



National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021

No. 15, 2021

**An Act to amend the *National Redress Scheme for
Institutional Child Sexual Abuse Act 2018*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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***An Act to amend the *National Redress Scheme for
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[Assented to 1 March 2021]

The Parliament of Australia enacts:

No. 15, 2021

*National Redress Scheme for Institutional Child Sexual Abuse
Amendment (Technical Amendments) Act 2021*

1

1 Short title

This Act is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 March 2021
2. Schedule 1, Part 1	Immediately after the commencement of the <i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i> .	1 July 2018
3. Schedule 1, Parts 2 to 9	The day after this Act receives the Royal Assent.	2 March 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Associates of participating institutions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Paragraph 29(2)(g)

Repeal the paragraph, substitute:

- (g) for each responsible institution—determine the participating group (if any) of which the responsible institution is a member at that time; and

2 Subsection 29(2) (before note 1)

Insert:

Note 1A: If the Operator determines that a responsible institution is a member of a participating group, then all other members of the participating group at that time will be associates of the responsible institution, see subsection 133(3). To find the membership of a participating group at a particular time, see the declaration of the participating group under subsection 134(1) that is in force at that time.

3 Paragraph 29(7)(b)

After “participating institution”, insert “or representative for a participating group”.

4 After subsection 35(1)

Insert:

- (1A) If the Operator determined under paragraph 29(2)(g) that the institution is a member of a participating group, the Operator must also give the notice to the representative for the participating group.

5 Paragraph 35(2)(c)

Repeal the paragraph, substitute:

Schedule 1 Amendments

Part 1 Associates of participating institutions

- (c) if the Operator determined under paragraph 29(2)(g) that the institution is a member of a participating group—the participating group; and

6 Paragraph 35(2)(f)

After “the institution”, insert “or participating group”.

7 Paragraph 39(g)

Repeal the paragraph, substitute:

- (g) if the Operator determined under paragraph 29(2)(g) that any of those responsible institutions is a member of a participating group—identifies the other participating institutions, or classes of participating institutions, that are associates of the responsible institution because they are also members of that participating group at the time of the determination; and

8 Subparagraph 42(2)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) all participating institutions that are identified in the offer under paragraph 39(g) as being associates of those responsible institutions;

9 Subsection 79(1)

After “participating institution”, insert “or representative for a participating group”.

Part 2—Funder of last resort provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

10 Section 6 (definition of *funder of last resort*)

Omit “the *funder*”, substitute “a *funder*”.

11 Paragraph 29(2)(i)

Omit “the funder”, substitute “a funder”.

12 Subsection 29(2) (note 1)

Omit “the participating government institution is the funder of last resort for the defunct institution, then the participating government institution”, substitute “one or more participating government institutions are a funder of last resort for the defunct institution, then those participating government institutions”.

13 Paragraph 35(2)(e)

Omit “the funder of last resort for a defunct institution—that fact”, substitute “a funder of last resort for a defunct institution—that fact and the number of other institutions that are a funder of last resort for the defunct institution”.

14 Paragraph 39(i)

Omit “any of those responsible institutions is”, substitute “one or more of those responsible institutions are”.

15 Paragraph 39(i)

Omit “the funder”, substitute “a funder”.

16 Subparagraph 39(i)(ii)

Omit “the government institution is”, substitute “those government institutions are”.

17 Paragraph 58(3)(c)

Omit “the funder”, substitute “a funder”.

18 Section 148

Omit:

A participating government institution may be the funder of last resort for a defunct institution. In that case, the government institution will be liable to pay the defunct institution’s (hypothetical) share of the costs of providing redress to the person, which will increase the amount of funding contribution the government institution will be liable to pay. (For funders of last resort, see Part 6-2.)

substitute:

One or more participating government institutions may be a funder of last resort for a defunct institution. In that case, those government institutions will be liable to pay the defunct institution’s (hypothetical) share of the costs of providing redress to the person, which will increase the amount of funding contribution the government institutions will be liable to pay. (For the funder of last resort provisions, see Part 6-2.)

19 Section 150 (note)

Omit “a participating government institution is the funder of last resort for a defunct institution in relation to abuse of a person, the government institution”, substitute “one or more participating government institutions are a funder of last resort for a defunct institution in relation to abuse of a person, those government institutions”.

20 Part 6-2 (heading)

Omit “**Funders**”, substitute “**Funder**”.

21 Section 162

Omit “will be the funder”, substitute “will be a funder”.

22 Section 162

After “redress to a person”, insert “(or a proportion of those costs where there is more than one funder of last resort)”.

23 Section 162

Omit “become the funder”, substitute “become a funder”.

24 Division 2 of Part 6-2 (heading)

Omit “**Funders**”, substitute “**Funder**”.

25 Section 163 (heading)

Repeal the heading, substitute:

163 Meaning of *funder of last resort*

26 Section 163

Omit “institution is the”, substitute “institution is a”.

27 Subsection 165(1)

Repeal the subsection (not including the heading), substitute:

- (1) If the Operator determines under paragraph 29(2)(i) that:
- (a) one or more participating government institutions are equally responsible with a defunct institution for abuse of a person; and
 - (b) one or more of those government institutions (the ***funding institutions***) are a funder of last resort for the defunct institution in relation to the abuse;
- then each of those funding institutions are proportionally liable, in accordance with this section, for what the defunct institution would have been liable to pay in relation to providing redress to the person, had the defunct institution been a participating institution.

28 Subsection 165(2)

Omit “the government” (first occurring), substitute “a funding”.

29 Paragraph 165(2)(b)

Repeal the paragraph, substitute:

- (b) divide the amount worked out under subsection 30(2) (as applying because of paragraph (a) of this subsection) as the amount of the defunct institution's share of the costs of the redress payment by the number of funding institutions; and
- (c) add the amount worked out under paragraph (b) to what, apart from this section, would have been that funding institution's share of the costs of the redress payment.

30 Subsection 165(3)

Omit "the government" (first occurring), substitute "a funding".

31 Paragraph 165(3)(b)

Repeal the paragraph, substitute:

- (b) divide that amount by the number of funding institutions; and
- (c) add the amount worked out under paragraph (b) to what, apart from this section, would have been the amount of that funding institution's share of those costs.

32 Subsection 165(4)

Omit "the government" (first occurring), substitute "a funding".

33 Paragraph 165(4)(b)

Repeal the paragraph, substitute:

- (b) divide that amount by the number of funding institutions; and
- (c) add the amount worked out under paragraph (b) to what, apart from this section, would have been the amount of that funding institution's contribution to those costs.

Part 3—Engaging independent decision-makers

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

34 Subsection 183(1)

Omit “or 185”.

35 Subsection 184(1)

After “75”, insert “, 185”.

36 At the end of section 184

Add:

Powers and functions—engaging independent decision-makers

- (5) The Operator may, in writing, delegate the Operator’s powers or functions under section 185 (which are about engaging independent decision-makers) to an SES employee, or an acting SES employee, in the Department.
- (6) In exercising a power or performing a function under a delegation under subsection (5), the delegate must comply with any directions of the Operator.

37 Subsection 185(1)

Omit “and with the approval of the Minister”.

38 Subsection 185(2)

Repeal the subsection, substitute:

- (2) Before engaging a person under subsection (1), the Operator must consult the participating States and participating Territories in accordance with the National Redress Scheme Agreement.

Part 4—Protected names and symbols

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

39 Section 180

After:

The Operator may engage a person to be an independent decision-maker to make determinations relating to redress applications.

insert:

Some uses of names and symbols (called protected names and protected symbols) relating to the scheme are prohibited unless the Operator gives consent.

40 After Division 4 of Part 7-3

Insert:

Division 4A—Protected names and symbols

185A Use of protected names and symbols

- (1) A person must not, without the Operator's written consent:
 - (a) use in relation to a business, trade, profession or occupation;
or
 - (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft; or
 - (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire;
or
 - (d) use in relation to:
 - (i) goods or services; or

(ii) the promotion, by any means, of the supply or use of goods or services:

either:

- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
- (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.
- (3) Subsection (1) does not affect the use of a name or symbol by a participating State or a participating Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) Subsection (1), so far as it applies in relation to a particular protected name or a protected symbol, does not affect rights conferred by law on a person in relation to:
 - (a) a trade mark that is a registered trade mark for the purposes of the *Trade Marks Act 1995*; or
 - (b) a design registered under the *Designs Act 2003*; that was so registered, or was registered under the *Designs Act 1906*, at the protection time in relation to the name or symbol.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) This section, so far as it applies in relation to a particular protected name or a protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (the **relevant name or symbol**) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:
 - (a) was using the relevant name or symbol in good faith in that manner; or
 - (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.

Schedule 1 Amendments
Part 4 Protected names and symbols

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

(6) In this section:

protected name means any of the following names:

- (a) “National Redress Scheme”;
- (b) “National Redress Scheme for Institutional Child Sexual Abuse”;
- (c) “National Redress Scheme for people who have experienced institutional child sexual abuse”;
- (d) such other names as are prescribed by the rules.

protected symbol means a symbol:

- (a) that is used, or for use, in connection with the scheme; and
- (b) the design of which is set out in the rules.

protection time means:

- (a) in relation to a name mentioned in paragraph (a), (b) or (c) of the definition of ***protected name***—the time immediately before the commencement of Part 4 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021*; or
- (b) in relation to any other name—the time immediately before the commencement of the rule prescribing the name; or
- (c) in relation to a protected symbol—the time immediately before the commencement of the rule setting out the design of the symbol.

Part 5—Payment of redress payments etc.

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

41 Section 6

Insert:

administrator: see subsection 48(1A).

42 Section 47

After “to the person”, insert “or to an administrator in some circumstances”.

43 After subsection 48(1)

Insert:

(1A) However, if:

(a) another person (an *administrator*) has been appointed by a court, tribunal or board, or other entity prescribed by the rules, under a law of the Commonwealth, a State or a Territory to make decisions on behalf of the person in relation to all or part of the person’s property or financial affairs or matters; and

(b) the Operator considers that it is appropriate in the circumstances;

then the Operator must pay the redress payment to the administrator as soon as practicable.

Note: Another person appointed by the person, for example, under a power of attorney, is not covered by paragraph (a).

44 After subsection 49(2)

Insert:

(2A) Subsections (1) and (2) have effect subject to section 48.

45 After subsection 51(3)

Insert:

(3A) However, if:

(a) another person is an administrator of the person (as referred to in subsection 48(1A)); and

(b) the Operator considers that it is appropriate in the circumstances;

then the Operator must pay the counselling and psychological services payment to the administrator.

46 After subsection 52(2)

Insert:

(2A) Subsections (1) and (2) have effect subject to section 51.

Part 6—Due date for funding contributions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

47 Section 153

Before “Funding contribution”, insert “(1)”.

48 At the end of section 153

Add:

- (2) However, the Operator may, by written notice given to the participating institution before, on or after the day on which the funding contribution would be due and payable apart from this subsection, specify a later day as the day on which the funding contribution is due and payable. The notice has effect, and is taken always to have had effect, according to its terms.

Part 7—Disclosure to encourage institutions to participate in the scheme

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

49 After subsection 95(1)

Insert:

(1A) The Operator may disclose protected information to a person for the purpose of encouraging an institution that is not a participating institution to agree to participate in the scheme if, the protected information:

- (a) is about that institution; and
- (b) was provided to, or obtained by, an officer of the scheme for the purposes of the scheme.

50 Subsection 95(2)

After “subsection (1)” (wherever occurring), insert “or (1A)”.

Part 8—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

51 At the end of the Act

Add:

Chapter 8—Application and transitional provisions

Part 8-1—Simplified outline of this Chapter

194 Simplified outline of this Chapter

<p>This Chapter contains application and transitional provisions relating to amendments of this Act.</p>
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Part 8-2—Application and transitional provisions relating to the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021

195 Application of amendments relating to the funder of last resort provisions

The amendments made by Part 2 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to a determination under section 29 made on or after the commencement of that Part (whether the application for the determination was made before, on or after that commencement).

196 Application of amendments relating to engaging independent decision-makers

The amendments of sections 183, 184 and 185 made by Part 3 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to persons engaged on or after the commencement of that Part.

197 Application of amendments relating to payment of redress payments etc.

The amendments made by Part 5 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to the payment of redress payments and counselling and psychological services payments on or after the commencement of that Part.

198 Application of amendments relating to when funding contribution is due

The amendments of section 153 made by Part 6 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to funding contributions payable before, on or after the commencement of that Part (including funding contributions in relation to which a notice has been given under section 153 before that commencement).

199 Application of amendments relating to disclosure of protected information about institutions

The amendments of section 95 made by Part 7 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply, after commencement of that Part, in relation to protected information provided or obtained before, on or after that commencement.

Part 9—Minor technical amendments

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

52 Section 6 (definition of associate)

Omit “subsection”, substitute “subsections”.

53 Paragraph 35(2)(b)

Omit “if Operator”, substitute “if the Operator”.

*[Minister’s second reading speech made in—
House of Representatives on 8 October 2020
Senate on 4 February 2021]*

(121/20)
