Australian Government
Department of Social Services

Kathryn Campbell CSC
Secretary

Ref: MS18-000881

Ms Jeanette Radcliffe
Committee Secretary
Senate Standing Committee on Community Affairs
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Parliament House
CANBERRA ACT 2600

Dear Ms Radcliffe

The Department of Social Services (the department) welcomes the opportunity to make a written submission to the Senate Community Affairs Legislation Committee on the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018.

Attachment A provides a consolidated Commonwealth Government Department submission.

Thank you again for the opportunity to make a written submission.

Yours sincerely

Kathryn Campbell
30 May 2018

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Senate Community Affairs Legislation Committee Submission

Inquiry into the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill.

1. Introduction

On 26 October 2017, the former Minister for Social Services, the Hon. Christian Porter MP, introduced 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 (Commonwealth Bills) in the House of Representatives.

On 30 November 2017, the Senate referred the Commonwealth Bills to the Senate Community Affairs Legislation Committee (the Committee) for inquiry and report. The Committee reported on their inquiry on 28 March 2018. The Australian Government tabled its response to the Committee's report on 29 May 2018.

The Commonwealth Bills were introduced as a first step in acknowledging that child sexual abuse suffered by children in Commonwealth institutional settings was wrong, and should not have happened. The Commonwealth Bills were drafted to demonstrate the Australian Government was committed to a redress scheme, and to encourage state and territory governments and non-government institutions to join a national redress scheme. The Commonwealth Bills also ensured that a redress scheme for people who experienced child sexual abuse in Commonwealth run institutions could be implemented in the event state and territory governments and non-government institutions did not announce their participation in a national redress scheme in time for a 1 July 2018 commencement date.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) recommended that the best outcome for survivors of institutional child sexual abuse is for a 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. Accordingly, the Australian Government has always been working towards a national scheme with participation from all state and territory governments, and non-government institutions.

Since the introduction of the Commonwealth Bills, detailed negotiations with state and territory governments have continued, to encourage them to join the National Redress Scheme for people who have experienced institutional child sexual abuse (the Scheme), in order to maximise the coverage for survivors across Australia. Once state and territory governments are participating in the Scheme, this allows non-government institutions, such as churches and charities, to participate in those jurisdictions.

On 9 March 2018, the New South Wales (NSW) and Victorian governments announced that they would join the Scheme and provide redress to people who were sexually abused as children in government institutions 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 would join the Scheme. On 30 April 2018, the Queensland government announced its participation. On 22 May 2018, the Tasmanian government announced it would join the Scheme. On 28 May 2018, both the Northern Territory and South Australian governments announced that they would sign up to the Scheme.

As the Australian Government has had a commitment from jurisdictions to join the Scheme, the focus shifted from the Commonwealth Bills to progressing legislation that will establish a national scheme. Positive negotiations are continuing with the Western Australian government. The Australian Government is also continuing discussions with non-government institutions, such as churches and charities, to secure their participation in the Scheme.

The Australian Government's power to legislate for the National Scheme is contingent on at least one state parliament enacting legislation to refer powers to the Commonwealth prior to the Commonwealth Parliament passing the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (the National Bill) and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (the related Bill).

NSW and Victoria introduced referral legislation into their legislative assemblies on 1 May 2018 and 8 May 2018 respectively. NSW passed their referral legislation on 16 May 2018. The NSW referral legislation received Assent on 23 May 2018. On 24 May 2018, the Victoria referral legislation was passed by the Victorian Legislative Assembly but still needs to go to the Victorian Legislative Council and to receive Assent before it comes into force.

The state referral legislation that NSW and the Victorian Legislative Assembly has passed includes the National Bill as a Schedule. The State text reference relies on the National Bill as set out in the Schedule. The NSW and Victorian governments, along with all other state and territory governments, were consulted comprehensively on the development of the National Bill and its underlying policies. Any changes made to the National Bill would mean the National Bill would not align with the Schedule included in state referral Acts. This would render the referral ineffective and mean that the National Bill could not operate in States which had passed their referral Bills before the changes were made to the National Bill. Any amendments to the National Bill in the Commonwealth Parliament would require the negotiation, reintroduction and passage of a state referral Bill through any state Parliament that has passed its legislation, thereby delaying the 1 July 2018 Scheme start date. Any such delay would represent an adverse outcome for elderly individuals who experienced institutional child sexual abuse.

Changes to the National Bill would also require the Australian Government to renegotiate with all state and territory governments, as their agreement to participate in the Scheme is contingent on their agreement to the policies of the Scheme and the drafting of the National Bill.

This submission demonstrates the work undertaken since the Senate Community Affairs Legislation Committee Report 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, and highlights the major updates to the National Bill and the Scheme since that report.

2. The Committee's inquiry into Commonwealth Bills

The Australian Government has fully considered the Committee's report of its inquiry into the Commonwealth Bills. The Committee made eleven recommendations to the Australian Government. In the course of developing the National Bill, the Government has agreed ten of those recommendations, and partially agreed one.

Labor Senators made a further ten recommendations. The Government has agreed four of those recommendations and partially agreed three. The Australian Greens made one recommendation, which the Government has adopted.

The following table sets out the Committee's eleven recommendations and the Government's response.

Committee Recommendation	**Government Response**
1. 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
2. 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
3. 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
4. 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
5. The Government consider mechanisms to ensure ongoing counselling is available to survivors, should they need it.	Agree
6. 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
7. 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
8. 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

9. 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
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
11. The Committee recommends these bills be passed.	Agree

Of particular interest to the Committee, the Australian Government has agreed the Committee's recommendation two that the Department of Social Services (DSS) consult with survivors' representative groups on the rules of the Redress Scheme, and ensure information on rules is communicated as it becomes available.

While the Rules cannot be tabled before the National Bill receives Royal Assent, DSS has developed a fact sheet explaining how the rule making powers in the National Bill are intended to be exercised. A copy of this fact sheet is at Attachment A. An Explanatory Statement will also accompany the Rules when they are made publicly available.

3. Implementation readiness

Subject to the passage of legislation, DSS is confident that the implementation of service delivery elements are on track to implement the Scheme on 1 July 2018. In preparation for Scheme commencement on 1 July, DSS is working closely with the Department of Human Services (DHS), who are responsible for service delivery, and with relevant government and non-government institutions. The Scheme design has been survivor focused and trauma-informed.

To ensure that the Government is ready to deliver the Scheme on 1 July, DSS and DHS have been developing the service delivery framework in close consultation with survivors' representative groups and advocates. For DSS, this includes:

- **Independent Decision Makers:** The Department will undertake the selection and vetting of Independent Decision Makers, followed by appointment and training.
- **Training:** On-board training for institutions is being developed by the Department, with practical information about an institutions interaction with the Scheme to support an application outcome (requests for information through to provision of direct personal responses, and administrative arrangements).
- **Community-based Support Services:** The Department is engaging with royal commission support services on a fortnightly basis regarding the Scheme. The Department has scheduled two full day training sessions to assist these services support survivors engaging with the Scheme. Funding for the Royal Commission Community-based Support Services has been extended to 31 December 2018, ahead of a grants application process for ongoing Redress Support Services to commence from 1 January 2019.
- **Communications:** A new dedicated website is being developed to replace the DSS information webpage. DSS will maintain and continue a subscription service to

provide regular updates regarding the Scheme. DSS is also developing stakeholder information packs.

- **Media Training:** The Department is developing media training material and will engage with major media outlets on how to sensitively report on the Scheme without retraumatising survivors.
- **Redress Website:** The Digital Transformation Agency has approved and registered the dedicated redress website URL. The website is undergoing user testing with content to be finalised shortly.
- **Institutional database:** A searchable database is to be available on the Redress website from 1 July that will help applicants identify if an institution has joined the Scheme (this is an important feature identified by survivor groups).
- **Policy guide:** A publicly available, plain English explanation of the Redress legislation will be uploaded to http://guides.dss.gov.au/guide-social-security-law when the Scheme commences.

DHS has also been developing important infrastructure for the Scheme, including:

- **Application form:** DHS is developing both paper-based and online forms in consultation with, and user tested by, survivors and support services.
- **Application information guide and scheme letters:** DHS has almost finalised the information guide and scheme letters.
- **Dedicated case management system:** A dedicated case management system has been developed by DHS to record and process all Redress applications.
- **Institutional Portal:** DHS is creating the Institutional Portal to facilitate a secure environment for the Scheme to request information (regarding applications) from participating institutions.
- **Redress Team:** DHS has recruited the Redress Team and will begin training soon. The Team will be ready to commence answering telephone calls and assess applications from 1 July 2018.
- **Telephone Helpline Scripts:** Telephone helpline scripts will be drafted and user-tested before 1 July 2018.
- **Remote Service Strategy:** Consultations with state governments and service providers have commenced, to help inform the development of a remote service strategy.
- **Management information:** DHS is developing scheme data collection and reporting capability.

4. Major policy updates since the Commonwealth Bills

Extensive consultations have occurred between Australian government officials, their state and territory counterparts and non-government institutions to finalise policy parameters. Major updates to the Scheme since the Commonwealth Bills were introduced into the Australian Parliament are described below.

4.1 Counselling and psychological services

The Scheme will provide access to counselling and psychological care (CPC) to eligible survivors as one of the three components of redress.

Survivors will access CPC under the Scheme in one of two ways:

- Where a jurisdiction has elected to provide a lump sum payment, the survivor will receive a tiered lump sum payment of $1,250, $2,500, or $5,000 (based on the severity of the sexual abuse they have experienced), or
- Where a jurisdiction has elected to provide state based counselling services, survivors will be referred through a state or territory government to appropriate counselling services. Jurisdictions will be provided with the tiered counselling payment directly ($1,250, $2,500, or $5,000 based on the severity of the sexual abuse the person has experienced). The inclusion of the option came at the request from a number of the jurisdictions.

Survivors will only be able to access one of the above options based on the jurisdiction they reside in at the time of submitting an application for redress. If an eligible survivor resides overseas, they will receive a lump sum payment.

If a jurisdiction has elected to provide state based services, they must adhere to National Service Standards for the delivery of counselling and psychological services for the redress cohort which are publicly available as a schedule to the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse.

4.2 Independent Decision Makers

The Scheme Operator, on behalf of the Commonwealth and with the approval of the Minister for Social Services, will appoint appropriately qualified, independent assessors, known as Independent Decision Makers. After appropriate delegations are put in place, the Independent Decision Makers will make the final decisions on applications for redress.

Participating state and territory governments have been asked to nominate candidates for the Independent Decision Makers positions. Independent Decision Makers will be required to be independent from participating institutions to ensure fairness and transparency.

To ensure independence, the Department will conduct a probity process for all Independent Decision Makers before appointment. This will require all Independent Decision Makers to declare any potential conflicts of interest, undertake a national police history check, a working with children check and a social media check. The process will be undertaken by the Department.

It is expected that people appointed as Independent Decision Makers will 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 into Institutional Responses to Child Sexual Abuse.

Independent Decision Makers will also be required to undertake a comprehensive training to ensure they are trauma-informed.

4.3 Responsibility

Like the Commonwealth Bill, the National Bill sets out a comprehensive framework for determining relevant institutions responsibility for abuse.

To ensure clarity in interpretation and to simplify the categories of responsibility, the category of 'minor and tangential' responsibility has been taken out of the National Bill. The definition of 'equal responsibility' has also been amended so that an institution is equally responsible for abuse of a person if the institution and one or more other institutions are approximately equally responsible for the abuser having contact with the person, and no institution is primarily responsible for the abuse of the person.

The factors taken into consideration when determining whether an institution is responsible have also been expanded in the National Bill. Whereas one of the factors was previously that 'the institution was responsible for the care of the child when the abuse occurred', this has been split out into three distinct factors in order to provide further clarity to decision makers. These factors are:

- whether the institution was responsible for the day-to-day care or custody of the person when the abuse occurred
- whether the institution was the legal guardian of the person when the abuse occurred, and
- whether the institution was responsible for placing the person into the institution in which the abuse occurred.

The rule-making power in clause 15(5) of the Bill has also been utilised to give effect to a number of instances where institutions will automatically be equally responsible.

It is proposed that the Rules will set out that governments will be equally responsible, along with the relevant non-government institution, for other circumstances where they had parental responsibility for a child and placed them in an institution where they were abused. This rule was developed at the request of and in close consultation with the states and territories.

The Rules will also set out that Commonwealth Defence institutions will be equally responsible, along with the relevant non-Defence institution(s), for abuse on or after 1 January 1977 that is linked to an externally run Cadet program.

4.4 Child applicants

The Commonwealth Bill allowed all children to apply to the Scheme, including children who would not turn 18 before the sunset date. The Commonwealth Bill included protections for children applying to the Scheme, such as mandating child applicants to have:

- A correspondence nominee to apply to, and engage with, the Scheme on their behalf
- A payment nominee to manage any redress payments the child received, and
- A legal certificate proving that the child and their nominee received adequate legal advice before accepting their offer and signing the statutory release.

During consultations with jurisdictions, concerns were raised that these protections were not sufficient. The concerns were:

- A child cannot understand the impact of accepting an offer of redress and waiving their rights to future civil litigation, and such a significant decision should not be made by an adult on their behalf,

- An adult parent or guardian (as a payment nominee) may not use the child's redress money for the benefit of the child, or the child may not agree with how the redress money is used, and
- The full impact of the child's abuse may not be realised until much later in their life, and the person's application may be better articulated as an adult, resulting in a larger redress payment as an adult.

The final policy reflected in the National Bill is that children may apply for redress, however their application will not be determined and they will not sign a statutory release until they reach 18 years of age. Children who will not turn 18 before the Scheme sunset date will not be able to apply for redress. 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. An age limit will also address the risk of the misuse of monetary payments made to minors.

By allowing children aged eight or above to apply, the Scheme will be able to request information from the responsible institution(s) at the time of the application to ensure the information is current and prevent possible issues in sourcing information later. Once the child turns 18, they can choose to proceed with their application and provide any further relevant information if they wish, or withdraw their application.

The final policy in relation to child applications settled in the National Bill reflects a strong commitment to balance the various concerns from the jurisdictions on this issue.

This policy will be carefully communicated to the survivor cohort. Children and their families, including those who are unable to access redress, will be able to access the Scheme's support services, and in particular the legal support services to consider the child's legal rights.

There is a specific commitment in the National Bill to review the child applicant policy as part of the Review mechanism contained in the National Bill.

4.5 Applicants who are in gaol, or who have a serious criminal conviction

Application from a person in gaol

Through the development of the National Bill with jurisdictions, it became apparent that it would be difficult to ensure appropriate redress support services for all survivors in prison.

There are also 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.

As a result, the National Bill states that people who are in gaol will not be able to apply to the Scheme while they remain in custody. However, they will be able to apply to the Scheme when they are released. A person is ***in gaol*** under the National Bill if they are being lawfully detained (in prison or elsewhere) while under sentence, or they are undergoing a period of custody pending trial or sentencing for an offence. A person who is on release on parole or licence is not ***in gaol***.

The National Bill also allows the Scheme Operator discretion to accept an application from a person in gaol, if there are exceptional circumstances warranting the application.

For example, where the applicant is so ill that it is likely that they could not make an application, or respond to a request for information, when they are released from custody, or if the applicant is likely to remain in gaol until after the Scheme sunset date. The Rules will prescribe that the Scheme Operator will consult with relevant state and territory Attorneys-General when considering whether an incarcerated person should be allowed to apply to the Scheme. This is because they are most likely to have information about the circumstances of the person that may justify allowing their application.

Special assessment of applicants with serious criminal convictions

The Commonwealth Bill did not explicitly exclude people with serious criminal convictions. However, the former Minister for Social Services, the Hon. Christian Porter MP, publicly announced that the Scheme was intending to exclude from the Scheme people who had committed any sexual offence, or other serious offences, such as homicide, or serious fraud or drug offences, for which they had received a sentence for imprisonment for five years or longer.

Following evidence presented to the Committee's inquiry into the Commonwealth Bill, and the Committee's recommendations in their final report, and after consultation with states and territories and non-government institutions, the Government has amended the policy for people with serious criminal convictions applying to the Scheme.

The National Bill states that people who have been convicted of a serious criminal offence and sentenced to imprisonment for five years or longer will go through a special assessment process before they can be entitled to redress under the Scheme (section 63). This means that the Scheme will still accept applications from people with criminal convictions. However, people who have a serious criminal conviction, where they have been sentenced to imprisonment for five years or longer for any offence, will have their application assessed on a case-by-case basis. This policy was negotiated with jurisdictions and non-government institutions. This decision balances the need for the Scheme to recognise the impact that childhood abuse can have on a person's life, including increasing the risk of offending behaviour, with the need to ensure that the Scheme is not brought into disrepute by providing redress to a person who has themselves committed heinous crimes.

When undertaking the special assessment of applicants with serious criminal convictions, the Scheme Operator will consider a number of factors to ensure that providing redress to this person will not bring the Scheme into disrepute, or adversely affect public confidence in, and support for, the Scheme. These factors as listed in the National Bill include the nature of the offence, the length of the sentence of imprisonment, the length of time since the person committed the offence, any rehabilitation outcomes of the person, and any advice from State or Territory Attorneys-General in the jurisdiction where the person was abused and where the offending occurred. When making this determination, the National Bill provides that the Scheme Operator will place more weight on the advice provided by the Attorney-General of the jurisdiction in which the abuse occurred to allow the jurisdiction to take responsibility for institutional failings in that jurisdiction.

There is a specific commitment in the National Bill to review the processes regarding applications from people in gaol and applicants with serious criminal convictions, as part of the Review mechanism contained in the National Bill.

4.6 Security notices

The National Bill includes provisions that restrict a person's access to redress where it may prejudice the security of Australia or a foreign country. Under Division 3, Part 3-2 of the Bill a person is not entitled to redress where a security notice is in force. Similarly, under paragraph 20(1)(b) of the Bill, a person cannot make an application for redress where a security notice is in force. A security notice may be put in force where an individual has had their passport cancelled or refused, or their visa has been revoked or refused on national security grounds. These provisions will provide consistent powers for the Australian Government to deal with the threat of terrorism within Australian and that posed by Australians who participate in terrorist activities overseas.

A person's access to redress will only be impacted in circumstances where the receipt of redress is relevant to the assessed security risk posed by the individual and the receipt of redress would adversely impact the requirements of security. This is to ensure that those individuals assessed to be engaged in politically motivated violence overseas, fighting or actively supporting extremist groups are covered. It is not intended that every person whose passport or visa has been refused or cancelled would lose access to redress, rather only in cases where it is appropriate or justified on security grounds.

The arrangements align with Australia's existing counter-terrorism legislative framework by mirroring provisions contained in the *Paid Parental Leave Act 2010* (sections 278A to 278L), *Social Security Act 1991* (sections 38L to 38W) and *A New Tax System (Family Assistance) Act 1999* (sections 57GH to 57GS).

In practice, where the Minister for Home Affairs cancels or refuses a visa, or the Minister for Foreign Affairs cancels a passport on national security grounds, this may lead to the Minister for Home Affairs issuing a security notice. In the instances that this occurs, the security notice will be provided to the Minister for Social Services who would provide a copy to the Scheme Operator and the Secretary of the Department of Human Services who would restrict the person whom the notice relates' access to redress.

4.7 Participating groups, representatives and lone institutions

The National Bill also includes a number of new provisions which provide for flexible arrangements to support institutions participating in the Scheme.

The National Bill includes provisions to allow for institutions to have representatives in the Scheme, who will be able to undertake a number of administrative functions on behalf of the institutions that they represent (for example, coordinating requests for information and distributing invoices). Certain institutions (i.e. defunct institutions) will be required to appoint a representative. A representative must be a legal person, but they are not required to be a participating institution.

The National Bill also provides for the concept of a 'participating group', which two or more institutions (known as 'associates') will be able to form to support all the various institutional structures that may wish to participate in the Scheme. To be able to form a participating group, the institutions must not be members of another participating group, and (if comprised of non-government institutions) be sufficiently connected (i.e. belong to the same faith denomination or "brand"). There are two key features of participating groups. The first is that,

if an associate is liable to pay a funding contribution, then the associate and the group's representative will be jointly and severally liable to pay that funding contribution. The second feature is that, where one associate is responsible, all associates of the group will be released from civil liability for abuse within the scope of the Scheme (further information is provided on the statutory release below).

The National Bill also sets out the concept of a 'lone institution', which is a non-government institution that is not a defunct institution and is not a member of a participating group. Lone institutions will either be incorporated or unincorporated. Unincorporated lone institutions will be required to have a representative, with which they will be jointly and severally liable.

The National Bill also sets out that defunct institutions can participate in the Scheme, if they have a representative that will assume all of the responsibilities and liabilities of the defunct institution. This is different from a funder of last resort arrangement, which is about governments picking up shortfalls in funding in more limited circumstances. This ensures that even if an institution ceases to exist, the National Bill provides a clear mechanism to allow existing institutions to take responsibility for defunct institutions, therefore maximising participation in the Scheme.

4.8 Statutory release

The National Bill includes release provisions that differ from arrangements in the Commonwealth Bill. The changes will ensure increased participation from institutions as the arrangements more comprehensively protect institutions from exposure to future liability.

To be entitled to redress, a person must accept their offer and in doing so:

- release and forever discharge the responsible institution, its associates, and all officials of those institutions from civil liability for the abuse within the scope of the Scheme;
- forego any entitlement to be paid damages by a released institution or official if the institution were joined as a third party to civil proceedings in relation to abuse within the scope of the Scheme; and
- be prevented from bringing or continuing any civil claim against a released institution or official in relation to the abuse within the scope of the Scheme.

These arrangements mean that once an offer of redress is accepted, a person cannot take civil action against the responsible institution, its associate institutions, and officials of those institutions. The changes to the release provisions clarify that a released institution or official cannot be made liable to pay damages if later joined as a third party to a common law claim or being subject to contribution proceedings. It was always the Scheme's intention to ensure that institutions providing redress are not required to also provide compensation or damages.

To ensure increased participation of institutions, it was also crucial to ensure officials of institutions were released from civil liability. These arrangements do not apply if the official of an institution was also the abuser of the applicant, and the release does not apply to criminal liability.

4.9 Assessment framework

The Scheme will use an assessment framework to assess the monetary payment amount that each survivor will receive. The assessment framework design is based on the approach recommended by the Royal Commission, and on consultation with the Independent Advisory Council, jurisdictions and key non-government institutions. It will include components that recognise the severity of sexual abuse suffered, the impact on the survivor, related non-sexual abuse, institutional vulnerability (for residential institutions) and extreme circumstances.

The average monetary payment under the Scheme is expected to be around $76,000 (before prior payments are taken into account). The maximum payment available under the Scheme is $150,000. This payment will recognise the most extreme cases. This average monetary payment is $11,000 higher than that recommended by the Royal Commission.

The assessment framework will be publicly available as a legislative instrument, which will be tabled after the passage of the Bill.

4.10 Nominee arrangements

As set out in the Department's submission to the Commonwealth Bills inquiry, it was previously proposed that applicants under the age of 18 would be required to have a nominee to engage with the Scheme. As offers of redress can now only be made and accepted upon a person turning 18, this nominee requirement is no longer proposed in the National Bill.

After feedback from state and territory governments, the broader nominee arrangements (as set out in the Commonwealth Bill) have also been amended in the National Bill. There is no longer a 'payment nominee' option under the Bill. Feedback from jurisdictions was that this arrangement was not necessary for a one-off payment, compared to (for example) other payments under social security. Jurisdictions also suggested that existing legal arrangements (such as financial trustees) were sufficient to manage redress payments, once they were received in a person's bank account.

The previous 'correspondence nominee' provisions have also been replaced by two distinct nominee arrangements under the Bill. An 'assistance nominee' can be appointed by the Scheme Operator if both the prospective nominee and the applicant provide consent to the appointment. An assistance nominee will be able to do any act that can be done by the applicant, except making an application for redress, accepting an offer of redress, and declining an offer of redress. This means that only the applicant will be able to agree to release responsible institution(s) from civil liability. This type of nominee arrangement is intended for applicants who have the capacity to provide consent to such an arrangement, but may prefer some assistance in engaging with the Scheme (for example, if the person is finding it too traumatic to engage with the Scheme).

A 'legal nominee' can also be appointed by the Scheme Operator, if the prospect nominee consents to the appointment, the Scheme Operator has taken into account the wishes (if any) of the applicant, and under an existing law, the prospective nominee has power to make decisions for the applicant in all matters that are relevant to the duties of a legal nominee (for example, a legal guardianship arrangement or a power of attorney). A legal

nominee will be able to do any act that can be done by the applicant, including accepting an offer of redress. This type of nominee arrangement is intended for applicants with existing legal arrangements who may not be able to provide consent to such an arrangement (for example, if the person's mental capacity is limited).

4.11 Disclosure of information provisions

The Australian Government recognises the importance of protecting information which it obtains for the purposes of the Scheme. Information arrangements slightly differ under the National Bill and changes have been made to provide clarification and to ensure state and territory governments can comply with existing mandatory reporting arrangements.

Where the Scheme obtains information for the purposes of the Scheme and that information is held in the records of DSS or DHS, that information is 'protected information'. Given the sensitivity of information collected by the Scheme, Chapter 4, Part 4-3 of the Bill specifies the limited circumstances where protected information can be used, obtained, recorded or disclosed.

A person is authorised to obtain, record, disclose or use protected information where:

- it is for the purposes of the Scheme; or
- with the express or implied consent of the person or institution to which the information relates; or
- there are reasonable grounds to believe it is necessary to prevent or lessen a serious threat to an individual's life, health or safety; or
- where the information is displayed in aggregated form that does not disclose information about a particular person or institution.

The Scheme Operator also may disclose protected information to:

- a person's legal or assistance nominee; or
- a person who is authorised or the head of a government institution (including the chief executive of Centrelink) where it is necessary in the public interest in a particular case. However, this is only in limited circumstances where extensive criteria are met. For example, where the information cannot reasonably be obtained from a source other than the Scheme. The Rules will specify the limited circumstances that the Scheme Operator can exercise this power; or
- To a government institution for the enforcement of a criminal law, or for the safety or wellbeing of children. However, in doing so the Scheme Operator must have regard to the impact this disclosure would have on the person to whom the protected information relates.

Similarly, if protected information is disclosed to a government institution, the institution may disclose the information for the purposes of the enforcement of a criminal law, for the safety or wellbeing of children, or for investigatory, disciplinary or employment processes related to the safety or wellbeing of children. These arrangements allow state and territory governments to comply with existing state and territory mandatory reporting obligations.

In addition, where the Scheme Operator discloses protected information for the purposes of the Scheme, a person engaged by a participating institution may only obtain, record, disclose or use protected information if it is reasonable necessary for:

- Complying with a request for information under the Scheme;
- Providing a direct personal response to the person;
- Facilitating a claim under an insurance policy; or
- Undertaking an internal investigation and disciplinary procedures.

Strict offences apply for unauthorised access, recording, disclosure and usage, as well as for soliciting disclosure and offering to disclose protected information. The penalty for misuse of protected information is imprisonment for 2 years or 120 penalty units, or both.

Protected information in the Scheme will also be exempt from freedom of information disclosure. This supports the trauma informed approach of the Scheme.

4.12 Review of the Scheme

The National Bill includes a requirement for the Minister to conduct a review of the operation of the Scheme on the second anniversary of the Scheme start day, or a later day prescribed by the Rules. This is in addition to the review on the eighth anniversary of the Scheme, which was present in the Commonwealth Bill.

Both reviews must consider a number of matters, including the extent to which governments and non-government institutions have opted into the Scheme, the administration of the Scheme, the views of key stakeholders on the Scheme and the impact of Scheme design on survivors. The review will specifically look at the impact of Scheme design on Indigenous survivors, as well as survivors who are still children or who have a criminal conviction.

The second anniversary review will be an opportunity for a comprehensive stocktake of the Scheme's policy and implementation, and will necessarily involve consultation with survivor groups, non-government institutions, support services providers and governments from all Australian jurisdictions.

5. Update on support services

The Redress Support Services have been informed based on the existing support arrangements provided by the Royal Commission Community-based Support Services, which were established in 2013 to assist people engage with the Royal Commission. These organisations deliver services such as counselling, support and case management to individuals and their family members before, during and after their interaction with the Royal Commission.

Through this experience, the Department is aware of the nature of institutional child sexual abuse and its impact being a personal and individual experience. Under the National Redress Scheme, Redress Support Services will continue to provide flexible, timely, tailored, personalised and transparent assistance to those who need it.

Redress Support Services are an essential component of the Scheme. Only through such an arrangement can we ensure that the Scheme engages with clients in a respectful, trauma-informed, professional, and culturally informed way.

Redress Support Services will provide both practical and emotional support. Practical support provided will include information about the Scheme, assistance completing the Scheme's application form, gathering supporting information to help lodge a claim, and supporting clients to access other appropriate services such as legal and financial counselling. Emotional support includes providing counselling, case management, professional supervision and similar arrangements to provide clients with a safe environment to engage with the Scheme.

The primary target group will continue to be the people who have experienced sexual abuse as a child in institutional settings before the commencement of the Scheme. Services may also assist affected family members where it is in the best interest in meeting the critical needs of the client.

6. Issues raised in consultations with support services and advocacy groups

Consultations with support services and advocacy groups have highlighted some areas of the Scheme that people who have experienced institutional child sexual abuse have indicated concern. Areas that have been raised in these forums include concerns that the Government will use the redress payment to recover Medicare payments, that prior payments made by responsible institutions are being indexed, and that the Scheme has consulted too closely with non-government institutions, such as churches and charities. DSS would like to use this opportunity to address these concerns.

6.1 Inalienable redress payments

Some people have had Medicare payments recouped from out-of-court settlements or redress-like payments they have received in the past, and are concerned that Medicare payments will be recouped from redress payments made under the Scheme. Redress payments are expressly defined in the National Bill as not being compensation or damages for the purposes of Commonwealth legislation. This means that Medicare payments will not be recouped from the redress payment.

The redress payments and counselling and psychological services payments are absolutely inalienable and cannot be used to recover debts due to the Commonwealth, states or territories. The payments will not be treated as income in social security income tests and will also not be subject to income tax. The payment will be assessable as part of the standard assets test under the *Social Security Act 1991*. In addition, the payments are protected from being garnisheed by a court order for a period of one year after the payment has been made. Therefore, the payments will be quarantined and protected from any third-party debt collection for that period.

6.2 Prior payments

Relevant prior payments are payments made by or on behalf of a responsible institution in recognition of the harm caused by abuse for which the institution is responsible, or in recognition of such abuse itself. In accordance with recommendations by the Royal Commission, the Scheme will be deducting relevant prior payments made by or on behalf of responsible institutions from those institutions' liability under the Scheme. This is to reflect the fact that some institutions have already paid some monetary redress to survivors.

The Scheme will not deduct payments provided to support access to counselling and psychological services, or routine payments of treatment, or other expenses like medical or dental bills. The Scheme will not take into account one-off payments for specific purposes that are not in recognition of harm, even where the specific purpose for which the payment was made was requested by the survivor (for example, for consumer items or covering rent). In cases of shared responsibility, the Scheme will only deduct prior payments from the liability for redress of the institution that made the payment.

6.3 Indexation

Also in line with the recommendations of the Royal Commission, relevant prior payments will be adjusted for inflation to account for changes in the value of money over time. The purpose of adjusting relevant prior payments for inflation is to account for changes in the value of money over time. This is different to attempting to take into account any growth in the amount of the prior payment due to interest or investment. The Scheme will calculate how much the amount of a prior payment would be worth in today's dollars if it was paid today, not how much the payment would be worth if it was put in a bank account from when it was paid until today.

The Scheme will be using a flat inflation rate of 1.9 per cent per annum when adjusting prior payments for inflation. This represents the average rate of inflation over the lifetime of the Royal Commission. Adjusting relevant payments by CPI would generally result in a higher indexation rate in most cases, thereby lowering the payment available to survivors.

The Commonwealth cannot compel institutions to participate in the Scheme, and the success of the Scheme depends on achieving maximum coverage. 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.

7. Conclusion

The National Bill responds to the Royal Commission's redress recommendations, and establishes a nation-wide redress scheme.

States and non-government institutions all recognise that it is essential to balance the needs of all stakeholders in order to ensure maximum coverage for as many people who experience institutional child sexual abuse as possible. The National Bill reflects this balance and provide the means for all states and non-government institutions to take responsibility and provide redress to those who experienced institutional child sexual abuse in their care.

The Australian Government Departments welcome the Committee's inquiry into the National Bill, and officials will be available to present evidence to the Committee, if necessary.

Attachment A

FACT SHEET: National Redress Scheme for Institutional Child Sexual Abuse Rules 2018

The National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules) are currently the subject of negotiations with jurisdictions. The Rules will be finalised over the coming month, with the aim for them to commence on 1 July 2018 once the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (the National Bill) is passed and receives Royal Assent. Below is an overview of key policies that are proposed for the Rules.

Attributing Responsibility

The Rules will specify circumstances where a participating institution will be automatically deemed to be equally responsible. These circumstances are likely to include where a state or territory government was a legal guardian of a child that was placed in the care of another institution, and where the abuse of the child was connected to a cadets program associated with the Commonwealth Department of Defence.

The Rules will also specify circumstances where an institution will be deemed not responsible. This will include where a government agency only had a regulatory or funding role, or where an institution has paid court ordered compensation or damages to a person for the same abuse for which the person is claiming redress.

Abuse perpetrated by a child

The Rules will exclude from the Scheme any sexual abuse perpetrated by a child, unless the abuse involved physical contact with, or penetration of, another child.

Special circumstances for applying for the Scheme

The Rules will prescribe that the Scheme Operator will consult with relevant state and territory Attorneys-General when considering whether an incarcerated person should be allowed to apply to the Scheme. The Rules will also prescribe that applications made by children will be determined after they turn 18 years old and that they will be invited to provide further information to support their application at that time.

Apportioning Costs

The Rules will provide further detail for calculating redress and apportioning costs across liable institutions. This will include grouping abuse into "sets" for the purpose of applying the monetary assessment framework. The Rules will also specify payments that are not to be considered relevant prior payments, and therefore not deducted from an applicant's redress payment, including statutory compensation payments such as those paid by the Department of Veterans' Affairs, and payments made to cover medical expenses.

Revocation of determination

The Rules 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.

Opting In arrangements

The Rules will specify the prerequisites for making a declaration that an institution is participating in the Scheme, including that their agreement is in writing, and that they satisfy the Minister that their financial obligations under the Scheme will be met.

The Rules will prescribe the method for working out an institution's share of the administration costs for the Scheme per billable quarter. As agreed by the states and territories, this will be 7.5% of their liability for redress payments, plus a share of $1,000 per application to contribute to legal support services that is proportional to their share of the redress payment for that application.

The Rules will also specify that institutions must be given notice of the Minister's intent to revoke their participation in the Scheme, or make a declaration that a representative will no longer act for a defunct institution/lone institution/group, and that the institution will have 10 business days to respond. This

requirement will not apply if the institution has requested that the relevant declaration be revoked, or it is insolvent.

Waiver of prior agreements or deeds

The Rules will prescribe that prior agreements or deeds that would have the effect of preventing or prohibiting a person from applying for redress are waived. This ensures survivors are not prevented from applying for redress and are not prohibited from providing all relevant information in their application.

Public Interest Certificates

The Rules will prescribe the circumstances in which the Scheme Operator may disclose protected information in the public interest. These provisions will be closely modelled off similar provisions in other social services legislation.

Administrative arrangements

The Rules will provide a number of administrative arrangements, such as prescribing circumstances where notices should be provided to the person, or the participating institution, and when certain agreements or information needs to be provided in writing.