



National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021

No. 109, 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
Institutional Child Sexual Abuse Act 2018*, and for
related purposes***

[Assented to 13 September 2021]

The Parliament of Australia enacts:

No. 109, 2021

*National Redress Scheme for Institutional Child Sexual Abuse
Amendment Act 2021*

1

1 Short title

This Act is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment 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.	13 September 2021
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 September 2021 (F2021N00231)
3. Schedule 2	A single day to be fixed by Proclamation. However: (a) subject to paragraph (b), if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period; and (b) if the provisions would otherwise commence on or before the commencement of the provisions covered by table item 2, they commence immediately after the commencement of the provisions covered by that table item.	17 September 2021 (F2021N00231) (paragraph (b) applies)

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
4. Schedule 3	The day after this Act receives the Royal Assent.	14 September 2021
5. Schedule 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 September 2021 (F2021N00231)
6. Schedule 5, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 September 2021 (F2021N00231)
7. Schedule 5, item 8	Immediately after the commencement of the provisions covered by table item 3. However, if the provisions covered by table item 3 commence before the provisions covered by table item 6, the provision covered by this table item does not commence at all.	17 September 2021
8. Schedule 5, item 9	At the same time as the provisions covered by table item 6.	17 September 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—Advance payments

Part 1—Main amendments

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Section 4

After:

If the person declines the offer, then the person is not entitled to redress under the scheme. The person is not required to release any institution or official from liability for the abuse.

insert:

In certain circumstances, the Operator may make an advance payment for a person who has applied for redress.

2 Section 6

Insert:

advance payment: see subsection 56B(1).

3 Section 6 (at the end of the definition of *saved amount*)

Add:

; or (c) for an advance payment: see subsection 56D(2).

4 Subsection 22(2)

After “Act”, insert “(other than subsection 167(4A))”.

5 Subsection 30(2) (method statement, at the end of step 1)

After the second sentence, insert “In applying the assessment framework to work out the maximum amount, disregard any advance payment or relevant prior payment.”.

6 Subsection 30(3)

Repeal the subsection (including the notes), substitute:

Working out amount of redress payment

- (3) The Operator must then work out the sum of the amounts of each responsible institution's share of the costs of the redress payment. The amount may be nil, but it must not exceed the maximum amount of the redress payment.

Note: The amount may be nil because the total amount of relevant prior payments that were paid to the person by the responsible institutions exceeds the maximum amount of the redress payment that could be payable to the person. However, even though the person may not be paid any redress payment in that case, the person will still be entitled to the other components of redress under the scheme (i.e. the counselling and psychological component and a direct personal response).

- (4) The Operator must then work out the amount of redress payment for the person, which is the amount worked out under subsection (3) less the amount of any advance payment for the person. The amount of redress payment for the person may be nil but not less than nil.

Note: For funder of last resort cases, subsection 165(2) affects how the amount of the redress payment and the share of the costs of the payment are worked out.

7 Before subparagraph 35(2)(b)(iv)

Insert:

- (iii**b**) if an advance payment for the person has been paid—the amount of the advance payment; and

8 After paragraph 39(b)

Insert:

- (ba) if an advance payment for the person has been paid—specifies the amount of the advance payment; and

9 After paragraph 39(r)

Insert:

- (ra) if an advance payment for the person has been paid—informs the person that, if the offer is declined, the amount of the advance payment will become a debt due to the Commonwealth; and

10 At the end of Chapter 2

Add:

Part 2-6—Advance payments

Division 1—Simplified outline of this Part

56A Simplified outline of this Part

If a person has made an application for redress under the scheme, the Operator may, in certain circumstances, make an advance payment for the person in the amount of \$10,000.

Division 2—Advance payments

56B The Operator may make an advance payment

- (1) The Operator may, on behalf of the Commonwealth, pay an amount under this section (an *advance payment*) for a person if:
 - (a) the person has made an application for redress under the scheme; and
 - (b) the application includes a statement by the person to the effect that the person has suffered institutional child sexual abuse that occurred:
 - (i) inside a participating State; or
 - (ii) inside a Territory; or
 - (iii) outside Australia; and
 - (c) the person was not prevented under section 20 from making the application; and
 - (d) the Operator has not made a determination under section 29 to approve, or not approve, the application; and

- (e) the Operator is satisfied that one or more of the following apply:
 - (i) the person is aged 70 or over;
 - (ii) the person is aged 55 or over and is an Aboriginal person or Torres Strait Islander (both within the meaning of the *Aboriginal and Torres Strait Islander Act 2005*);
 - (iii) the person is terminally ill;
 - (iv) there are exceptional circumstances justifying the advance payment being made;
 - (v) any other circumstances prescribed by the rules; and
 - (f) the person has not died; and
 - (g) the Operator considers it appropriate to do so; and
 - (h) any requirements prescribed by the rules are satisfied.
- (2) The amount of the advance payment is \$10,000.
 - (3) The advance payment is payable to:
 - (a) the person; or
 - (b) if another person is an administrator of the person and the Operator considers it appropriate in the circumstances—the administrator.
 - (4) The Operator must give the person written notice of the advance payment.
 - (5) The rules may prescribe matters relating to the payment of advance payments.

56C Protection of the advance payment—general

- (1) An advance payment is a payment of compensation under the scheme. However, for the purposes of:
 - (a) the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*; and
 - (b) any other legislation of the Commonwealth, a State or a Territory;the payment is not to be treated as being a payment of compensation or damages.

Note: This subsection prevents an advance payment affecting other payments that may be payable to the person under legislation. For example, when determining whether a social security payment is payable, or the amount of such a payment, an advance payment is not to be taken into account.

- (2) For the purposes of the application of any law of the Commonwealth, a State or a Territory in relation to an advance payment:
 - (a) the payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise; and
 - (b) no amount may be deducted from the payment.
- (3) Subsections (1) and (2) have effect subject to subsection 56B(3).
- (4) Nothing in this Act prevents a liability insurance contract from treating an advance payment as being a payment of compensation or damages.

56D Additional protection of advance payment—garnishee orders

- (1) If:
 - (a) an advance payment is being paid, or has been paid, to the credit of an account; and
 - (b) a court order in the nature of a garnishee order comes into force in relation to the account;the court order does not apply to the saved amount (if any) in the account.
- (2) The *saved amount* is worked out as follows:

Method statement

- Step 1. Work out the amount of the advance payment that has been paid to the credit of the account in the year immediately before the court order came into force.
- Step 2. Subtract from the amount of that payment the total amount withdrawn from the account during that year: the result is the *saved amount*.

11 At the end of section 161

Add:

; (d) advance payments.

12 After subsection 167(4)

Insert:

(4A) The amount paid to the recipient is a debt due to the Commonwealth if:

- (a) the amount was an advance payment paid in relation to a person after the person made an application for redress under the scheme; and
- (b) either:
 - (i) the person withdraws the application under section 22; or
 - (ii) the Operator gives the person an offer of redress under section 39, and the person declines the offer under section 45.

Part 2—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

13 In the appropriate position in Part 8-3

Insert:

201 Application of amendments made by Schedule 1 to the amending Act

The amendments made by Part 1 of Schedule 1 to the amending Act apply in relation to:

- (a) an application made on or after the commencement of this section; or
- (b) an application made before that commencement, if:
 - (i) the application was not withdrawn before that commencement; and
 - (ii) the Operator did not make a determination to approve, or not approve, the application under section 29 of this Act before that commencement.

Schedule 2—Indexation of relevant prior payments

Part 1—Main amendments

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Section 6

Insert:

institutions' total share: see subsection 30(3).

2 At the end of paragraph 29(2)(c)

Add:

- (iii) the amount of the Commonwealth's share of the costs of the redress payment; and

3 After paragraph 30(1)(b)

Insert:

- ; and (c) the amount of the Commonwealth's share of the costs of the redress payment.

4 Subsection 30(2) (heading)

After "*Working out*", insert "*institution's*".

5 Subsections 30(3) and (4)

Repeal the subsections (including the heading), substitute:

- (3) The Operator must then work out the amount that is the *institutions' total share* by adding together the amount of each responsible institution's share of the costs of the redress payment (worked out under subsection (2)).

Working out Commonwealth's share of the costs of redress payment

- (4) The Operator must then work out the amount that is the Commonwealth's share of the costs of the redress payment using the following method statement:

Method statement

Step 1. Work out what would be the institutions' total share (i.e. what would be the total worked out under subsection (3)) if the definition of *n* in step 4 of the method statement in subsection (2) were omitted and the following definition were substituted:

n is the number of whole years occurring during the period:

- (a) starting when the relevant prior payment was paid to the person; and
- (b) ending when the person made the relevant application for redress under section 19.

Step 2. The amount of the Commonwealth's share of the costs of the redress payment is the difference between:

- (a) the institutions' total share (worked out under subsection (3)); and
- (b) the amount worked out under step 1 of this method statement.

Note 1: The effect of this subsection is broadly to reverse the adjustment made under step 4 of the method statement in subsection (2) to the extent that adjustment relates to inflation that occurs while the application is being processed. The Commonwealth bears the cost of this reversal.

Note 2: The Commonwealth's share will be nil if:

- (a) there are no relevant prior payments; or
- (b) for each relevant prior payment, the substitution mentioned in step 1 of the method statement in this subsection does not affect the adjusted amount of the relevant prior payment.

Working out amount of redress payment

- (5) The Operator must then work out the amount of redress payment for the person by:
- (a) adding together:
 - (i) the institutions' total share (worked out under subsection (3)); and
 - (ii) the Commonwealth's share of the costs of the redress payment (worked out under subsection (4)); and
 - (b) subtracting the amount of any advance payment for the person.

The amount of redress payment for the person may be nil but not less than nil.

Note 1: The amount may be nil because of relevant prior payments or an advance payment. However, even though the person may not be paid any redress payment in that case, the person will still be entitled to the other components of redress under the scheme (i.e. the counselling and psychological component and a direct personal response).

Note 2: For funder of last resort cases, subsection 165(2) affects how the amount of the redress payment and the shares of the costs of the payment are worked out.

6 After subparagraph 35(2)(b)(iii)

Insert:

- (iiia) the amount of the Commonwealth's share of the costs of that payment; and

7 At the end of paragraph 58(3)(b)

Add:

- (iii) the amount of the Commonwealth's share of the costs of the redress payment; and

8 Subsection 165(2)

Omit "and the amount of a funding institution's share of the costs of that payment", substitute ", the amount of a funding institution's share of the costs of that payment and the amount of the Commonwealth's share of the costs of that payment".

9 Paragraph 165(2)(a)

Omit “subsection 30(2)”, substitute “subsections 30(2) to (4)”.

10 Paragraph 165(2)(c)

Before “add”, insert “in determining the amount of a funding institution’s share—”.

Part 2—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

11 In the appropriate position in Part 8-3

Insert:

202 Application of amendments made by Schedule 2 to the amending Act

- (1) The amendments made by Part 1 of Schedule 2 to the amending Act apply in relation to determinations made under section 29 of this Act:
 - (a) before the commencement of this section, whether or not, as a result of the determination, any of the following occurred before that commencement:
 - (i) an offer of redress was made, accepted or declined;
 - (ii) a redress payment was made;
 - (iii) an application for review of the determination was made, or a review determination made; or
 - (b) on or after that commencement.

Offers of redress made before commencement

- (2) Subsections (3) and (4) of this section apply to an offer of redress given to a person under section 39 before the commencement of this section if the amount (the **new amount**) that the Operator was required to determine under this Act, as amended by Part 1 of Schedule 2 to the amending Act, as the amount of the redress payment for the person is greater than the amount that the Operator would have been required to so determine if those amendments had not been made.
- (3) The offer of redress is taken to have always stated, as the amount of the redress payment for the person, the new amount mentioned in subsection (2) of this section.

- (4) To avoid doubt, if:
- (a) the Operator paid some of the redress payment under section 48 before that commencement; and
 - (b) the amount paid is less than the new amount;
- the Operator must, as soon as practicable after that commencement, pay, under that section (and subject to anything prescribed by the rules for the purposes of subsection 48(2)), the difference between:
- (c) the new amount; and
 - (d) the amount that the Operator has already paid.

Schedule 3—Extending review and acceptance periods

Part 1—Review periods

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Section 6

Insert:

review period for a determination under section 29: see subsections 34(4) to (10).

2 At the end of paragraph 34(1)(c)

Add “during the review period for the determination”.

3 Paragraph 34(3)(a)

Repeal the paragraph, substitute:

- (a) if subsection (2) applies—state that the review period for the determination is the same as the acceptance period for the offer included in the notice; and
- (aa) if subsection (2) does not apply—specify the review period for the determination; and

4 At the end of section 34

Add:

Review period

- (4) If the application has been approved, the *review period* for the determination is the same as the acceptance period for the offer of redress included in the notice.
- (5) To avoid doubt, any extension of the acceptance period under subsection 40(2) also has the effect of extending the review period.

- (6) If the application has not been approved, the *review period* for the determination is the period determined by the Operator, which must:
 - (a) start on the date of the notice; and
 - (b) be at least 28 days, but not longer than 6 months.
- (7) If subsection (6) applies, the Operator may, by written notice given to the person, extend the review period if the Operator considers there are exceptional circumstances that justify the extension.
- (8) An extension under subsection (7) may be given:
 - (a) on the Operator's own initiative; or
 - (b) on a request made by the person under subsection (9).
- (9) If subsection (6) applies, the person may request the Operator to extend the review period. The request must comply with any requirements prescribed by the rules.
- (10) An extension under subsection (7) may be given, or a request under subsection (9) may be made, before, at or after the end of the review period.

5 Paragraph 35(2)(g)

Omit "day by", substitute "period within".

Part 2—Acceptance periods

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

6 Subsection 40(2)

Omit “Before the end of the acceptance period, the”, substitute “The”.

7 After subsection 40(4)

Insert:

- (4A) An extension under subsection (2) may be given, or a request under subsection (4) may be made:
- (a) before the end of the acceptance period; or
 - (b) at or after the end of the acceptance period if the person has neither accepted nor declined the offer of redress (disregarding subsection 45(2)).

8 At the end of section 40

Add:

- (6) To avoid doubt, if:
- (a) under subsection 45(2), a person is taken to have declined an offer of redress because the person did not accept the offer before the end of the acceptance period; and
 - (b) at or after the end of the acceptance period, the Operator extends the acceptance period under subsection (2) of this section;

then subsection 45(2) does not apply, and is taken never to have applied, to the person at any time occurring during the acceptance period as extended (but may apply to the person at or after the end of the acceptance period as extended).

Part 3—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

9 In the appropriate position in Chapter 8

Insert:

Part 8-3—Application and transitional provisions relating to the National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021

200 Definitions

In this Part:

amending Act means the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*.

application means an application for redress.

203 Application of amendments made by Schedule 3 to the amending Act

- (1) The amendments made by Part 1 of Schedule 3 to the amending Act apply in relation to determinations made under section 29 of this Act:
 - (a) before the commencement of this section, whether the day specified in the notice of the determination under paragraph 34(3)(a) occurred before, on or after that commencement; or
 - (b) on or after that commencement.
- (2) For the purposes of this Act as amended by Part 1 of Schedule 3 to the amending Act, a notice that:

Schedule 3 Extending review and acceptance periods

Part 3 Application and transitional provisions

- (a) was given to a person under section 34 of this Act before the commencement of this section; and
 - (b) stated that the relevant application for redress had not been approved; and
 - (c) specified a day (the *specified day*) as the day by which the person may apply for review of the determination;
is taken to have specified, as the review period for the relevant determination, the period:
 - (d) starting on the date of the notice; and
 - (e) ending on the specified day.
- (3) The amendments made by Part 2 of Schedule 3 to the amending Act apply in relation to acceptance periods ending before, on or after the commencement of this section.

Schedule 4—Remove statutory declaration requirement for applications

Part 1—Main amendments

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Paragraph 19(2)(c)

Omit “Operator; and”, substitute “Operator.”.

2 Paragraph 19(2)(d)

Repeal the paragraph.

Part 2—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

3 In the appropriate position in Part 8-3

Insert:

204 Application of amendments made by Schedule 4 to the amending Act

Applications made on or after commencement

- (1) The amendments made by Part 1 of Schedule 4 to the amending Act apply in relation to an application made on or after the commencement of this section.

Applications made before commencement

- (2) Despite paragraphs 19(2)(a) and (d), as in force immediately before the commencement of this section, an application that was:
 - (a) made under subsection 19(1) before the commencement of this section; and
 - (b) signed and dated by the applicant;is not invalid merely because the application:
 - (c) was not in the approved form, to the extent that the approved form required the application to include a statutory declaration; or
 - (d) did not verify the information included in the application by statutory declaration.

Schedule 5—Payment by instalments

Part 1—Main amendments

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Section 6 (definition of counselling and psychological services payment)

Omit “subsection 51(3)”, substitute “subsections 51(3) to (3D)”.

2 After subsection 48(1A)

Insert:

(1B) Despite the requirement in subsection (1) or (1A) that the redress payment be paid as soon as practicable, the Operator may pay the redress payment in such instalments, and at such times, (if any) as are agreed to by written agreement between the person or administrator (whichever is applicable) and the Operator.

(1C) Subsection (1B) does not apply if the person dies before the first instalment is paid.

(1D) If:

(a) the Operator pays part of the redress payment in one or more instalments; and

(b) the person dies before the Operator pays the last instalment; the Operator must pay the unpaid amount of the payment, in accordance with subsection (1) or (1A), as soon as practicable.

3 At the end of subsection 48(2)

Add “(including matters relating to payment by instalments)”.

4 At the end of section 50

Add:

(3) To avoid doubt, if the redress payment is being, or has been paid, in instalments, a reference in subsection (2) to the amount of the

redress payment that has been paid to the credit of the account in the year is a reference to the total amount of those instalments that have been paid to the credit of the account in the year.

5 After subsection 51(3A)

Insert:

- (3B) Despite the requirement in subsection (3) or (3A) that the counselling and psychological services payment be paid as soon as practicable, the Operator may pay the counselling and psychological services payment in such instalments, and at such times, (if any) as are agreed to by written agreement between the person or administrator (whichever is applicable) and the Operator.
- (3C) Subsection (3B) does not apply if the person dies before the first instalment is paid.
- (3D) If:
- (a) the Operator pays part of the counselling and psychological services payment in one or more instalments; and
 - (b) the person dies before the Operator pays the last instalment; the Operator must pay the unpaid amount of the payment, in accordance with subsection (3) or (3A), as soon as practicable.

6 At the end of subsection 51(4)

Add “(including matters relating to payment by instalments)”.

7 At the end of section 53

Add:

- (3) To avoid doubt, if the counselling and psychological services payment is being, or has been paid, in instalments, a reference in subsection (2) to the amount of the counselling and psychological services payment that has been paid to the credit of the account in the year is a reference to the total amount of those instalments that have been paid to the credit of the account in the year.

Part 2—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

8 After paragraph 202(4)(b)

Insert:

and (ba) if the redress payment was paid in instalments—the last instalment was paid before that commencement;

9 In the appropriate position in Part 8-3

Insert:

205 Application of amendments made by Schedule 5 to the amending Act

The amendments made by Part 1 of Schedule 5 to the amending Act apply in relation to redress to which a person becomes entitled on or after the commencement of this section.

*[Minister's second reading speech made in—
House of Representatives on 26 August 2021
Senate on 1 September 2021]*

(118/21)
