

The Senate

Community Affairs Legislation
Committee

National Redress Scheme for Institutional
Child Sexual Abuse Amendment
(Technical Amendments) Bill 2020
[Provisions]

November 2020

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ISBN 978-1-76093-127-8 (Printed Version)

ISBN 978-1-76093-127-8 (HTML Version)

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Printed by the Senate Printing Unit, Parliament House, Canberra

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Abbreviations

bill	National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020
committee	Senate Community Affairs Legislation Committee
Explanatory Memorandum	National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Explanatory Memorandum
National Redress Scheme Agreement	<i>Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse</i>
National Redress Scheme Bill Report	Senate Community Affairs Legislation Committee, <i>National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018</i> , 15 June 2018
Operator	National Redress Scheme Operator
PWDA	People with Disability Australia
Redress Act	<i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i>
Redress Scheme	National Redress Scheme for Institutional Child Sexual Abuse
Royal Commission	Royal Commission into Institutional Child Sexual Abuse
survivors	survivors of institutional child sexual abuse

List of Recommendations

Recommendation 1

1.71 The committee recommends that the bill be passed.

Chapter 1

Report

Purpose of the bill

- 1.1 The National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 (bill) was introduced into the House of Representatives on 8 October 2020.¹
- 1.2 The bill seeks to implement a series of technical amendments to improve the operations of the National Redress Scheme for Institutional Child Sexual Abuse (Redress Scheme) and address unintended consequences or oversights in the originating legislation. The amendments have nil financial impact.²
- 1.3 The bill is intended to clarify the operations of certain provisions of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Redress Act) and promote greater administrative efficiency for the Redress Scheme. The amendments to the Redress Act proposed by the bill:
 - clarify certain provisions relating to participating institutions and funders of last resort;
 - provide for greater efficiency in engaging independent decision-makers;
 - introduce protections for the names and symbols used in connection with the Redress Scheme;
 - allow for a redress payment to be made to a person who has been appointed to manage the financial affairs of a person entitled to redress;
 - permit extensions to the timeframe for payment of a funding contribution by an institution;
 - authorise disclosure of protected information about a non-participating institution for the purpose of encouraging the institution to participate; and
 - correct minor typographical errors in the Act.³
- 1.4 These amendments have been developed by the Commonwealth in consultation with states and territories in accordance with the *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse* (National Redress Scheme Agreement).⁴

¹ *House of Representatives Votes and Proceedings*, No. 73, 8 October 2020, pp. 1253–1254.

² National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Explanatory Memorandum (Explanatory Memorandum), p. 1; Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, pp. 5–6.

³ Explanatory Memorandum, p. 1.

⁴ Explanatory Memorandum, p. 1; Department of Social Services, *Submission 6*, p. 3.

Conduct of the inquiry

- 1.5 On 8 October 2020, the Senate referred the provisions of the bill to the Senate Community Affairs Legislation Committee (committee) for inquiry and report by 5 November 2020.⁵
- 1.6 Details of the inquiry were placed on the committee's website and the committee wrote to relevant organisations inviting submissions to the inquiry by 22 October 2020.⁶ Submissions continued to be accepted after that date.
- 1.7 The committee received 10 submissions which were published on the committee's website and are listed at Appendix 1 of this report.
- 1.8 The committee thanks all those who provided submissions to this inquiry.

Background

- 1.9 The Redress Scheme was established on 1 July 2018 as part of the Australian Government's response to the recommendations of the Royal Commission into Institutional Child Sexual Abuse (Royal Commission).⁷
- 1.10 The Redress Scheme acknowledges that many children were sexually abused in Australian institutions and recognises the suffering they endured because of this abuse. It holds institutions accountable for this abuse and helps eligible survivors of institutional child sexual abuse (survivors) to access redress.⁸
- 1.11 The development, implementation and operation of the Redress Scheme are shared responsibilities of the Australian Government and all state and territory governments, as set out in the National Redress Scheme Agreement.⁹

⁵ *Journals of the Senate*, No. 69, 8 October 2020, p. 2407.

⁶ Senate Standing Committees on Community Affairs, *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020*, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/RedressTechAmendments (accessed 28 October 2020).

⁷ Australian Government, *Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, www.childabuseroyalcommissionresponse.gov.au; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, December 2017. The committee undertook detailed examination of the legislation for the establishment of the scheme, see: 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]*, 28 March 2018; Senate Community Affairs Legislation Committee, *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018* (National Redress Scheme Bill Report), 15 June 2018.

⁸ National Redress Scheme, *About the National Redress Scheme*, www.nationalredress.gov.au/about/about-scheme (accessed 28 October 2020).

⁹ [Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, July 2020](http://www.nationalredress.gov.au/about/about-scheme) (current version).

1.12 Under the scheme, survivors are provided with three elements of redress:

- a monetary payment of up to \$150 000;
- access to counselling and psychological services; and
- a direct personal response from the responsible institution or institutions.¹⁰

1.13 As of 9 October 2020, the Redress Scheme had received 8297 applications and made 4670 decisions, including 3826 payments totalling approximately \$315 million. At that time, a further 615 offers of redress were still with applicants for consideration, while 3215 applications were being processed by the scheme. The average payment to survivors is around \$82 000.¹¹

Eligibility criteria

1.14 For a survivor to be eligible to apply for redress, certain criteria must be met. This includes that they experienced institutional child sexual abuse before 1 July 2018, are aged over 18 or will turn 18 before the scheme ends, and are an Australian citizen or permanent resident.¹²

1.15 Applications to the Redress Scheme have been open since 1 July 2018 and can be made at any time up to 30 June 2027, 12 months before the scheme ends on 30 June 2028.¹³

Participating institutions

1.16 Redress can only be provided to a survivor if the relevant institution has agreed to participate in the scheme and has been declared a 'participating institution' by the Minister for Families and Social Services. The final date for such a declaration is 31 December 2020.¹⁴

1.17 Participating institutions found to be responsible for the abuse of a person are required to make a funding contribution towards the redress provided, pertaining to a proportion of the direct costs of a redress payment and counselling for the survivor as well as the cost of administering the Redress Scheme.¹⁵ If a survivor accepts an offer of redress relating to a participating

¹⁰ National Redress Scheme Bill Report, p. 1; National Redress Scheme, *About the National Redress Scheme*, www.nationalredress.gov.au/about/about-scheme (accessed 28 October 2020).

¹¹ National Redress Scheme, *National Redress Scheme – Update*, 21 October 2020, <https://www.nationalredress.gov.au/about/updates/1226> (accessed 28 October 2020). See also, *National Redress Scheme – Update*, 23 September 2020; *National Redress Scheme – Update*, 13 July 2020.

¹² National Redress Scheme, *Applying*, www.nationalredress.gov.au/applying (accessed 28 October 2020); *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Redress Act), Part 2-2.

¹³ Explanatory Memorandum, p. 3.

¹⁴ Explanatory Memorandum, p. 4.

¹⁵ Redress Act, s. 149–152.

institution, they are required to release the responsible institution from any civil liability for that abuse.¹⁶

- 1.18 Under the Redress Act, two or more participating institutions may also form a participating group. For example, the Anglican Church of Australia group currently includes over 110 participating dioceses, schools and other institutions related to that church.¹⁷ Institutions in a participating group are considered associates of each other, and one institution from the group can act on behalf of the others when interacting with the Redress Scheme.¹⁸ Survivors who accept an offer of redress from an institution in a participating group are required to also release the other group members from liability for that abuse.¹⁹
- 1.19 As of 21 October 2020, a total 288 non-government institutions were participating in the Redress Scheme, representing around 53 300 sites across Australia, while 117 more had signalled their intention to join the scheme by the end of the year.²⁰ A small number of institutions named in the Royal Commission and/or in redress applications received to date have not yet joined or stated an intention to join the scheme before the end of the year.²¹

Second anniversary review

- 1.20 The Redress Act requires that an independent review of the Redress Scheme be conducted two years after its commencement. That review is currently underway, conducted by Ms Robyn Kruk AO, and will consider a broad range of matters prescribed in the Redress Act relating to the implementation, operation and administration of the scheme.²²
- 1.21 In introducing the bill in the House of Representatives, the Assistant Minister for Waste Reduction and Environmental Management noted that it is intended

¹⁶ Redress Act, s. 42.

¹⁷ National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018, Schedule 1.

¹⁸ Redress Act, Part 5-2.

¹⁹ Redress Act, s. 42.

²⁰ National Redress Scheme, *National Redress Scheme – Update*, 21 October 2020, <https://www.nationalredress.gov.au/about/updates/1226>. See also, Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 4.

²¹ National Redress Scheme, *Institutions that have not joined or signified their intent to join the Scheme*, www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined.

²² Redress Act, s. 192; Explanatory Memorandum, p. 4. See also, National Redress Scheme, *Second anniversary review*, www.nationalredress.gov.au/about/second-anniversary-review.

that the second anniversary review 'will help drive further improvements to the scheme' in addition to the amendments proposed in this bill.²³

Legislative scrutiny

- 1.22 The Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights had not reported on their consideration of the bill at the time this report was prepared.
- 1.23 The statement of compatibility with human rights for the bill notes that it does not introduce any limitations on human rights. Instead the bill positively engages several human rights conventions, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, by providing avenues of redress and remedy for people who have experienced abuse.²⁴

Key provisions and issues raised in submissions

- 1.24 Submissions to the inquiry were broadly supportive of the measures in the bill to meet the aim of improving the operating efficiency of the Redress Scheme ahead of the outcome of the second anniversary review, although some raised concerns about the operation and implementation of certain provisions.²⁵
- 1.25 Those provisions and the issues raised by submitters are outlined below.

Associates of participating institutions

- 1.26 The Redress Scheme is currently required to individually list in an offer of redress to a survivor all associates of a responsible institution. The Department of Social Services described that under this practice:

Where a responsible institution is part of a large participating group, an applicant could otherwise receive a letter of offer with thousands of institutions individually listed, which is neither trauma informed or practical.²⁶

- 1.27 Part 1 of the bill makes a series of amendments to the Redress Act to clarify how associate institutions in a group are determined, listed and described for notices and offers of redress, allowing groups to be listed by way of class

²³ Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5. See also, Department of Social Services, *Submission 6*, pp. 3–4.

²⁴ National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020, Statement of compatibility with human rights, pp. 2–3.

²⁵ See, for example, In Good Faith Foundation, *Submission 3*; Ryan Carlisle Thomas, *Submission 4*; Shine Lawyers, *Submission 7*; knowmore, *Submission 8*; Sexual Assault Support Service, *Submission 10*.

²⁶ Department of Social Services, *Submission 6*, p. 3. See also, Explanatory Memorandum, pp. 4, 6.

description instead.²⁷ These changes do not affect whether institutions are associates of each other or their obligations to provide redress or the release from civil liability when an offer of redress is accepted.²⁸

- 1.28 Most submitters supported these changes, expressing the view that the amendments will make offers of redress less confusing and improve survivors' experiences in accepting an offer of redress.²⁹
- 1.29 However, some submitters noted that the change may have unintended consequences for survivors, who would no longer be provided with a full list of associated institutions to help inform their decision about accepting an offer of redress and releasing those institutions from liability.³⁰
- 1.30 knowmore, the national community legal service funded to support survivors in the Royal Commission and through the Redress Scheme, stressed in its submission that:

Releasing institutions from future civil liability is a significant legal right that survivors are required to forego when accepting an offer of redress under the Scheme. It is therefore important for survivors to understand both the nature and consequences of this deed of release in order to make an informed decision about whether to accept or decline an offer of redress. This includes understanding which institutions they will be releasing from civil liability if they accept the offer of redress.³¹

- 1.31 In relation to the proposed amendments in the bill, People with Disability Australia (PWDA) and legal firm Ryan Carlisle Thomas recommended that applicants still be properly informed about the institutions they would be required to release from civil liability to enable them to make informed decisions about proceeding with an application or accepting an offer.³²
- 1.32 Submitters also emphasised the importance of making full lists of associated institutions in participating groups readily available to survivors, including on the Redress Scheme website and/or through legal and support services, if this information is no longer to be provided in a letter of offer.³³

²⁷ Bill, Part 1; Explanatory Memorandum, p. 4.

²⁸ Bill, Part 1; Explanatory Memorandum, p. 4.

²⁹ See for example, Shine Lawyers, *Submission 7*, p. 1; Australian Lawyers Alliance, *Submission 2*, p. 5; In Good Faith Foundation, *Submission 3*, p. 2.

³⁰ People with Disability Australia (PWDA), *Submission 9*, p. 2; Ryan Carlisle Thomas, *Submission 4*, [p. 2]; knowmore, *Submission 8*, pp. 4–5.

³¹ knowmore, *Submission 8*, pp. 4–5.

³² PWDA, *Submission 9*, p. 2.

³³ Ryan Carlisle Thomas, *Submission 4*, [p. 2]; knowmore, *Submission 8*, pp. 5–6.

- 1.33 The second reading speech of the bill clarified that '[i]mportantly, this measure will not affect the release from civil liability of the associate institutions'.³⁴

Funder of last resort provisions

- 1.34 Participating government institutions can be determined to be 'funders of last resort' for redress where a defunct non-government institution is not participating in the Redress Scheme. Under current arrangements, only a single institution can be the funder of last resort for a redress funding contribution. The arrangement, as summarised in the Redress Act, is that:

... the government institution will be liable to pay the defunct institution's share of the costs of providing redress to a person, in addition to the government institution's liability to pay its own share of those costs.³⁵

- 1.35 Part 2 of the bill amends the Redress Act to reflect that one or more government institutions may be equally responsible for a survivor's abuse and therefore be a funder of last resort.³⁶ These amendments also clarify that where there is more than one funder of last resort, the share of the redress cost will be divided equally between the relevant government institutions.³⁷

- 1.36 Submitters again expressed broad support for these changes,³⁸ with Ryan Carlisle Thomas stating that:

... any measures to ensure maximum coverage of, and participation in, the Scheme, by providing funding of last resort for defunct institutions, and the sharing of responsibility for abuse between funders of last resort where appropriate ... should be encouraged.³⁹

- 1.37 Noting current delays in identifying and declaring funders of last resort under the Redress Scheme, both knowmore and the In Good Faith Foundation stressed the importance of ensuring that these new provisions are implemented by the National Redress Scheme Operator (Operator)⁴⁰ in a way that does not result in further delays for survivors.⁴¹

³⁴ Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5.

³⁵ Redress Act, s. 162.

³⁶ Bill, Part 2; Explanatory Memorandum, p. 6.

³⁷ Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5; Explanatory Memorandum, pp. 6–7.

³⁸ See, for example, Scouts Australia, *Submission 5*, [p. 1]; Australian Lawyers Alliance, *Submission 2*, p. 5; knowmore, *Submission 8*, p. 7.

³⁹ Ryan Carlisle Thomas, *Submission 4*, [p. 3].

⁴⁰ The Operator is the Secretary of the Department of Social Services. See Redress Act, s. 6.

⁴¹ knowmore, *Submission 8*, p. 7; In Good Faith Foundation, *Submission 3*, p. 2.

- 1.38 In relation to this point, the Joint Select Committee on Implementation of the National Redress Scheme (JSC) heard that a significant majority of applications received named multiple institutions. In its interim report, the JSC noted that based on the expectations of the Royal Commission, this high level of multiple institution claims was not anticipated.⁴²
- 1.39 The second reading speech of the bill acknowledged that the Redress Act was drafted with one expectation but did not take into account multiple funder of last resort contributions requiring calculation. It also clarifies that the shared cost will be divided equally, which may contribute to the expedience of processing applications.⁴³

Engaging independent decision-makers

- 1.40 Decisions about granting redress to survivors are made by independent decision-makers appointed to the Redress Scheme. The Redress Act currently requires that each appointment of an independent decision-maker is approved by the Minister for Families and Social Services in consultation with state and territory ministers, a process which has 'made it difficult to efficiently respond to the demands of the scheme'.⁴⁴
- 1.41 Part 3 of the bill amends the Redress Act to remove the need for ministerial approval of appointments and instead allow the Operator to appoint decision-makers in consultation with the jurisdictions via their representative departments.⁴⁵
- 1.42 Although most submitters supported the changes,⁴⁶ Ryan Carlisle Thomas expressed a view that the proposed 'devolving of responsibility' from Ministers to the Operator and senior executive officers would not provide sufficient scrutiny for the appointment of decision-makers.⁴⁷
- 1.43 The Explanatory Memorandum clarifies that the change proposed in the bill will not impact the suitability of those engaged as independent decision-makers, as the:

... qualification, skills and experience of a person to perform the role of independent decision-maker can continue to be appropriately assessed at a

⁴² Joint Select Committee on Implementation of the National Redress Scheme, *Interim Report*, May 2020, p. 31.

⁴³ Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5.

⁴⁴ Redress Act, s. 185; Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5.

⁴⁵ Explanatory Memorandum, p. 7.

⁴⁶ See, for example, knowmore, *Submission 8*, p. 7; In Good Faith Foundation, *Submission 3*, p. 2.

⁴⁷ Ryan Carlisle Thomas, *Submission 4*, [pp. 3–4].

departmental level, in consultation with participating States and participating Territories...⁴⁸

- 1.44 Further, the 2020–21 Budget has allocated funding to continue the work of Independent Decision Makers as part of the \$104 million over four years allocated to support the delivery of the National Redress Scheme.⁴⁹

Protected names and symbols

- 1.45 The Australian Government currently funds knowmore to provide free legal support services for survivors to access their redress options, including through the Redress Scheme.⁵⁰
- 1.46 Despite the availability of this free service, several submitters informed the committee of a concerning trend of some Australian law firms engaging in targeted predatory practices such as marketing legal advice and related services to survivors, or registering websites using the name of the scheme.⁵¹
- 1.47 Ryan Carlisle Thomas, a legal firm which takes referrals from knowmore to provide advice about civil alternatives to the Redress Scheme, emphasised the importance of firms being able to refer to the existence of the scheme in their communications with clients in an appropriate manner:

For example, it is important to let abuse survivors know that redress is available under the Scheme when advising of alternative civil litigation pathways. However, communications from any businesses, trades, professions or occupations that refer to the Scheme should make it clear that they are not providing services under, or in connection with, the Scheme so as to avoid any confusion or mistake.⁵²

- 1.48 Part 4 of the bill introduces new provisions into the Redress Act to protect the name and symbols of the Redress Scheme against this kind of unauthorised use.⁵³ This measure 'will ensure that other parties do not misuse the scheme name and logo to the potential detriment of an already vulnerable cohort' and still allows for the use of the name and logo in good faith.⁵⁴

⁴⁸ Explanatory Memorandum, p. 7.

⁴⁹ Australian Government, *Budget Paper No. 2*, Budget 2020–21, p. 154.

⁵⁰ knowmore, *Submission 8*, p. 2; National Redress Scheme, *Independent legal support*, www.nationalredress.gov.au/support/independent-legal-support (accessed 28 October 2020).

⁵¹ knowmore, *Submission 8*, p. 9; Scouts Australia, *Submission 5*, [p. 2]; In Good Faith Foundation, *Submission 3*, p. 3; Ryan Carlisle Thomas, *Submission 4*, [p. 4].

⁵² Ryan Carlisle Thomas, *Submission 4*, [p. 5].

⁵³ Explanatory Memorandum, p. 7.

⁵⁴ Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5.

1.49 Submitters were highly supportive of these provisions to prevent the misuse of the name and image of the Redress Scheme and protect survivors from predatory practices.⁵⁵

Making redress payments

1.50 The Redress Scheme currently requires that redress payments, and any relevant payments for counselling and psychological services, are made directly to the person receiving that redress. However this has unintended consequences where a third party appointed by a court or tribunal, such as a public trustee or guardian, normally administers the person's property and/or finances because of impaired capacity or the risk to their interests.⁵⁶

1.51 Part 5 of the bill introduces new provisions which allow a redress payment or counselling and psychological care payment to be made to third parties in these limited circumstances.⁵⁷

1.52 Submitters generally supported these provisions as a sensible and necessary addition to the Redress Act.⁵⁸

1.53 However, PWDA proposed that redress funds should not be subject to management by an administrator as part of a person's general finances, and instead be treated as special and separate 'so as to recognise their unique value and meaning for survivors', except in extenuating circumstances:

PWDA is of the view that conditions should only be placed on a person accessing and using their redress payment where their consent cannot be obtained, or there is a risk of undue influence or financial exploitation.⁵⁹

1.54 Other submitters also highlighted the importance of ensuring that the implementation of the measures in Part 5 of the bill do not inappropriately disempower survivors or lead to financial abuse.⁶⁰

1.55 knowmore and Ryan Carlisle Thomas both expressed the view that the limitations proposed in the bill, which would ensure only someone appointed by third party appointed by a court or tribunal under law could receive a payment on behalf of a survivor, would provide sufficient protections for

⁵⁵ See, for example, knowmore, *Submission 8*, p. 9; In Good Faith Foundation, *Submission 3*, p. 3; Ryan Carlisle Thomas, *Submission 4*, [p. 5].

⁵⁶ Redress Act, s. 48, 51; Explanatory Memorandum, p. 9; Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 5.

⁵⁷ Explanatory Memorandum, pp. 8–9.

⁵⁸ See for example, Australian Lawyers Alliance, *Submission 2*, p. 5; Shine Lawyers, *Submission 7*, p. 2.

⁵⁹ People with Disability Australia, *Submission 9*, [p. 4].

⁶⁰ In Good Faith Foundation, *Submission 3*, p. 3; Ryan Carlisle Thomas, *Submission 4*, [p. 6]; knowmore, *Submission 8*, p. 9.

abuse survivors against 'undue influence, duress and unconscionable conduct'.⁶¹

Due date for funding contributions

- 1.56 Institutions found liable for funding redress contributions are currently required to make this payment by a prescribed date and late payments incur a penalty. There is currently no flexibility in the Redress Act to allow the operator to grant an extension of the due date.⁶²
- 1.57 Part 6 of the bill introduces a provision into the Redress Act to allow the Operator to give written notice of an extension of the due date for payment.⁶³ This change will provide a mechanism for addressing special circumstances that warrant an institution being granted an extension, such as the financial and operational pressures experienced by some institutions during the COVID-19 pandemic.⁶⁴
- 1.58 Some submitters raised concerns that the ability to defer an institution's contribution indefinitely could cause redress payments to be delayed to survivors, many of whom already experience long delays.⁶⁵
- 1.59 The Assistant Minister for Waste Reduction and Environmental Management clarified in his second reading speech that allowing a due date extension to an institution would not delay redress payments, which are made by the scheme first and invoiced to the responsible institution later.⁶⁶

Disclosure to encourage institutions to participate in the scheme

- 1.60 As noted above, there are still several institutions named in the Royal Commission or in applications to the Redress Scheme that have not announced any intention to participate.
- 1.61 Part 7 of the bill would allow the Operator to disclose certain protected information for the purpose of encouraging an institution to participate in the scheme, so long as the information is about that institution.⁶⁷

⁶¹ Ryan Carlisle Thomas, *Submission 4*, [p. 6]; knowmore, *Submission 8*, p. 9.

⁶² Redress Act, s. 53; Explanatory Memorandum, p. 9.

⁶³ Bill, Item 48.

⁶⁴ Redress Act, s. 53; Explanatory Memorandum, p. 9.

⁶⁵ Australian Lawyers Alliance, *Submission 2*, p. 5; Ryan Carlisle Thomas, *Submission 4*, [p. 6]; People with Disability Australia, *Submission 9*, [pp. 4–5].

⁶⁶ Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 6.

⁶⁷ Bill, Item 49; Mr Trevor Evans MP, Assistant Minister for Waste Reduction and Environmental Management, *House of Representatives Hansard*, 8 October 2020, p. 6.

1.62 The Department of Social Services provided the committee with some examples of how this disclosure of information would work in practice:

By way of example, where a non-government institution is named in an application for redress, and a state or territory government department has an existing relationship with that non-government institution (by way of a funding arrangement for example), it would be helpful for the Scheme to engage with the relevant jurisdiction to enable them to use their existing relationship to encourage the institution to participate. Similarly, where a small, local sporting group is named in application, the amendment will enable [the] Scheme to meaningfully engage with a relevant umbrella organisation to discuss how best to secure the participation of the local sporting group.⁶⁸

1.63 Submitters were highly supportive of these measures to encourage full participation in the scheme,⁶⁹ provided that protected personal information about survivors is appropriately redacted or withheld from institutions.⁷⁰

Other matters raised in submissions

1.64 Several submissions to this inquiry outlined further areas for future improvement in the Redress Scheme and noted the role of the second anniversary review to consider those matters.⁷¹

1.65 The Department of Social Services reiterated in its submission that the second anniversary review has a broad scope which encompasses a range of issues, and is an 'important opportunity to consider the Scheme's operation in light of its objectives and examine where and how any improvements may be made'.⁷²

1.66 Aspects of the Redress Scheme raised by submitters for possible future examination or amendment included:

- timeframes for the processing and finalising of claims, including the time period allocated for survivors to accept an offer of redress;⁷³
- survivors' access to documentation about their abuse;⁷⁴
- types of abuse not currently covered by the scheme;⁷⁵

⁶⁸ Department of Social Services, *Submission 6*, p. 3.

⁶⁹ knowmore, *Submission 8*, p. 10; In Good Faith Foundation, *Submission 3*, p. 3; Shine Lawyers, *Submission 7*, p. 3.

⁷⁰ Ryan Carlisle Thomas, *Submission 4*, [p. 7].

⁷¹ See, for example, Angela Sdrinis Legal, *Submission 1*, [pp. 2–4]; In Good Faith Foundation, *Submission 3*, p. 4.

⁷² Department of Social Services, *Submission 6*, p. 4.

⁷³ Angela Sdrinis Legal, *Submission 1*, [pp. 2–4].

⁷⁴ Angela Sdrinis Legal, *Submission 1*, [p. 4].

⁷⁵ Angela Sdrinis Legal, *Submission 1*, [p. 3].

- support programs for 'secondary survivors', such as family members of survivors or whistle-blowers within institutions responsible for abuse, who may have also suffered significant and lasting harm;⁷⁶
- the appointment and functions of Independent Decision Makers under the scheme;⁷⁷
- expanding funder of last resort provisions to be closer in line with the original recommendations of the Royal Commission;⁷⁸ and
- extension of the deadline for institutions to register to participate in the Redress Scheme.⁷⁹

1.67 The Department of Social Services acknowledged that the current bill does not consider any substantive policy changes to the Redress Scheme and that these 'would be best pursued' after the second anniversary review has concluded.⁸⁰

Committee view

1.68 The National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 seeks to make technical amendments to the operation and administration of the National Redress Scheme with the aim of improving outcomes for survivors and the efficiency of its operations.

1.69 It is clear to the committee that the amendments proposed are broadly supported by stakeholders. Although submitters raised some minor concerns about the provisions of the bill, these were largely related to confirming that any amendments are implemented in a way that does not unduly disadvantage survivors seeking to access redress.

1.70 The committee is confident that the Redress Scheme will ensure that its approach remains trauma-informed and survivor-focused and that the amendments proposed in the bill will lead to more efficient operation and better outcomes for survivors.

Recommendation 1

1.71 The committee recommends that the bill be passed.

⁷⁶ In Good Faith Foundation, *Submission 3*, p. 4.

⁷⁷ Angela Sdrinis Legal, *Submission 1*, [pp. 2–3]; In Good Faith Foundation, *Submission 3*, pp. 2, 4; Scouts Australia, *Submission 5*, p. 1; knowmore, *Submission 8*, p. 7.

⁷⁸ Shine Lawyers, *Submission 7*, p. 2; knowmore, *Submission 8*, p. 7.

⁷⁹ Sexual Assault Support Service, *Submission 10*, p. 1.

⁸⁰ Department of Social Services, *Submission 6*, p. 3.

Senator Wendy Askew
Chair

Additional Comments by Labor Senators

- 1.1 For the reasons outlined in the committee's report, Labor Senators support the passage of the Bill.
- 1.2 However, there are long-standing problems with the implementation of the National Redress Scheme that the Government must address as a matter of urgency.
- 1.3 These issues have been investigated at length by the 45th Parliament's Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and the 46th Parliament's Joint Select Committee on Implementation of the National redress Scheme. The reports of these committees remain relevant and should be acted on by the Government.
- 1.4 Labor Senators call on the Government to take action to make sure the National Redress Scheme is delivering justice for survivors and properly reflects the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. This includes:
 - publicly naming institutions that do not sign up to the National Redress Scheme, and ceasing Commonwealth funding for institutions that do not sign up;
 - removing the charitable and tax deductibility status of institutions that do not sign up to the National Redress Scheme;
 - if an institution refuses to participate in the National Redress Scheme, deem them as participating, process claims and recoup the money through the tax system, or other means;
 - introducing an advance payment scheme for elderly and ill applicants, similar to the Scottish model;
 - ensure governments act as funders of last resort in all cases where defunct institutions do not have links to existing entities;
 - increasing the maximum payment to \$200 000, as recommended by the Royal Commission;
 - ensuring prior payments are not indexed when calculating a Redress payment;
 - ensuring that prior payments which do not relate to institutional child sexual abuse are not deducted from Redress, including payments to the Stolen Generations;
 - guaranteeing that an offer of Redress will not be reduced if an applicant requests a review;
 - fixing the Redress Assessment Framework (the matrix) so that it properly recognises the impact of abuse when calculating redress payments, as recommended by the Royal Commission; and

- ensuring adequate ongoing psychological support, as recommended by the Royal Commission, not just one-off payments.
- 1.5 Labor Senators also call on the Government to reduce delays associated with the Scheme and ensure it can be easily accessed by all eligible people, including people from culturally and linguistically diverse backgrounds; First Nations Australians; people with disability; and those in regional and rural areas.
 - 1.6 Labor Senators also call on the Government to address privacy breaches in the National Redress Scheme, as survivors must be able to trust that the process is safe and will not re-traumatise them.
 - 1.7 Currently, just 3826 Redress payments have been made to survivors – at this rate, it would take around 35 years for the 60 000 people estimated by the Royal Commission to be eligible for Redress to receive a payment. The Government must do more to ensure survivors have confidence that the National Redress Scheme will deliver justice.

Senator Malarndirri McCarthy

Additional Comments by the Australian Greens

- 1.1 The Australian Greens are broadly supportive of the amendments contained in the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020. The Bill makes a series of important technical amendments to the operation of the National Redress Scheme for Institutional Child Sexual Abuse (Redress Scheme).
- 1.2 The majority of submissions were strongly supportive of a number of the provisions in the Bill, including:
 - the introduction of a strict liability offence that will apply to unauthorised use of the protected names and symbols used in relation to the Redress Scheme; and
 - provisions that allow the Scheme Operator to disclose protected information about a non-participating institution to encourage an institution to participate in the Redress Scheme.
- 1.3 However, there are further reforms we consider necessary.

Associates of participating institutions

- 1.4 Part 1 introduces changes to the way associates of participating institutions are determined, listed and described for notices and offers of redress. Under these changes, survivors are no longer provided with a full list of associates of participating institutions when they accept or reject an offer of redress.
- 1.5 As pointed out by knowmore in its submission:

Releasing institutions from future civil liability is a significant legal right that survivors are required to forego when accepting an offer of redress under the Scheme. It is therefore important for survivors to understand both the nature and consequences of this deed of release in order to make an informed decision about whether to accept or decline an offer of redress. This includes understanding which institutions they will be releasing from civil liability if they accept the offer of redress.¹
- 1.6 knowmore, Ryan Carlisle Thomas Lawyers and People with Disability Australia have all suggested alternative ways this information could be provided to survivors. For example, the Scheme Operator could allow survivors to request this information in writing, associates of participating institutions could be identified on the Redress Scheme's website, or a full list could be provided to survivors earlier in the application process.
- 1.7 The Australian Greens will be monitoring the implementation of these changes to ensure that survivors continue to be provided with information about associates of participating institutions.

¹ knowmore, *Submission 8*, p. 5.

Funder of last resort provisions

1.8 Part 2 introduces provisions to allow more than one participating government institution to be declared as a funder of last resort.

1.9 knowmore expressed concerns in its submission that this could lead to further delays for survivors:

We urge the Scheme Operator and all participating government institutions to ensure that the process of identifying and declaring more than one funder of last resort for a defunct institution does not result in further delays for survivors. In our view, declarations should be made for defunct institutions as soon as possible after they are first named in an application.²

1.10 The Australian Greens will be monitoring these amendments to ensure they do not result in additional delays for survivors.

Engaging independent decision-makers

1.11 Part 3 removes the need for ministerial approval of independent decision-makers and instead allows the Scheme Operator to appoint decision-makers. Some submitters supported this change because it may reduce delays experienced by survivors to receive a decision on their application.

1.12 However, Ryan Carlisle Thomas argued that devolving responsibility to the Scheme Operator does not provide sufficient scrutiny. Ryan Carlisle Thomas instead suggested that the number of independent decision-makers should be increased to manage any peaks in the number and complexity of applications.³

1.13 The Australian Greens share concerns about the change from ministerial to departmental approval and will be closely monitoring the implementation of this process.

Conclusion

1.14 The Australian Greens echo the concerns raised in the inquiry about the implementation of these technical amendments to the Redress Scheme. We note that the second anniversary review of the Redress Scheme is currently underway. We will closely monitor recommendations made by that review and continue to push for future reform to ensure the Redress Scheme delivers justice for all survivors.

Senator Rachel Siewert

² knowmore, *Submission 8*, p. 6.

³ Ryan Carlisle Thomas, *Submission 4*, pp. 3–4.

Appendix 1

Submissions

Submissions

- 1 Angela Sdrinis Legal
- 2 Australian Lawyers Alliance
- 3 In Good Faith Foundation
 - Attachment
- 4 Ryan Carlisle Thomas
- 5 Scouts Australia
- 6 Department of Social Services
- 7 Shine Lawyers
- 8 knowmore
- 9 People with Disability Australia
- 10 Sexual Assault Support Service