

South Australia

**Victims of Abuse In State Care (Compensation)  
Bill 2009**

A BILL FOR

An Act to establish a scheme for the determination of claims for payment of statutory compensation to persons who have suffered abuse or neglect while in State care.

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### The Parliament of South Australia enacts as follows:

#### 1—Short title

This Act may be cited as the *Victims of Abuse In State Care (Compensation) Act 2009*.

#### 2—Commencement

5 This Act will come into operation 6 months after the day on which it is assented to by the Governor or on an earlier day fixed by proclamation.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

***abuse or neglect***, in relation to a child, means—

- 10 (a) sexual abuse of the child; or
- (b) physical or emotional abuse of the child, or neglect of the child, reasonably likely to—
- (i) cause the child to suffer physical or psychological injury detrimental to the child's wellbeing; or
- (ii) place the child's physical or psychological development in jeopardy;

15 ***child*** means a person under the age of 18 years;

***child in State care*** means a child who was, at the relevant time, a child who had been placed under the guardianship, custody, care or control of a designated Minister or another public official, or the former body corporate known as the Children's Welfare and Public Relief Board, under a relevant Act;

20 ***Commissioner for Victims' Rights*** means the person holding or acting in the office of Commissioner for Victims' Rights under the *Victims of Crime Act 2001*;

***designated Minister*** means a Minister responsible for the administration of a relevant Act;

*relevant Act* means the *Children's Protection Act 1993* or a corresponding previous enactment dealing with the protection of children;

*sexual abuse* means conduct that would, if proven, constitute a sexual offence;

*sexual offence* means a sexual offence within the meaning of section 4 of the *Evidence Act 1929*.

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#### 4—Eligibility to make claim

A person is eligible to claim statutory compensation under this Act if the person—

- (a) reached the age of 18 years before 1 February 2009; and
- (b) suffered abuse or neglect as a child in State care.

#### 10 5—Application for compensation

(1) A person who is eligible to claim statutory compensation under this Act may, within the application period, apply to the Attorney-General for statutory compensation.

(2) The following requirements apply to and in relation to the application:

(a) the application must—

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- (i) contain the information required by the regulations; and
- (ii) be accompanied by any medical reports relevant to the application in the possession of, or accessible to, the claimant; and
- (iii) be accompanied by any further documents required under the regulations;

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(b) the information contained in the application must be verified by statutory declaration.

(3) A claimant must comply with any reasonable request of the Attorney-General for further information in relation to the application or evidence in support of the application.

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(4) In this section—

*application period* means the period commencing on the day on which this section comes into operation and ending—

(a) on the first anniversary of that day; or

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(b) if another day (that does not precede the day referred to in paragraph (a)) is specified by the Minister by notice in the Gazette for the purposes of this definition—on that day.

#### 6—Payment of compensation

(1) Subject to this section—

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(a) if the Attorney-General is satisfied that a claimant suffered abuse or neglect as a child in State care but is not satisfied that the claimant suffered significant physical or psychological injury as a result of the abuse or neglect, the Attorney-General may determine that the claimant is entitled to a payment of compensation not exceeding \$7 000; and

(b) if the Attorney-General is satisfied that a claimant suffered abuse or neglect as a child in State care and that the abuse or neglect caused significant physical or psychological injury, the Attorney-General may determine that the claimant is entitled to a payment of compensation of not less than \$7 000 and not more than \$43 000.

(2) The Attorney-General's determination on a claim for statutory compensation may be based on evidence provided by the claimant or on further investigations conducted by the Attorney-General (but the Attorney-General is not obliged to conduct such investigations in respect of a claim).

(3) The Attorney-General may determine that a payment of statutory compensation cannot be made to a particular claimant in accordance with a determination under subsection (1) unless the claimant executes a waiver of other legal rights (in such form as the Attorney-General thinks fit).

(4) A payment of statutory compensation cannot be made in accordance with a determination under subsection (1) unless a legal practitioner has signed a certificate in the prescribed form certifying that he or she has explained the legal implications of the payment to the claimant.

(5) The State is liable to indemnify the claimant for the reasonable costs of obtaining the legal advice required under subsection (4) up to—

(a) \$500; or

(b) if some other limit (not less than \$500) is prescribed by regulation—that limit.

(6) A determination or purported determination of the Attorney-General under this section cannot be challenged or called in question before any court.

(7) If the Attorney-General determines under subsection (1) that a claimant is entitled to a payment of compensation, the payment is recoverable from the Crown as a debt due to the claimant.

## **7—Apology**

(1) If the Attorney-General determines under section 6 that a claimant is entitled to a payment of statutory compensation, the claimant must also be given a written apology.

(2) An apology must—

(a) refer to the circumstances of the abuse or neglect suffered by the claimant; and

(b) acknowledge that the abuse or neglect of the claimant occurred because of a breach of the State's duty of care to the claimant.

## **8—Recovery from claimant**

If—

(a) in accordance with a determination of the Attorney-General under section 6, a payment of statutory compensation is made to a claimant; and

(b) the claimant is subsequently paid compensation or damages under another Act or by some other person for injury, financial loss or grief caused by the abuse or neglect for which the payment referred to in paragraph (a) was made; and

5 (c) the compensation or damages received from the other source was not taken into account by the Attorney-General in making the determination or exceeds the amount taken into account by the Attorney-General,

10 the Crown may recover from the claimant, as a debt, the amount of the payment or the amount of the excess (as the case requires) but may not recover more than the amount received from the other source.

### 9—Delegation

(1) The Attorney-General may, by instrument in writing, delegate to a specified person, or the holder of a specified position, any of the Attorney-General's powers or functions under this Act.

15 (2) A delegation under this section—

(a) may be made subject to conditions or limitations; and

(b) is revocable at will and does not derogate from the power of the Attorney-General to act in any matter.

### 10—Commissioner for Victims' Rights to assist claimants

20 The Commissioner for Victims' Rights is to support persons eligible to claim statutory compensation under this Act and, for that purpose, must, where necessary—

(a) provide such advice and assistance to claimants, and persons interested in making claims under this Act, as may be reasonably required; and

25 (b) arrange for the provision of legal advice to claimants as required under section 6.

### 11—Confidentiality

(1) Subject to subsection (2), a person engaged or formerly engaged in the administration of this Act must not disclose information that could identify, or lead to the identification of—

30 (a) a person who has been, or who is alleged to have been, the victim of abuse or neglect; or

(b) a person who has been responsible for, or is alleged to have been responsible for, the abuse or neglect of a child,

35 except to the extent that he or she may be authorised or required to disclose that information by the Minister.

(2) Subsection (1) does not prevent a person from disclosing information—

(a) as required by law, or as required for the administration of this Act; or

(b) at the request, or with the consent, of the person to whom the information relates or a guardian of the person; or

40 (c) in accordance with the regulations.

**12—Interaction between this Act and other laws**

Subject to section 6(3), this Act does not exclude or derogate from rights to damages or compensation that exist apart from this Act.

**13—Regulations**

5 The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.