



Western Australia

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

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Western Australia

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

No. 36 of 2018

An Act —

- to adopt the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Commonwealth)* as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the day on which this Act receives the Royal Assent for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and
- to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and
- to amend the *Criminal Injuries Compensation Act 2003*; and
- for related matters.

[Assented to 5 December 2018]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Terms used

In this Act —

adoption means the adoption under section 4(2);

amendment reference means the reference under section 5(1);

assent day means the day referred to in section 2;

express amendment of the National Redress Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the National Redress Act;

National Redress Act means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Commonwealth);

National Redress Scheme means the National Redress Scheme for Institutional Child Sexual Abuse as established by the National Redress Act and as in force from time to time;

participating State institution means a participating State institution within the meaning of the National Redress Act;

State institution means a State institution within the meaning of the National Redress Act.

Part 2 — Adoption and referral

4. Adoption of the relevant version of the National Redress Act

(1) In this section —

relevant version of the National Redress Act means the National Redress Act as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the assent day.

(2) The relevant version of the National Redress Act is adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth.

(3) Despite subsection (2), the adoption has effect for, and for no longer than, the period —

- (a) beginning when subsection (2) comes into operation; and
- (b) ending at the beginning of the day fixed under this Part as the day on which the adoption is to terminate.

5. Amendment reference

(1) Matters relating to a redress scheme for institutional child sexual abuse are, except as provided by sections 7 and 8, referred to the Parliament of the Commonwealth, but only to the extent of making laws with respect to those matters by making express amendments of the National Redress Act.

(2) The amendment reference has effect only —

- (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth); and
- (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

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- (3) Despite subsection (1) and subject to section 10(2), the amendment reference has effect for, and for no longer than, the period —
- (a) beginning when subsection (1) comes into operation; and
 - (b) ending at the beginning of the day fixed under this Part as the day on which the reference is to terminate.

6. Amendment of National Redress Act

It is the intention of the Parliament of the State that the National Redress Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act —

- (a) by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from under the amendment reference; and
- (b) by provisions of instruments made or issued under the National Redress Act or under provisions referred to in paragraph (a).

7. State redress mechanisms

- (1) A *State redress mechanism* is —
- (a) a scheme, program or arrangement (temporary or otherwise) established (before or after the commencement of this Act) by —
 - (i) the Parliament or government of the State; or
 - (ii) an institution (whether governmental or non-governmental) or other entity,for or in respect of persons who have suffered institutional child sexual abuse in the State (whether applying only to any such persons or applying to any class of victims of crime) and any associated matters; or

- (b) 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) and any associated matters.
- (2) The amendment reference does not include the matter of making a law to the extent that that law would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism, whether or not the mechanism deals with the same or similar subject-matters as those dealt with in any aspect of the National Redress Scheme.
- (3) Subsection (2) does not cover any of the following matters (if they would otherwise be covered by the amendment reference) —
 - (a) any matter to which the National Redress Act as originally enacted relates;
 - (b) the matter of the release or discharge, in connection with the operation of the National Redress Scheme, of relevant civil liability of institutions or officials;
 - (c) the matter of the disclosure or use of evidence or other information provided or obtained in connection with the operation of the National Redress Scheme;
 - (d) the matter of the making, enforcement or protection (for example, protection against the operation of orders in the nature of garnishee orders) of payments in connection with the operation of the National Redress Scheme.

8. Requirements for agreement of the State

The amendment reference does not include the matter of making a law to the extent that that law would substantively remove or override a provision of the National Redress Act that requires the agreement of the State.

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9. Termination of adoption or amendment reference

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which —
 - (a) the adoption and the amendment reference are to terminate; or
 - (b) the amendment reference is to terminate; or
 - (c) the adoption is to terminate (if the amendment reference has been previously terminated).
- (2) The Governor may, by proclamation (a *revoking proclamation*), revoke a proclamation published under subsection (1).
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) If a revoking proclamation has effect the revoked proclamation is taken never to have been made for the purposes of sections 4(3) and 5(3).
- (5) A revoking proclamation does not prevent the making of a further proclamation under subsection (1).

10. Effect of termination of amendment reference before adoption

- (1) If the amendment reference terminates before the adoption, the termination of the amendment reference does not affect —
 - (a) laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
 - (b) the continued operation in the State of the National Redress Act as in operation immediately before that termination or as subsequently amended or affected by —
 - (i) laws referred to in paragraph (a) that come into operation after that termination; or

- (ii) provisions referred to in section 6.
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.

Part 3 — Agreement and information

11. How agreement of the State is given, withdrawn and evidenced

- (1) The regulations may make provision for or with respect to, or (subject to any relevant provisions of the regulations) the Minister may 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, this Act and the National Redress Scheme.
- (2) Without limitation —
 - (a) the regulations or directions may authorise a person to give agreement on behalf of the State; and
 - (b) the agreement of the State to State institutions participating in the National Redress Scheme may be given in respect of —
 - (i) one or more particular State institutions; or
 - (ii) a class of State institutions, however described.

12. Information sharing

- (1) In this section —

Operator means the Operator within the meaning of the National Redress Act;

State agency means the whole or part of a body (whether or not incorporated) established for a public purpose by or under a law of the State, whether or not it is a State institution or participating State institution, and includes a body or class of bodies prescribed by the regulations as being within this definition, but does not include a body or class of bodies prescribed by the regulations as not being within this definition.
- (2) A participating State institution may give information to the Operator for the purpose of complying with a request made by the Operator to the participating State institution under the

National Redress Act to give information in relation to an application under the National Redress Scheme.

- (3) A State agency may give information to another State agency for the purpose of assisting any participating State institution to comply with a request made by the Operator to the participating State institution under the National Redress Act to give information as referred to in subsection (2).
- (4) Nothing in a law of the State prevents —
- (a) a participating State institution from giving information to the Operator as referred to in subsection (2); or
 - (b) a State agency from giving information to another State agency as referred to in subsection (3),

unless that law is prescribed by the regulations under this Act.

- (5) A reference in this section to a participating State institution is a reference to a participating State institution that is, is part of or is connected with the State.

Part 4 — Interaction between the *Criminal Injuries Compensation Act 2003* and the National Redress Act

13. Terms used

In this Part —

abuse means abuse as defined in the National Redress Act section 6 that is within the scope of the National Redress Scheme;

assessor has the meaning given in the *Criminal Injuries Compensation Act 2003* section 3;

compensation application has the meaning given in the *Criminal Injuries Compensation Act 2003* section 3;

offence has the meaning given in the *Criminal Injuries Compensation Act 2003* section 3;

redress application means an application for redress made under the National Redress Act.

14. Deferral of compensation application if redress application not made in relation to abuse

(1) This section applies if —

- (a) a person has made a compensation application in relation to an offence; and
- (b) the offence for which the compensation application is made is or involves abuse; and
- (c) the person has not made a redress application; and
- (d) the assessor dealing with the compensation application by or on behalf of a person is of the opinion there is a reasonable likelihood that the person is eligible for redress under the National Redress Scheme.

(2) The assessor must defer the compensation application pending the making of a redress application.

15. Effect on compensation application if redress application made

- (1) This section applies if —
 - (a) after a person has made a redress application the person makes a compensation application in relation to an offence and —
 - (i) the offence in relation to which the person makes the compensation application is or involves abuse; and
 - (ii) the redress application has not been determined;or
 - (b) after a person has made a compensation application in relation to an offence the person makes a redress application and —
 - (i) the offence in relation to which the person made the compensation application is or involves abuse; and
 - (ii) the compensation application has not been determined.
- (2) The assessor dealing with the compensation application by or on behalf of a person must defer the compensation application pending the determination of the redress application.

Part 5 — Regulations

16. Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 6 — Tabling particular documents

17. Tabling documents relating to scheme reviews

(1) In this section —

intergovernmental agreement means the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia as in force from time to time;

scheme review means —

- (a) a review under the National Redress Act section 192(1) or (3); or
- (b) a review of the operation and objectives of the intergovernmental agreement carried out under clause 36 of that agreement.

(2) Subsection (3) applies if —

- (a) a scheme review is carried out; and
- (b) a report is prepared by the person carrying out the review; and
- (c) the Minister receives the report.

(3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after the Minister receives the report, but not later than 6 sitting days of the House after the Minister received it.

(4) If a report to which subsection (3) applies contains sensitive, confidential or personal information, the Minister may comply with subsection (3) by removing the sensitive, confidential or personal information from the report before causing the document to be laid before each House.

**Part 7 — *Criminal Injuries Compensation Act 2003*
amended**

18. Act amended

This Part amends the *Criminal Injuries Compensation Act 2003*.

19. Section 42 amended

- (1) In section 42(3) delete “received by way of compensation or damages, or under a contract of insurance,” and insert:

received, whether under a contract of insurance or otherwise,

- (2) In section 42(4) delete “amount by way of compensation or damages, or under a contract of insurance,” and insert:

amount, whether under a contract of insurance or otherwise,

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
abuse	13
adoption	3
amendment reference	3
assent day	3
assessor	13
compensation application	13
express amendment	3
intergovernmental agreement	17(1)
National Redress Act	3
National Redress Scheme	3
offence	13
Operator	12(1)
participating State institution	3
redress application	13
relevant version of the National Redress Act	4(1)
revoking proclamation	9(2)
scheme review	17(1)
State agency	12(1)
State institution	3
State redress mechanism	7(1)