

House of Assembly—No 166

As received from the Legislative Council and read a first time, 3 December 2009

South Australia

**Victims of Crime (Abuse in State Care)
Amendment Bill 2009**

A BILL FOR

An Act to amend the *Victims of Crime Act 2001*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Victims of Crime (Abuse in State Care) Amendment Act 2009*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Victims of Crime Act 2001*

3—Insertion of section 33A

10 After section 33 insert:

33A—Payments for victims of abuse while in State care

- (1) If the Attorney-General determines to make a payment to a person under section 27(4)(e) or 31(2) because the person has suffered abuse or neglect as a child in State care, the following provisions apply:

- 15 (a) the person cannot be required to enter into an agreement to—
 - (i) keep the amount of the payment, or the reason for the payment, confidential; or
 - 20 (ii) waive, as a condition of receiving the payment, any entitlement to damages or compensation that exists apart from this Act;
- (b) the person must be given a written apology that—
 - (i) refers to the circumstances of the abuse or neglect suffered by the person; and

- (ii) acknowledges that the abuse or neglect occurred because of a breach of the State's duty of care to the person,

(but for the purposes of any other claim or proceeding, this apology and acknowledgement will be disregarded and will not be taken to be an admission of liability or fault on the part of the State);

- (c) the payment must include an amount as compensation for the reasonable costs and expenses incurred by the person in connection with—

- (i) his or her application for the payment; and

- (ii) civil proceedings (if any) for compensation for the abuse or neglect commenced by or on behalf of the person before the commencement of this section that are discontinued before the Attorney-General's determination is made;

- (d) despite any other limit prescribed by this Act in relation to orders for compensation or the terms of any scheme established by the Attorney-General for the making of such payments, the maximum amount payable to the person is \$80 000 (not inclusive of costs).

(2) In this section—

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

- (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;

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;

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 within the meaning of section 4 of the *Evidence Act 1929*.