

# A BILL FOR THE REDRESS FOR SURVIVORS OF ABUSE CANON 2017

## EXPLANATORY MEMORANDUM

### General Background

1. Since 2004 some dioceses and Anglican organisations have developed their own redress schemes as a response to survivors of abuse, including child sexual abuse, as an alternative to civil litigation. They are often referred to as Pastoral Care and Assistance schemes. Different processes apply in these schemes with varying degrees of independence in the decision-makers and the decisions made in assessing claims (including around monetary payments).
2. The Royal Commission into Institutional Responses to Child Sexual Abuse was established in January 2013 and its terms of reference include “what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions ...”.
3. On 14 September 2015 the Redress and Civil Litigation Report of the Royal Commission was tabled in the Australian Parliament. In this report, the Royal Commission:
  - (a) found that a process for redress must provide equal access and equal treatment for survivors – regardless of the location, operator, type, continued existence or assets of the institution in which they were abused – if it is to be regarded by survivors as being capable of delivering justice;
  - (b) found that appropriate redress for survivors should include the elements of a direct personal response, counselling and psychological care and monetary payments;
  - (c) recommended that, in order to provide redress under the most effective structure for ensuring justice for survivors, the Australian Government should establish a single national redress scheme; and
  - (d) stated that decisions about redress should be made by a body that is independent of the institutions, which will mean that applicants will not need to deal directly with the institution in which they were abused.
4. In response to this report, the Royal Commission Working Group put in place a process of consultation, including two forums on 1 June 2016 and 21 September 2016

which attracted extensive representation from dioceses and organisations and the circulation of an options paper. A majority of participants at the second forum supported the view that “Option 4” in the options paper (an independently controlled scheme managed by an independent, incorporated entity to determine payments in accordance with Royal Commission’s recommended financial matrix) would best deliver an independent, consistent, survivor centred redress scheme. There was no firm commitment of involvement but a willingness to receive more detailed information to allow an assessment against current arrangements. A consistent view expressed at these forums was that diocese or organisation should not be liable for the payment of any amount in settlement of a claim for redress against another diocese or organisation.

5. On 4 November 2016 the Commonwealth announced that it would establish a Redress Scheme for survivors of abuse in Commonwealth institutional settings, and would encourage states, territories and non-government institutions to opt-in on a strictly “responsible entity pays” basis. The ability of non-government institutions (including dioceses and other Anglican organisations) to participate in the Scheme will depend on a referral of powers from the state(s) in which that institution is established and/or operates. A referral will enable non-government institutions in the referring state to voluntarily opt into the Scheme by written agreement.
6. The present position with respect to the Commonwealth Redress Scheme is:
  - (a) the Scheme is proposed to commence on 1 July 2018 and will be limited to child sexual abuse which occurred prior to that date;
  - (b) participating responsible entities will need to meet the following costs:
    - redress costs comprising the three Scheme outcomes of monetary payment, direct personal response, and psychological counselling;
    - contribution to the cost of a survivor’s legal advice in a capped amount; and
    - administration costs;
  - (c) it is unclear whether the Church will only be able to opt into the Scheme through a single entity on behalf of any dioceses and organisations that wish to voluntarily participate in the Scheme;
  - (d) it is unclear which states will refer the necessary powers to the Commonwealth to enable non-government institutions in their jurisdiction to voluntarily opt into the Scheme; and
  - (e) it is anticipated that an Exposure Draft of the Bill to establish the Scheme will be available in early August 2017 before it is introduced into the Australian Parliament in the Spring sittings commencing in August 2017.
7. In these circumstances some dioceses and organisations may wish to voluntarily opt into the Commonwealth Redress Scheme. Accordingly, it is prudent for the General

Synod to authorise the Standing Committee to arrange for the registration of a company, or for the participation in another entity or scheme, on behalf of those dioceses and organisations. It is also conceivable that a number of non-Anglican, non-government institutions may wish to opt into the Scheme through membership of the company or participation in the same entity or scheme.

8. In addition, it may be necessary or desirable to put in place arrangements for the co-ordination and management of redress for survivors of abuse perpetrated by clergy, lay workers and volunteers who commit abuse in the course of their official responsibilities, including survivors of child sexual abuse who are unable or unwilling to participate in the Commonwealth Redress Scheme. Accordingly, it is also prudent for the General Synod to authorise the Standing Committee to arrange for the company or another entity or scheme to be able co-ordinate and manage redress in these circumstances on behalf of the dioceses and organisations that voluntarily elect to become members of the company or participate in the entity or scheme.
9. The object of this canon is to make provision for the co-ordination and management of redress:
  - (a) for survivors of child sexual abuse perpetrated by offenders through participation in the Commonwealth Redress Scheme; and
  - (b) for survivors of abuse perpetrated by offenders, including survivors of child sexual abuse who are unable or unwilling to participate in the Commonwealth Redress Scheme.
10. The canon confers authority on the Standing Committee to arrange for the registration of such a company and/or the participation of dioceses and organisations in another entity or scheme, and confers powers on the Standing Committee in relation to the company or the entity or scheme.
11. As the canon does not in any direct way influence, alter or shape how the diocese is ordered or governed or the church trust property of a diocese, it does not contain a declaration under s 30(b) of the Constitution. It is intended that the canon will come into force on a date appointed by the President.

#### **Notes on Clauses**

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| Clause 1 | states the title of the canon.  |
| Clause 2 | states the object of the canon.   |
| Clause 3 | contains definitions of the following words and expressions used in the canon: Commonwealth redress scheme, Offenders and Participants. |
| Clause 4 | confers authority on the Standing Committee to arrange for the  |

registration of a company limited by guarantee under the Corporations Act 2001 (Cth) to co-ordinate and manage redress.

- Clause 5 specifies provisions that must be included in the constitution of the company.
- Clause 6 confers powers on the Standing Committee in relation to the company.
- Clause 7 confers authority on the Standing Committee to arrange for the participation of dioceses and organisations in another entity or scheme which is established to co-ordinate and manage redress.
- Clause 8 confers powers on the Standing Committee in relation to the entity or scheme.