

21 June 2018

Mr Rob Hansen
Committee Secretary
Health, Communities, Disability Service and
Domestic and Family Violence Prevention Committee
Queensland Parliament

Email: robert.hansen@parliament.qld.gov.au

Dear Mr Hansen

Thank you for your email seeking a written briefing to assist the committee's inquiry into the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (the Bill).

As requested, the attached briefing explains the following:

- The differences between the Bill and the New South Wales Bill on which it was generally modelled, and the reasons for the differences.
- Which groups and individuals participated in the 'meetings and roundtables with key stakeholders' mentioned in the explanatory notes to the Bill(p 4), the dates and locations of those meetings, the outcomes of the meetings and how issues and concerns raised in those meetings have been reflected in the Bill.
- A broad explanation about how the National Redress Scheme works
- The consequences for the Queensland Bill if the Commonwealth Bill does not get passed by the Senate
- The scope for the Queensland Government to influence how the National Redress Scheme operates.

If you require any further information or assistance in relation to this matter, please contact Ms Susie Pedersen, Manager, Cabinet and Parliamentary Services, Department of Child Safety, Youth and Women on 07 3828 2615.

I trust this information is of assistance.

Yours sincerely



Michael Hogan
Director-General

Enc

**BRIEFING FOR THE
HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY
VIOLENCE PREVENTION COMMITTEE**

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

Department of Child Safety, Youth and Women

1. Background

The Royal Commission into Institutional Responses to Child Sexual Abuse's (Royal Commission) Redress and Civil Litigation Report was publicly released on 14 September 2015. The Report recommended the establishment of a single national redress scheme to provide eligible applicants who experienced institutional child sexual abuse with a monetary payment, access to counselling and psychological care and a direct personal response from responsible institution/s.

On 19 June 2018, the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (Cth) (National Bill) and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (Cth) (Consequential Amendments Bill) were passed by the Australian Parliament. Subject to assent, the National Bill will create a 10-year redress scheme to commence on 1 July 2018 (National Scheme). States, territories and non-government institutions (NGIs) will have two years from 1 July 2018 to opt into the National Scheme.

To opt in, states must refer powers to the Commonwealth Parliament in accordance with the Commonwealth Constitution. On 16 April 2018, Cabinet approved the Queensland Government opting into the National Scheme and referring powers for the scheme to operate in Queensland.

On 30 April 2018, the Premier publicly announced the Queensland Government would opt into the National Scheme. Although the National Scheme is expected to commence on 1 July 2018, the Queensland Government's participation is likely to commence from late 2018.

This timeframe is required to pass the necessary legislation and to enable the operational arrangements needed to implement the National Scheme to be put in place. The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 will achieve its objective of enabling the National Scheme to operate in Queensland, by providing for the adoption of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (National Redress Act), and referring the amendment reference, which provides for express amendments to the National Redress Act, to the Commonwealth Parliament. The Bill will also introduce associated provisions to support implementation of the National Scheme for the Queensland Government, including a framework to facilitate information sharing for the purposes of the scheme.

2. National Redress Scheme overview

The National Redress Scheme is intended to provide support to people who were sexually abused as children in an institutional context. The National Scheme has been designed in accordance with the Royal Commission's principle that the relevant institutions should pay for the abuse experienced by children for which they were responsible. The National Scheme will operate on a voluntary basis, which requires state and territory governments and NGIs to opt into the scheme. To date, all state and territory governments have reportedly committed to

joining the scheme, alongside a number of NGIs, including the Catholic Church, the Anglican Church, the Salvation Army, the Uniting Church, YMCA and Scouts Australia.

Eligibility requirements

Under the National Bill, a person will be eligible for redress if they meet certain requirements, including:

- they experienced sexual abuse
- the abuse falls within the scope of the scheme (including that it occurred when the person was aged under 18, and before the commencement date of the scheme), and
- the institution responsible for the abuse is participating in the National Scheme.

The National Rules, which are intended to sit under the National Redress Act, may also prescribe when a person is eligible for redress.

Under the national legislation, people sentenced to a term of imprisonment for a period of five years or more will not be entitled to redress unless the National Scheme Operator determines that the person is entitled. In deciding whether to make such a determination, the National Scheme Operator must seek and take into account advice from the Attorney-General (or nominee) of the jurisdiction where the abuse occurred, amongst other factors. In Queensland, it is anticipated that this role will form part of the functions of the Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence. Similar processes will also be in place for applicants who are incarcerated at the time of application.

Application processing

Under the National Scheme, applications will be received and assessed by the National Scheme Operator, which is a function of the Federal Government. Subject to assent to the national legislation, the National Scheme Operator will have the power to request, from participating institutions, information that may be relevant to determining applications.

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

The National Scheme has three core elements broadly consistent with the Royal Commission's recommendations:

- monetary payments of up to \$150,000
- direct personal responses, such as an apology from the responsible institution/s, and
- access to counselling and psychological care.

When a claim is approved by the National Scheme Operator, the person can indicate which elements of redress they are entitled to that they would like to access.

3. Queensland Context

Estimated number of Queensland Government redress claims

Modelling undertaken to inform government indicates that approximately 10,000 redress applications may relate to abuse in Queensland institutions. This includes approximately 5,000 claims relating to Queensland Government-operated institutions across the ten-year life of the National Scheme, and a further 5,000 relating to abuse in Queensland NGI-operated institutions. The Department of Child Safety, Youth and Women is anticipated to be responsible for an estimated 81 per cent of all applications relating to Queensland Government

institutions (across residential, foster care and juvenile justice settings). Given this level of involvement, the Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence has assumed lead responsibility for operationalising the National Scheme for the Queensland Government.

Queensland's operationalisation of the National Redress Scheme

A range of activities are underway to operationalise the Queensland Government's participation in the National Scheme, and internal government governance structures have been established to support this work. To meet the anticipated number of claims and to streamline administration of the National Scheme, the Queensland Government will establish a central contact point to facilitate communication between all relevant Queensland Government agencies and the National Scheme Operator. The Queensland Government central contact point will be established in the Department of Child Safety, Youth and Women (DCSYW). As the central contact point, DCSYW will coordinate and manage information requests from the National Scheme Operator and liaise with relevant Queensland Government agencies.

Planning and design for the direct personal response and counselling elements of redress are also currently being progressed. Each participating institution will be responsible for the delivery of the direct personal response element of redress. In the Queensland Government context, each agency will develop a suitable approach to the delivery of direct personal responses, with guidance from DCSYW with regard to best practice trauma-informed models as required. The intent of the direct personal response is to provide a formal acknowledgement of the abuse the person suffered and an opportunity for institutions to learn from the mistakes of the past.

To implement the counselling and psychological care element of redress, under the National Bill participating state and territory governments will have the option to provide counselling by way of a lump sum payment or by delivering counselling and psychological care services directly to successful applicants. DCSYW, on behalf of the Queensland Government, is currently working through options for the design and delivery of the counselling and psychological care element of the National Scheme for successful applicants who reside in Queensland.

4. Stakeholder consultation

Royal Commission consultation

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

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

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

Queensland stakeholder roundtables

The Queensland Government, through the Department of the Premier and Cabinet, has conducted a series of meetings and roundtables with key stakeholders to inform its response to the Royal Commission. Roundtables were held from March to June 2018 in Cairns, Townsville, Caboolture, Brisbane, Logan, Ipswich and the Gold Coast (details at Appendix 1). These roundtables provided an opportunity for services, out of home care providers, legal experts, sport and recreation clubs, religious institutions, educators and people who have experienced institutional child sexual abuse to inform government of their reform priorities arising from the Royal Commission's work.

The purpose of the roundtables was to provide an opportunity for stakeholder groups to share their views on the Royal Commission's reports, to explain the process and timing for analysis and potential implementation planning, and discuss relevance of the recommendations to ongoing reform. Views of participants were also sought and considered in relation to the development of the Truth, Healing and Reconciliation Taskforce, which was announced by the Premier in September 2017. As outlined in the Queensland Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse, this Taskforce will assist the Queensland Government to implement the Royal Commission's recommendations and support government in making the cultural and attitudinal changes recommended by the Royal Commission. In addition to the roundtables, the Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence held a workshop with members of the Historical Abuse Network on 18 April 2018. This workshop provided an opportunity for many of the issues covered during the roundtables to also be explored with people who have historical experiences of abuse in a variety of institutional settings, including in Queensland.

Generally, recurring themes from feedback across the roundtables included: an emphasis of trauma-informed and culturally safe services responses; the importance of community education; resourcing issues and the needs of rural and remote people; the needs of Aboriginal and Torres Strait Islander people; and the ongoing impacts of abuse on people who have experienced institutional child sexual abuse.

While the roundtables focused on the broader recommendations of the Royal Commission, redress recommendations were discussed at the roundtables for religious institutions and survivors and support services. Given the sensitivity of the discussions with survivors, feedback is provided as general information about themes and issues.

Broadly, feedback regarding redress related to the design and implementation of the National Scheme and centred on the need for financial literacy and other comprehensive support for survivors in addition to redress payments; the importance of the accessibility of redress, particularly for certain groups, including Aboriginal and Torres Strait Islander people; and the importance of redress payments not being treated as income for the purpose of access to government services and supports. This feedback will be considered in the operationalisation of the National Scheme in Queensland as it pertains to specific activities that will support delivery of the elements of redress.

Feedback was also received with regard to how other payments received by people affected by sexual abuse, for example through civil claims and victims of crime payments, will impact on redress payments. While the treatment of prior payments is generally dealt with at a national level and is therefore outside of the scope of the Bill, the Bill does provide for amendment of the *Victims of Crime Assistance Act 2009*, so that redress payments cannot be deducted from payments under that Act in relation to the same abuse.

Broader community consultation has not been undertaken on the provisions in the Bill, as it

relates to internal operations of the Queensland Government and operationalises the Queensland Government's commitment to opt into the National Scheme.

5. Overview of the Bill

The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (the Bill) provides for:

- a referral of powers to the Commonwealth Parliament to enable the National Scheme to operate in Queensland
- information sharing to support operation of the National Scheme, and
- an amendment to the *Victims of Crime Assistance Act 2009* to provide that redress payments may not be deducted from victim assistance payments under that Act.

a. Referral of powers

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

- all participating states referring matters relating to a redress scheme for institutional child sexual abuse to the Commonwealth Parliament (so the National Scheme can apply in those states)
- at least one state doing an initial 'reference of scheduled text', to enable the Federal Government to introduce a National Bill (to create a national instead of a Commonwealth scheme), and
- following the passage of a National Bill, all remaining states 'adopting' the national legislation in order to participate in the scheme.

The National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (NSW) (the NSW Bill) was passed by the New South Wales (NSW) Parliament on 16 May 2018. The National Redress Bill was subsequently passed by the Australian Parliament on 19 June 2018. In light of this, the Queensland Bill provides for Queensland to 'adopt' the National Bill and refer powers to the Commonwealth Parliament to enable future amendments to the National Bill to apply to its operation in Queensland.

b. Information sharing

The National Bill provides that the National Scheme Operator can request, from participating institutions, information that may be relevant to determining applications when:

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

As an institution participating in the National Scheme, the Queensland Government will be required to provide information to the National Scheme Operator in response to requests for information, to assist the Scheme Operator to determine applications. The National Scheme will be a low-threshold scheme that will make decisions on the basis of whether it is reasonably likely that the person is eligible for redress. As such, information will generally be sought on whether a person was involved with the relevant Queensland Government institution at the specified time. These types of records will be held by the Queensland Government agencies responsible for operating relevant institutions.

In order to streamline administration of the National Scheme, the Federal Government has requested that each participating state and territory government establish a 'central contact

point' to facilitate communication between all relevant government agencies within that jurisdiction and the National Scheme Operator. The Queensland Government central contact point is to be established in DCSYW. As the central contact point, DCSYW will coordinate and manage information requests from the National Scheme Operator and liaise with relevant Queensland Government agencies.

The Bill provides the chief executive (Child Safety) as the central contact point with the ability to request and receive relevant information from other state agencies for providing back to the National Scheme Operator, where it is for the purposes of the National Scheme. This will include the ability to request criminal history information from the Queensland Police Service, if required for the purpose of providing advice to the National Scheme Operator, as to whether an applicant with a relevant criminal history, or who is incarcerated, should be declared entitled to apply for redress.

As the National Bill provides strict timeframes within which a response to a request for information must be provided to the National Scheme Operator, the Bill also gives the chief executive discretion to determine the timeframe for the provision of information by other Queensland Government agencies. This will enable the central point of contact to meet timeframes set by the National Scheme Operator and to manage demand in peak periods. The National Bill does provide participating institutions with the ability to request an extension to timeframes for providing information to the National Scheme Operator in certain circumstances. DCSYW proposes that operational guidelines will provide for a process for a state agency to advise if there will be difficulties sourcing required information within the specified timeframe and request the central contact point to seek an extension from the National Scheme Operator. Any extension will be at the discretion of the National Scheme Operator.

To ensure all potentially relevant agencies are within the scope of the Bill and able to share information with the central contact point for the purposes of the National Scheme, the term 'State agency' is defined broadly in the Bill. This ensures that, where appropriate, statutory and other relevant state bodies will be covered by, and able to rely on, the information sharing framework.

NGIs are not captured by the Bill's information sharing provisions, as the National Bill provides the National Scheme Operator with the power to request information from such institutions directly. It is not proposed that information will be shared between the Queensland Government and NGIs under the National Scheme.

To remove any doubt as to the information sharing framework's interaction with the *Information Privacy Act 2009* and other Queensland legislation that regulates the disclosure of specific kinds of information (such as the *Disability Services Act 2006* and the *Child Protection Act 1999* (CPA)), the Bill provides that this framework generally applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.

Given this general overriding provision, specific exemptions may be listed in regulations where particular information is not to be shared for the purposes of the National Scheme and existing legislative restrictions are to be upheld. These exemptions may include, for example, section 186 of the CPA, which provides that notifier details must not be disclosed. As any exemptions will also need to be consistently reflected under the National Rules, Including a regulation making power will enable negotiations to be undertaken with the Commonwealth to ensure any exemptions to information sharing are consistently applied at a national level. DCSYW will work closely with all relevant agencies on the exemptions to be prescribed in the regulations and in the National Rules.

6. Consistency with legislation of other jurisdictions

All state and territory governments have reportedly committed to opt into the National Scheme. As noted above, to participate in the National Scheme, a state must refer powers to the Commonwealth Parliament in accordance with section 51(xxxvii) of the Commonwealth Constitution, which involves:

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

On 16 May 2018, the NSW Parliament passed its referral legislation. As the NSW Bill provided for the required initial reference of scheduled text to the Commonwealth Parliament, Queensland's Bill varies from NSW by providing for the adoption of the National Redress Act.

The NSW and Victorian Bills also provide that a state agency may give information to another state agency for the purpose of assisting any state institution to comply with an information request from the National Scheme Operator. The provisions of the Queensland Bill would enable information sharing between state agencies and the chief executive as the central contact point, but not between state agencies. As the purpose of the information sharing provisions is to facilitate appropriate information sharing with the National Scheme Operator, and it is intended that the central contact unit will act as the conduit for this information, it is not considered necessary to extend the sharing of information to between other state agencies. When required (for example, when multiple state agencies may hold relevant records relating to the same application), the central contact unit will coordinate responses to information requests from different agencies.

The provision in the Queensland Bill amending the *Victims of Crime Assistance Act 2009* to provide that redress payments may not be deducted from victim assistance payments under that Act, is also unique to Queensland's Bill.

Queensland's Bill is otherwise generally modelled on the NSW Bill and its provisions largely reflect those of the NSW Bill.

7. Dependencies

The national legislation was passed on 19 June 2018. Subject to assent, this will enable the National Scheme to commence from 1 July 2018. While Queensland Government participation is intended from late 2018, legislation needs to be progressed at the earliest opportunity so that participation of Queensland-based NGIs in the National Scheme is not unnecessarily delayed.

8. Queensland Government influence on National Scheme operations

Queensland has been working closely with the Federal Government and other state and territory government on design of the National Scheme since its establishment was announced by the Federal Government in November 2016. Once the National Scheme is operational, the Federal Government will have responsibility for its operations, including decision-making regarding applications. The Queensland Government's involvement will include responding to information requests, providing advice on eligibility in certain circumstances, and paying invoices issued in relation to approved applications relating to Queensland Government institutions. The Queensland Government will not have capacity to seek review of decisions.

However, the Queensland Government will be represented on national governance structures and will have opportunity through these forums, and regular reporting required to be provided to the Federal Government on scheme operations, to provide feedback on issues as they

arise, and to jointly influence (along with other participating states and territories) proposed changes to the National Scheme. The national governance structures will enable responsible state and territory Ministers to vote on any proposed changes to key elements of the National Scheme, including those impacting on costs to state and territory governments.

As the counselling and direct personal response elements of the National Scheme will be delivered at the state level, the Queensland Government will also have control over the delivery of these elements of redress.

APPENDIX ONE

Group	Date and Location	Chair
Religious Institutions and Churches	28 March 2018 Brisbane	Ms Jennifer Howard MP, Assistant Minister for Veterans' Affairs and Assistant Minister of State
People who have experienced institutional child sexual abuse, support services and advocacy groups	17 April 2018 Caboolture	The Honourable Dr Steven Miles MP, Minister for Health and Minister for Ambulance Services
People who have experienced institutional child sexual abuse, support services and advocacy groups in rural and remote Queensland	27 April 2018 Townsville	The Honourable Coralee O'Rourke MP, Minister for Communities and Minister for Disability Services and Seniors
Law and justice services	30 April 2018 Brisbane	The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice
Schools, Teachers, Early Childcare Education and Care Services, Higher Education and VET	10 May 2018 Logan	The Honourable Shannon Fentiman MP, Minister for Employment and Small Business and Minister for Training and Skills Development
Sports, recreation and community clubs	25 May 2018 Helensvale	The Honourable Mick de Brenni MP, Minister for Housing and Public Works; Minister for Digital Technology; Minister for Sport
People who have experienced institutional child sexual abuse, support services and advocacy groups – Aboriginal and Torres Strait Islander Women	30 May 2018 Cairns	The Honourable Jackie Trad MP, Acting Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships
Out-of-home care	30 May 2018 Ipswich	The Honourable Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence
People who have experienced institutional child sexual abuse, support services and advocacy groups – Aboriginal and Torres Strait Islander Men	7 June 2018 Brisbane	The Honourable Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence