negotiations with jurisdictions, and explained the Government's preference to proceed with a National Redress Scheme.

The Commonwealth bills will form the basis of the legislation to establish a National Scheme, with further enhancements following further consultations with the states and territories and non-government institutions. The recommendations of the Senate Community Affairs Legislation Committee report have also been taken into consideration in the development of the National Scheme.

Inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017

Recommendations made by the Committee

1. The Committee recommends 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, as outlined in chapter two.

Partially agree

The Australian Government partially agrees with this recommendation. The two-year deadline for institutions to opt in to the Scheme 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.

On 9 March 2018, the New South Wales and Victorian governments announced they will join the Scheme, followed by the Australian Capital Territory government on 19 March 2018, and the Queensland government on 30 April 2018.

The Australian Government is encouraging the remaining states, and non-government institutions (NGIs), to opt into the Scheme.

If the remaining states do not refer their powers to the Commonwealth to join the Scheme upon its anticipated commencement of 1 July 2018, NGIs will be afforded less time to structure and prepare themselves to enable their participation before the two-year deadline to opt in. Further reducing this deadline may disincentivise their participation.

2. The Committee recommends 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.

Agree

The Government agrees with this this recommendation. The Government and the Department of Social Services have consulted with key NGIs and representatives of survivor groups on the Independent Advisory Council in the development of the policy underpinning the National Bill and Rules.

The Independent Advisory Council was reconvened on 7 May 2018 to consider the National Bill and Rules.

An Explanatory Statement will also accompany the Rules when they are made publicly available.

3. The Committee recommends the Department should actively engage with survivors' representative groups to provide clear communications for survivors, the community and media on how decisions will be made and matters that will be taken into account in making those decisions. Where necessary communication should reference the average payment amount rather than focusing on the maximum redress payment.

Agree

The Government agrees with this recommendation. The Department of Social Services is working closely with the Department of Human Services to ensure a coordinated approach to communication and stakeholder engagement. The Government will ensure appropriate information is delivered to stakeholders, people who have experienced institutional child sexual abuse, media and the community.

The communication approach will be informed by extensive research with people who have experienced child sexual abuse in institutions, their friends and family, support services and advocates, and the general public.

The experience of applicants is paramount to the communication approach. All materials will be developed with careful consideration of the sensitivity of the subject matter and the need to avoid triggering further trauma. All communication will take a trauma-informed approach.

The monetary payment assessment framework that sets out the method and matters to take into account when working out the amount of redress payment will be a non-disallowable legislative instrument and therefore will be publicly available after the passage of the National Bill.

The Government agrees with the Committee's recommendation that where necessary, communication should reference the average payment amount rather than focusing on the maximum redress payment. This messaging will be incorporated into the Government's communication approach in relation to the National Redress Scheme.

4. The Committee recommends that, in further developing the operational assessment elements of the Redress Scheme, the Department take into consideration the long-term impact of non-sexual abuse on survivors, including the needs of Aboriginal and Torres Strait Islander survivors.

Agree

The Government agrees with this recommendation. The Scheme recognises that many survivors experienced non-sexual abuse in conjunction with sexual abuse as children.

In recognition of this additional harm, the monetary assessment payment framework will include a component for non-sexual abuse that occurred in relation to the sexual abuse.

5. The Committee recommends the Government consider mechanisms to ensure ongoing counselling is available to survivors, should they need it.

Agree

The Government agrees with this recommendation. The Australian Government is working closely with state and territory governments to finalise the Scheme's counselling arrangements.

In addition to counselling services provided under the Scheme, the Department of Social Services, funds a range of programs to support vulnerable people. For example, the Department funds Find and Connect, which is a targeted service for Forgotten Australians and Former Child Migrants, some of whom may have experienced institutional child sexual abuse. In addition, the Department funds Family and Relationship Services, which are whole of family focused early intervention and prevention services that provide assistance with family relationship issues at all stages.

The Government also provides 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 (Better Access).

6. The Committee recommends the Redress Support Service incorporate referral of affected family members, in cases where it is necessary to meet the critical needs of the survivor, to existing counselling services.

Agree

The Government agrees with this this recommendation. The Government has committed \$52.1 million over three years to 30 June 2021 to provide support services to survivors who are applying for redress. Support Services are primarily for people making an application of redress through the Scheme. However, where it is in the best interest of the survivor, support services may assist affected family members. This could include referral to other services.

7. The Committee recommends that in developing the minimum timeframes in the Redress Scheme, for the provision of documents or answers to an offer of redress, 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.

Agree

The Government agrees with this recommendation. The National Redress Scheme will provide the Scheme Operator (the Secretary of the Department of Social Services) with the discretion to extend the production period for the provision of information, and the acceptance period for offers of redress, where there is a reasonable excuse.

The support services funded through the Scheme will be available to all survivors, 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.

8. The Committee recommends that the government consider changing the period of acceptance for redress from three months to six months, including provision for survivors to request an extension to this acceptance period where circumstances warrant.

Agree

The Government agrees with this recommendation. It is proposed the National Redress Scheme will have an acceptance period for offers of redress of six months. Survivors will also be able to request an extension if there are exceptional circumstances to justify the extension.

9. The Committee recommends that 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.

Agree

The Government agrees with this recommendation. In finalising the position on access to the Scheme by survivors with serious criminal convictions, the Government will balance the need to ensure the Scheme does not suffer reputational damage should a survivor with a particularly notorious history of violent or heinous offending receive a redress payment, with the value of the Scheme as a tool for the rehabilitation of offender.

Consideration will be given to the nature of the offence, length of sentence, length of time since the person committed the offence, and any rehabilitation of the person.

10. The committee recommends that the annual report to Parliament on the operation of the Redress Scheme should include detailed data to understand the experiences of people going through the Redress Scheme and to provide a basis of any necessary refinements to the Scheme, including details of the number of applications received, average processing times and average payments offered.

Agree

The Government agrees with this recommendation. The requirements of the Annual Report will be specified in the Rules for the National Bill. It is intended that the matters prescribed in the Rules will include details such as 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.

11. The Committee recommends these bills be passed.

Agree

The Government agrees with this recommendation, although notes that as New South Wales, Victoria, the Australian Capital Territory, and Queensland have opted in to the National Scheme, this Bill will be replaced with a National Bill.

Recommendations made by Labor Senators

1. The Government should immediately comply with all requests for further information from all states, territories and institutions to facilitate their opting in to the Redress Scheme.

Agree

The Government agrees with this recommendation. The Australian Government has consulted extensively with state and territory governments, and NGIs on the development of the National Bill and the Rules to facilitate their opting in to the Scheme. The Commonwealth also continues to hold bilateral discussions with state governments and NGIs to address their specific concerns and questions.

2. The Bill be amended to restore the maximum cap for monetary payments to \$200,000, as recommended by the Royal Commission.

Not agreed

The Government does not agree with this recommendation. A maximum redress payment of \$150,000 will be available under the National Redress Scheme, a position which is supported by states and territories. This amount 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. In addition, the average payment under the National Scheme is expected to be around \$11,000 higher than under that proposed by the Royal Commission.

3. The Bill be amended to specify that Survivors be given a year to decide whether or not to accept an Offer of Redress, as recommended by the Royal Commission.

Partially agree

The Government partially agrees with this recommendation. Consultations with the Independent Advisory Council, jurisdictions and institutions determined that 12 months was too long for operational realities of the Scheme. However, the Government has decided to extend the acceptance period for offers of redress from three to six months to address the concerns of submitters and witnesses to the Inquiry. The National Bill will reflect this change. Survivors will also be able to request an extension in certain circumstances.

4. The Bill be amended to specify that there will be adequate access to culturally competent services to assist Survivors interact with the Redress Scheme in all areas of Australia.

Agree

The Government agrees with this recommendation and has committed \$52.1 million over three years to 30 June 2021 to provide support services to assist survivors of institutional child sexual abuse to engage with the Scheme. Support services will be available to all survivors, 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.

5. The Bill be amended to specify that counselling offered through redress packages be available for the life of the Survivor, as recommended by the Royal Commission.

Agreed

The Government agrees with this recommendation. The Australian Government is working closely with state and territory governments to finalise the Scheme's counselling arrangements.

In addition to counselling services provided under the Scheme, the Department of Social Services, funds a range of programs to support vulnerable people. For example, the Department funds Find and Connect, which is a targeted service for Forgotten Australians and Former Child Migrants, some of whom may have experienced institutional child sexual abuse. In addition, the Department funds Family and Relationship Services, which are whole of family focused early intervention and prevention services that provide assistance with family relationship issues at all stages.

The Government also provides 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 (Better Access).

6. All Survivors of institutional child sex abuse be eligible for redress, including those who do not live in Australia and those with criminal convictions, as recommended by the Royal Commission.

Partially agree

The Government partially agrees with this recommendation. 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. Verification of identity documents for non-citizens and non-permanent residents would be very difficult and could result in organised overseas groups lodging large numbers of false claims in attempts to defraud the Scheme.

In finalising the position on access to the Scheme by survivors with serious criminal convictions, the Government will balance the need to ensure the Scheme does not suffer reputational damage should a survivor with a particularly notorious history of violent or heinous offending receive a redress payment, with the value of the Scheme as a tool for the rehabilitation of offenders. The Government has worked very closely with state and territory Attorneys-General to develop a position that maintains the integrity of the Scheme while not excluding those survivors with a criminal conviction.

7. The Bill be amended to reflect the funder of last resort provisions that were recommended by the Royal Commission.

Not agreed

The Government does not agree with this recommendation. The policy contained in the National Bill is that a government institution will be funder of last resort where they are:

- equally responsible with a defunct institution (meaning it no longer exists); and

- the government institution has agreed to pick up the other equal share of redress.

This is a necessary departure from the Royal Commission's recommendations, for if governments were to be funder in all circumstances, it would create a serious disincentive for financially viable institutions to opt in to the Scheme, or for those institutions taking responsibility for their historical institutions.

The Royal Commission's recommendation was made in the context of a national scheme with maximum participation, such that 'shortfalls' in funding would be somewhat limited to small non-existent organisations with no successors or where they were not part of a larger group. This is not the case within the parameters of the existing Scheme, where state and non-government institutions must voluntarily opt into the Scheme.

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.

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| <p>8. The rules regarding the number of applications which Survivors are permitted to submit to the Scheme be reconsidered by Government, with a view to balancing the need to avoid the retraumatising of Survivors, with the need to provide fair access to the Redress Scheme, which is cognizant of potential time pressures faced by Survivors.</p> |
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Not agreed

The Government does not agree with this recommendation. Applications for redress under the Scheme are limited to one application per survivor, whether or not that person suffered sexual abuse in more than one institution. This will ensure that survivors will only need to complete one form to cover all instances of child sexual abuse experienced in institutional contexts during their childhood.

As 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.

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| <p>9. Further consideration be given to the interaction of child applicants with the redress scheme, and any safeguards that this cohort may require.</p> |
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Agree

The Government agrees with this recommendation. The Australian Government is working closely with state and territory governments to finalise the National Scheme's arrangements for child applicants. In finalising these arrangements, it will be important to balance the appropriateness of children accessing support and receiving a monetary payment, with the risks associated with asking a child to sign away all their future civil rights when they may not realise the implications, and when the full impact of the abuse may not have been fully realised.

10. The Assessment Matrix should be released by the Government, prior to the passage of legislation.

Partially agree

The Government partially agrees with this recommendation. The monetary assessment payment framework will be a non-disallowable legislative instrument and therefore will be publicly available after the passage of the National Bill.

Recommendations made by the Australian Greens Senators

1. The Australian Greens strongly support the establishment of a national redress scheme for survivors of institutional child sexual abuse. We need to get the Redress Scheme settings right to ensure that the Redress Scheme is one based on fairness, equity and justice that is survivor focused and trauma and culturally informed. Accordingly, the Australian Greens recommend the Redress Bill and related bill not be passed in their current form and urge the Government to address the concerns raised by submitters and witnesses, some of which are outlined above, in the future national scheme bill.

Agree

The Government agrees with this recommendation. The Government will not proceed with the passage of the Commonwealth Bill and will introduce the National Bill once a state government has introduced referral legislation. The National Bill has been revised to address concerns raised by state and territory governments, institutions and other stakeholders.