

Australians can be proud of what the Royal Commission into Institutional Responses to Child Sexual Abuse accomplished, but they cannot be proud of the National Redress Scheme (NRS).

With the Joint Select Committee's review of the NRS set to be released in the coming weeks, it's important to look back on how the NRS emerged and the ways it strayed from the recommendations of the royal commission.

In September 2015, the royal commission released its [report](#) on redress and civil litigation. It proposed a redress scheme with three elements: a direct personal response, counselling and psychological care, and a monetary payment.

Read more: [*Royal commission report makes preventing institutional sexual abuse a national responsibility*](#)

And it set forth principles to guide redress, such as being “survivor-focused” by providing justice to survivors and not protecting the interests of institutions.

On June 19 2018, the [NRS bill passed](#) with bipartisan support in both houses of parliament, but it did not adhere to these principles, nor reflect the spirit of what the royal commission had recommended.

Protecting the interests of institutions ultimately prevailed over providing justice to survivors.

So how and why did this happen?

Creating a national scheme

Creating a national scheme was a complicated exercise. To do so, Australian states had to refer their legislative power for redress to the Commonwealth. Without state referral, non-Commonwealth institutions – both government and non-government – could not participate.

The Commonwealth began negotiating with the states in January 2016. In November that year, then Attorney-General George Brandis and then Minister for Social Services Christian Porter issued a [press release](#) announcing that a Commonwealth Redress Scheme (CRS) would be established.

The release said the maximum payment would be \$150,000, not the \$200,000 figure the royal commission had recommended.

That day, Porter held a [press conference](#) where he was asked to explain why the maximum was reduced. He said:

we have had intensive negotiations with the states and territories, and with churches and charities. And we were trying to design a monetary redress payment that offered appropriate recognition, but maximised our opportunity to get other organisations to opt-in to the scheme.

In October 2017, the CRS bill was [introduced into parliament](#). The government's strategy was to move the bill along while at the same time encouraging states and non-government institutions to opt-in to the scheme. If no states did so by July 1 2018, the scheme would be for survivors of abuse in Commonwealth institutions only.

That day, Porter was asked on [ABC radio](#) why people with convictions for sexual offences or other serious crimes were not eligible for the scheme. Porter explained that the decision was made in "deep consultation" with state attorneys-general who were of the "almost unanimous" view that to "give integrity and public confidence to the scheme", there needed to be limitations for those who "had committed serious crimes, particularly sexual offences".

The exclusion was a condition for the states to opt-in, and a “powerful reason why [the] decision was made”, according to Porter.

In the same interview, he dropped another bombshell: counselling and psychological care would be capped at \$5,000 per person. No explanation was given. The royal commission did not recommend a criminal history exclusion nor a cap on counselling.

As the CRS bill moved through parliament, media stories and submissions to the Senate Community Affairs Legislation Committee focused on the reduced maximum payment, criminal history exclusion, and cap on counselling. [Concerns were also raised](#) that the scheme was for sexual abuse only, and that important scheme details were to be contained in delegated legislation, or what is also termed “the rules”. This meant the minister would announce them at a future date, and they would not be subject to parliamentary scrutiny or debate.

Two crucial elements in the delegated legislation were the Assessment Framework and the Direct Personal Response Framework. [The Assessment Framework](#) assesses both the monetary payment and monetary support for counselling and psychological care. The [Direct Personal Response Framework](#) outlines a limited number of ways a responsible institution may engage with a survivor, including an apology or statement of regret, and steps taken to prevent abuse in the future.

It was not until August 13 2018, two months after the passage of the NRS, that these frameworks were tabled by the minister. Both departed strongly from what the royal commission had recommended.

The shift from a Commonwealth to a national scheme occurred in May 2018, when a [COAG intergovernmental agreement](#) on the NRS was signed by New South Wales and the ACT. New South Wales introduced legislation referring the power to make laws about redress to the Commonwealth.

Later that month, the NRS bill was [introduced into federal parliament](#). A Senate review in March had called attention to gaps between what the Royal Commission had recommended and what was in the CRS bill. The NRS bill maintained and, at times, widened these gaps.

The widening gaps between the royal commission and the NRS

We identified 17 contentious matters in the NRS bill.

Five matters that received considerable attention were the maximum monetary payment, criminal history exclusion, cap on counselling, assessment framework, and the eligibility of sexual abuse only.

But 12 others were just as consequential.

They related to government and institutional responsibilities (funder of last resort and institutional opt-in timeframe); application and payment requirements (single application, indexation of payment, acceptance period, deed of release, lack of external review); other eligibility criteria (no application from gaol, citizenship and residency, age limit); scheme reporting; and the direct personal response.

All 17 matters departed from what the royal commission recommended except three: the eligibility of sexual abuse only, indexation of payment, and no external review.

The pressure points for the departures were economic and political costs to government and non-government participants, and to a lesser degree, the convenience of the scheme operator.

As the NRS legislation moved toward passage in June 2018, [many politicians said](#) it was “imperfect”, but they would support it. Such support was often couched in pro-survivor rhetoric. For example,

[Senator Louise Pratt said](#)

:

Survivors have in some instances waited all their lives for justice, and they should not have to

wait a minute longer.

In fact, politicians' hands were tied: they could not change the bill because this would require renegotiating the framework of redress decided by members of the state and federal executive. Such delay would jeopardise the Commonwealth's promised start date of July 1 2018.

We want to see a fair and effective redress scheme. To make that happen, elements in the current scheme will need to change.

But is there any hope for change? Perhaps.

A bipartisan [Joint Select Committee](#) (JSC) on the Oversight of the Implementation of Redress Related Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse has been receiving submissions and holding hearings over the past five months.

Read more: [*Listen to abuse survivors and advocates to clear the way to a national redress scheme*](#)

The [JSC has learned](#) that survivors are having many problems applying to the scheme and understanding how best to present their case. Witnesses to the JSC and committee members themselves have expressed disbelief about the Assessment Framework: it privileges penetrative sexual abuse above all other types, and it caps the monetary support for counselling based on the type of abuse.

We [provided evidence](#) to the JSC of the many ways the NRS departs from the royal commission's principles of redress.

We also provided evidence of how poorly the scheme compares with other world redress schemes in the ways it assesses the severity and impact of abuse, supports counselling, and excludes certain groups. Compared to numerous examples that the royal commission offered for the direct personal response, the NRS stuck to a bare minimum and severely weakened the power of this innovative redress element.

Will the JSC report, delivered in early April, produce findings that make politicians, the media, and the public take notice?

The timing is not optimal with a federal election looming and other matters taking greater precedence. Post-election, let's hope that the failure of the NRS to provide justice to survivors receives the attention it deserves.

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Read more <http://theconversation.com/national-redress-scheme-for-child-sexual-abuse-protects-institutions-at-the-expense-of-justice-for-survivors-112954>