

Legislative Council—No 49

As received from the House of Assembly and read a first time, 6 September 2018

South Australia

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

A BILL FOR

An Act to adopt the National Redress Act, 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 Commonwealth Constitution, and to provide for related matters.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Adoption and referral

- 4 Adoption of the relevant version of the National Redress Act
- 5 Amendment reference
- 6 Amendment of National Redress Act
- 7 State redress mechanisms
- 8 Requirements for agreement of the State
- 9 Termination of adoption or amendment reference
- 10 Effect of termination of amendment reference before adoption

Part 3—Miscellaneous

- 11 How agreement of the State is given, withdrawn and evidenced
 - 12 Information sharing
 - 13 Regulations
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

10 *adoption* means the adoption under section 4(1);

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

assent day means the day on which this Act is assented to by the Governor;

15 *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;

20 *National Redress Act* means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth as in force from time to time;

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;

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

relevant version of the National Redress Act means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth as originally enacted and as subsequently amended by any amendments enacted by the Parliament of the Commonwealth at any time before the assent day;

10 *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

- 15 (1) The relevant version of the National Redress Act is adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth.
- (2) Despite subsection (1), the adoption 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 adoption is to terminate.
- 20

5—Amendment reference

- 25 (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.
- 30
- (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.
- 35

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—

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- (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).

10 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
 - 15 (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
 - 20 (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):
- 30 (a) any matter to which the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth, 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;
 - 35 (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.

9—Termination of adoption or amendment reference

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- (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
- 10 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).
- 15 (4) If a revoking proclamation has effect the revoked proclamation is taken never to have been made for the purposes of sections 4(2) 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

- 20 (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
- 25 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.
- 30 (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.

Part 3—Miscellaneous

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

- 35 (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) 1 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.

13—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.