

## DRAFT SECOND READING SPEECH

HON. ELISE ARCHER MP

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

*\*check Hansard for delivery\**

Madam Speaker, I am pleased to introduce the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018*.

This Bill delivers on the Tasmanian Government's commitment to participate in the National Redress Scheme and will provide an avenue for justice for those people who are affected by institutional child sexual abuse.

The National Redress Scheme is a key recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse and reflects the commitment of the many people who have worked towards the provision of an alternative avenue for justice for those who have been affected by sexual abuse as children in institutions.

The Royal Commission exposed the prevalence of institutional child sexual abuse, the failure of institutions to respond and the lifelong impact of abuse on people's lives.

In December of last year, the Royal Commission released 409 recommendations which will impact many areas of institutional governance, regulation and practice.

In June 2018, the Government announced it had accepted the overwhelming majority of recommendations in the Royal Commission's Final Report. The Government's response to the recommendations of the Royal Commission is available on the Department of Justice website and I encourage all Tasmanians to read the response.

Shortly, the Government will release an implementation plan outlining actions that will be taken over the next 12 months.

The National Redress Scheme is but one of a number of significant steps the Government will take to provide support and justice for people impacted by abuse. In line with the Royal Commission recommendations the Government will continue to introduce measures to protect children from institutional sexual abuse, to hold perpetrators to account and ensure that victims can achieve justice, including measures to assist people to participate in the criminal justice system.

Shortly, the Government intends to introduce legislative amendments that will:

- create a new criminal offence for failing to report serious crimes;

- strengthen existing criminal offences;
- strengthen alternative processes for the taking of evidence of vulnerable witnesses to reduce re-traumatisation;
- make changes to sentencing law and practice, including requiring courts to apply current sentencing standards for historic child sex offences; and
- introduce changes to criminal procedure, such as retrospectively repealing a limitation period that is preventing some people from accessing justice for summary sexual crimes.

The long-term impacts of child sexual abuse can make it difficult for people to call institutions to account through the legal system. The risk of re-traumatisation is a significant barrier for people to engage with justice processes. Disclosure of child sexual abuse often occurs years, even decades, after the abuse occurred.

The Australian Government has undertaken significant consultation and negotiation with stakeholders to develop the National Redress Scheme. This has involved negotiating with the States, Territories and non-government institutions as well as working closely with people affected by child abuse, advocacy groups and experts.

Tasmania has been working closely with the Commonwealth, and all other state and territory governments to develop a Scheme that is survivor-focused, and guided by what is known about the nature and impact of child sexual abuse.

The Royal Commission's data tells us that, on average, people affected by abuse may take in excess of 20 years to disclose. For this reason, among others, civil litigation is not always an effective mechanism for all people to obtain adequate redress.

Society's failure to adequately protect children has created a clear need for avenues through which survivors can access appropriate redress for past abuse. This was the rationale for the Royal Commission's recommendation that the Australian Government establish a single national redress scheme for survivors of institutional child sexual abuse.

The National Redress Scheme commenced on 1 July 2018 and will run for 10 years. Since July, Tasmanian applicants have been able to access support services and submit applications to the Scheme. The enactment of this legislation will enable those applications to be assessed by independent decision-makers and offers of redress made to Tasmanian claimants.

To date, the Australian Government, and the governments of New South Wales, Victoria and the ACT have commenced participation in the Scheme. All other governments have announced their intention to participate in the Scheme and will complete the formal requirements over the coming months. For States, this means they must enact laws to refer legislative powers to the Commonwealth. This Bill achieves that.

Redress includes the three components:

- a monetary payment which, under this Scheme, will be up to \$150,000;
- access to counselling and psychological support, the delivery of which will depend on where the person resides; and
- a direct personal response from the participating institution or institutions responsible to the extent requested.

An intergovernmental agreement underpins the National Redress Scheme and has been signed by States and Territories participating in the Scheme, as well as by the Commonwealth. The Tasmanian Premier signed the intergovernmental agreement on 31 May 2018.

The intergovernmental agreement sets out the governance arrangements for the National Redress Scheme and the respective roles and responsibilities of the Commonwealth, state and territory governments.

I now turn to the detail of the Bill.

The Bill adopts the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth (the *National Redress Act*). The Bill also includes an amendment reference to enable the Commonwealth to make amendments to the *National Redress Act* relating to redress for institutional child sexual abuse.

The amendment reference is subject to specific limitations to ensure that the Commonwealth cannot make any amendments that inadvertently affect State redress mechanisms (Clause 7) such as the Tasmanian Victims of Crime Assistance Scheme. It also includes the jurisdiction of a court to grant compensation or support to victims of crime, including crime relating to institutional child sexual abuse. This means that the limitation to the amendment reference prevents any changes to the *National Redress Act* that would impinge on the jurisdiction of courts concerning institutional child sexual abuse.

The Bill will commence on 1 November 2018.

The *National Redress Act* provides the legislative basis for entitlement, participation, offers and acceptance, provision of redress, funding liability, funder of last resort and other administrative matters.

The *National Redress Act* was explained in detail when it was introduced in the Commonwealth Parliament. Therefore, I will be brief in my account of the key elements.

The *National Redress Act* provides that abuse within the scope of the Scheme is sexual and related non-sexual abuse that occurred before the start of the Scheme on 1 July 2018, when the person was a child and in a participating state or territory.

A person is eligible for redress if they have been sexually abused within the scope of the Scheme, one or more participating institutions is responsible for the abuse, and the person is an Australian citizen or permanent resident.

If an application for redress identifies a participating institution as being involved in the abuse, the Scheme Operator must request that the institution provide any information that may be relevant.

Independent decision-makers consider whether there is a reasonable likelihood, as defined in the *National Redress Act*, that the person is eligible for redress under the Scheme.

'Reasonable likelihood' was the test recommended by the Royal Commission as the standard of proof for determining applications for redress.

After approving an application, the amount of the redress payment and the share of costs attributable to each liable institution is determined. The process for working out the amounts, including the application of an assessment framework, is prescribed. This includes deducting any relevant prior payments, such as payments made under the Tasmanian Abuse in State Care Ex Gratia Scheme.

A determination made by the Scheme is an administrative decision, not a finding of law or fact.

A person who has applied for redress may apply for internal review of a determination.

If a person is entitled to redress and wishes to access the counselling and psychological component, they will be referred to the participating jurisdiction where they live.

If a person wishes to receive a direct personal response, the participating institution must take reasonable steps to give one. Guiding principles are included in the *National Redress Act* and a Direct Personal Response framework sets out the arrangements under which institutions will provide those responses.

If a person accepts the offer of redress, they must release particular institutions from all civil liability for the abuse. Applicants are supported to access legal advice, which is funded by the responsible institutions. This is consistent with the Royal Commission's recommendations.

By agreeing to participate, Tasmanian Government institutions including State agencies, schools and service providers of child-related services among others are participating institutions.

Because Tasmania has opted into the Scheme, non-government institutions in our State, including churches, charities, independent schools and other organisations, are able to participate. Already a number of these institutions have committed to participate and I strongly encourage the remaining non-government institutions to join so that Tasmanians can have, as far as possible, equal access to redress.

For the purposes of the Scheme, a participating institution is deemed to be responsible for the abuse of a person if the abuse occurred in circumstances where the participating institution is primarily or equally responsible for the abuser having contact with the person.

A number of circumstances are relevant to determining that question such as, whether the institution was responsible for the day-to-day care of the person when the abuse occurred, or whether the abuser was an official of the institution when the abuse occurred.

Participating institutions that are determined to be responsible for the abuse of a person are liable for the costs of providing redress. Those institutions are also liable for contributing to the cost of counselling, independent legal advice, and the administration of the Scheme.

Some institutions where child sexual abuse has occurred may no longer exist. The *National Redress Act* provides that a 'defunct' institution can participate in the Scheme if it has a representative that acts on its behalf and assumes its obligations and liabilities under the Scheme.

Participating government institutions may be the funder of last resort for a non-government institution that no longer exists. This applies only where the government institution is equally responsible for the abuse.

This is an important day for many Tasmanians. I would like to take this opportunity to again acknowledge those people affected by institutional child sexual abuse, many of whom were not previously listened to, not believed or not acknowledged.

Their extraordinary bravery has ensured that we will learn from the mistakes of the past, acknowledge the harm and suffering experienced, and work towards prioritising the safety of children above all else.

I commend the Bill to the House.