



New South Wales

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

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament.

The Bill operates to refer matters relating to institutional child sexual abuse as follows:

- (a) The *text reference*, which provides for the enactment by the Commonwealth Parliament of the Bill for a proposed Commonwealth Act as set out in Schedule 1. The proposed Commonwealth Act is the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the *National Redress Act*).
- (b) The *amendment reference*, which provides for the enactment of express amendments to the National Redress Act relating to redress for institutional child sexual abuse. The amendment reference is subject to limitations under clauses 5 and 6.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) and main purpose of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** contains definitions of terms used in the proposed Act.

## **Part 2 Reference of matters to Commonwealth Parliament**

**Clause 4** deals with the reference of matters to the Commonwealth Parliament. The references comprise the text reference and the amendment reference, as referred to in the Overview above.

**Clause 5** provides that the amendment reference does not include certain matters relating to State redress mechanisms.

**Clause 5 (1)** defines *State redress mechanism* to mean a scheme established by the State Parliament or State government or by any governmental or non-governmental entity for or in respect of persons who have suffered institutional child sexual abuse in the State, and also to mean the jurisdiction of a court or tribunal to grant compensation or support for or in respect of victims of crime (including crime relating to institutional child sexual abuse).

**Clause 5 (2)** provides that the amendment reference does not include the matter of making a law to the extent that it would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism.

**Clause 5 (3)** provides that clause 5 (2) does not cover: any matters covered by the text reference; the release or discharge of civil liability under the National Redress Scheme; the disclosure or use of evidence or other information provided or obtained under the National Redress Scheme; or the making, enforcement or protection (eg against the operation of garnishee orders) of payments under the National Redress Scheme.

**Clause 6** provides that the amendment reference does not include the matter of making a law to the extent that it would substantively remove or override a provision of the National Redress Act that requires the agreement of the State (eg for a State institution to be declared a participating institution).

**Clause 7** deals with the termination of the period of the references under clause 4 (namely, the period ending on a day fixed by the Governor by proclamation).

**Clause 8** makes it clear that the termination of the amendment reference does not affect laws already in place.

## **Part 3 Miscellaneous**

**Clause 9** authorises the regulations or (subject to the regulations) the Minister to give directions as to how the agreement of the State is to be given or withdrawn and may be evidenced for the purposes of, and consistently with, the proposed Act and the National Redress Scheme.

**Clause 10** provides that a participating institution may give information to the Operator under the National Redress Scheme in response to a relevant request of the Operator, and that a State agency may provide information to another State agency for the purpose of assisting any participating State institution to comply with such a request. The information may be provided despite any law of the State unless the law is prescribed by the regulations.

**Clause 11** authorises regulations to be made for the purposes of the proposed Act.

## **Schedule 1 Scheduled text of the proposed Bill for a Commonwealth Act**

**Schedule 1** sets out the text of the Bill for the proposed *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth. The text is the subject of the text reference under clause 4 (1).