

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*National Redress Scheme for Institutional Child Sexual Abuse Act 2018*

*National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018*

### **Background**

The *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (the Assessment Framework) sets out the method, including matters to be taken into account for the purposes of working out the amount of redress payment for a person and the amount of the counselling and psychological component of redress for a person for the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) as enabled by the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

The Scheme will provide three elements of redress to eligible people: a monetary payment of up to \$150,000 may be provided as tangible recognition of the wrong suffered, access to counselling and psychological services or (depending on where the person lives) a counselling and psychological services payment of up to \$5,000, and the Scheme will facilitate a direct personal response from responsible institutions at the request of the person. The Scheme will commence on 1 July 2018 and will operate for a period of 10 years.

Section 32 of the Act provides the Minister with the power to declare, in writing, a method, or matters to take into account for the purposes of working out the amount of redress payment, and the amount of the counselling and psychological component of redress for a person.

Although the Assessment Framework is a legislative instrument, it is exempt from section 42 of the *Legislation Act 2003*, which provides for disallowance. It is necessary to exempt the Assessment Framework from disallowance so that the method or matters to be taken into account for the purpose of working out the amount of redress payment for a person are certain for applicants to the Scheme and decision-makers. This declaration would ordinarily be of an administrative character and would not be a legislative instrument without this provision. However, in order to ensure certainty and transparency it is appropriate to make this declaration a legislative instrument.

The Assessment Framework is designed to provide a framework to bind decision makers but to avoid re-traumatising survivors. This framework will be supported by assessment framework policy guidelines which will provide further detail and examples to assist decision makers to apply the Assessment Framework to the range of circumstances.

## **Commencement**

Commencement of the Assessment Framework is the later of the commencement of the Act and the start of the day after this instrument is registered.

## **Consultation**

The Assessment Framework, and the policy guidance material on which it was based, were consulted on extensively with officials from all states and territories in order to encourage all jurisdictions to participate in the Scheme. Further consultation on the policy within the Assessment Framework was also undertaken with Commonwealth Departments and key non-government institutions.

In addition, the Act and Rules which this Assessment Framework supports were consulted on with officials from all states and territories, Commonwealth Departments and members of key non-government institutions.

## Explanation of the provisions

### Part 1 – Preliminary

#### Section 1 Name

Section 1 provides that the instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018*.

#### Section 2 Commencement

Section 2 provides that the instrument will commence on the later of the Act and the start of the day after this instrument is registered.

#### Section 3 Authority

Section 3 provides that this instrument is made under section 32 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

#### Section 4 Definitions

Section 4 provides definitional terms used in this instrument.

The note at the beginning of this section identifies a number of terms defined in the Act, including *counselling and psychological component, non-sexual abuse, redress payment, related and sexual abuse*.

**Act** means the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

**contact abuse:** relevant sexual abuse of a person is **contact abuse** if:

- (a) any of that abuse involved physical contact with the person by someone else or by an object used by someone else (even if the rest of the sexual abuse of the person within the scope of the Scheme did not); and
- (b) none of that abuse involved penetration of the person.

**exposure abuse:** relevant sexual abuse of a person is **exposure abuse** if none of that abuse involved physical contact with the person (whether involving penetration of the person or not) by someone else or an object used by someone else.

**extreme circumstances:** sexual abuse of a person occurred in **extreme circumstances** if:

- (a) the abuse was penetrative abuse; and
- (b) taking into account:
  - (i) whether the person was institutionally vulnerable; and
  - (ii) whether there was related non-sexual abuse of the person;

it would be reasonable to conclude that the sexual abuse was so egregious, long-term or disabling to the person as to be particularly severe.

***institutionally vulnerable***: a person who suffered sexual abuse was ***institutionally vulnerable*** if, having regard to the following matters relating to the responsible institution for the abuse and the time of the abuse, it would be reasonable to conclude that the person's living arrangements at the time increased the risk of sexual abuse of the person occurring:

- (a) whether the person lived in accommodation provided by the institution;
- (b) whether the institution was responsible for the day-to-day care or custody of the person;
- (c) whether the person had access to relatives or friends who were not in the day-to-day care or custody of the institution;
- (d) whether the person was reasonably able to leave the day-to-day care or custody of the institution;
- (e) whether the person was reasonably able to leave the place where the activities of the institution took place.

The reference to 'responsible' institution in this definition is intended to also apply to institutions that are equally responsible (see section 15 of the Act) which could result in more than one institution being responsible for the abuse.

***penetrative abuse***: relevant sexual abuse of a person is ***penetrative abuse*** if any of that abuse involved penetration of the person (even if the rest of that abuse did not).

***relevant sexual abuse*** is defined to mean all of the sexual abuse of the person within the scope of the scheme for which one or more participating institutions are responsible (even if one or more participating institutions are responsible for some of that abuse and one or more other participating institutions are responsible for the rest of the abuse).

## **Part 2 – Amount of redress payment**

### **Section 5 Amount of redress payment**

Section 5 sets out the method for calculating the amount of redress payment for a person.

Subsection 5(1) provides that the amount of redress payment for a person is worked out using the following table as described in subsection 5(2):

<b>Amount of redress payment</b>					
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	<b>Column 6</b>
<b>Kind of sexual abuse of the person</b>	<b>Recognition of sexual abuse</b>	<b>Recognition of impact of sexual abuse</b>	<b>Recognition of related non-sexual abuse</b>	<b>Recognition person was institutionally vulnerable</b>	<b>Recognition of extreme circumstances of sexual abuse</b>
Penetrative abuse	\$70,000	\$20,000	\$5,000	\$5,000	\$50,000
Contact abuse	\$30,000	\$10,000	\$5,000	\$5,000	Nil
Exposure abuse	\$5,000	\$5,000	\$5,000	\$5,000	Nil

Note 1 clarifies that only one item of the table can be relevant to a person (because an item covers all relevant sexual abuse of the person within the scope of the Scheme).

Note 2 clarifies that the amount of the redress payment is also affected by section 30 of the Act and the rules made for the purposes of that section.

Subsection 5(2) sets out the method of calculating a person's redress payment. The calculation is the total of:

- (a) the amount in column 2 of the item of the table relevant to the sexual abuse of the person; and
- (b) the amount in column 3 of that item if the person's application to the Operator for redress indicates that the sexual abuse of the person had an impact on the person's wellbeing. It would be open to the Operator to rely on the information provided in the application as to whether the person's wellbeing was impacted by the sexual abuse, if the Operator believes that the person has provided sufficient information to make that decision; and
- (c) the amount in column 4 of that item if there was non-sexual abuse of the person that was related to the sexual abuse; and
- (d) the amount in column 5 of that item if the person was institutionally vulnerable; and
- (e) the amount (if any) in column 6 of the item if the sexual abuse occurred in extreme circumstances.

### **Part 3 – Amount of counselling and psychological component of redress**

#### **Section 6 – Amount of counselling and psychological component of redress**

Section 6 sets out the method for calculating the amount of the counselling and psychological component of redress. The amount of the component for a person is worked out using the following table:

<b>Amount of the counselling and psychological component of redress</b>	
<b>Column 1</b>	<b>Column 2</b>
<b>Kind of sexual abuse of the person</b>	<b>Amount of the component</b>
Penetrative abuse	\$5,000
Contact abuse	\$2,500
Exposure abuse	\$1,250

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

### **National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018**

This Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 (the Assessment Framework) prescribe matters for the purposes of the National Redress Scheme for Persons of Institutional Child Sexual Abuse (the Scheme) established by the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

The Scheme will provide three elements of redress to people that have experienced institutional child sexual abuse:

- a monetary payment of up to \$150,000 may be provided as tangible recognition of the wrong people have suffered;
- people will receive access to counselling and psychological services; and
- the Scheme will facilitate a direct personal response from responsible institutions at the request of a person.

The Scheme will commence on 1 July 2018 and will operate for a period of 10 years.

Section 32 of the Act provides that the Minister may declare, in writing, a method, or matters to take into account, for the purposes of working out the amount of redress payment for a person and the amount of the counselling and psychological component of redress. This declaration is the Assessment Framework. The necessary and convenient power provided in section 179 provides that the Minister may make Rules for the purposes of the Scheme, including for matters that are necessary or convenient to give effect to the Act. This ensures that the Commonwealth is able to incorporate additional matters that arise over the 10 year course of the Scheme.

The Assessment Framework provides the detailed requirements necessary to support and implement the Scheme. The method statement in section 30(2) of the Act requires the Operator to apply the Assessment Framework to work out the person's redress payment and the amount of the institution's share of that redress payment. The Assessment Framework sets out the circumstances, and associated payment amounts that determine the value of a person's redress payment. The

Assessment Framework also sets out the amount of the counselling and psychological component based on the amount of the person's redress payment.

## **Human rights implications**

### **The right to state-supported recovery for child victims of abuse**

Article 39 of the *Convention on the Rights of the Child* (CRC) guarantees the right to state-supported recovery for child victims of neglect, exploitation and abuse.

The Assessment Framework promotes this right by providing the detailed requirements necessary to support and implement the Scheme, specifically by providing the mechanism for working out a person's redress payment amount and the amount of the counselling and psychological component.

The Scheme will support the recovery of people that have experienced institutional child sexual abuse that occurred prior to the cut off day (the date of the Scheme's commencement) in Commonwealth institutional settings, and in other institutions that are participating in the Scheme.

### **The right to protection from sexual abuse**

Articles 19 and 34 of the CRC guarantee the right of every child to protection from all forms of physical or mental violence, injury or abuse, including sexual exploitation and abuse.

The Assessment Framework promotes this right through providing the detailed requirements necessary to support and implement the Scheme.

The Scheme seeks to recognise and alleviate the impact of historical failures of the Commonwealth and other government and non-government organisations to uphold this right.

### **The right to health**

Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to the highest attainable standard of physical and mental health and provides for states to take steps to achieve the full realisation of this right.

The Assessment Framework promotes this right through providing the detailed requirements necessary to support and implement the Scheme, particularly through the counselling and psychological component.

The Scheme promotes persons' right to health by providing access to counselling and psychological services to persons who seek it as one of the three elements of redress, maximising persons' access to health services. Counselling and psychological services will be delivered either through a direct payment or state or territory based services, depending on the residence of the person.

## **Conclusion**

The Assessment Framework is compatible with human rights as it do not raise any human rights issues.



**The Hon Dan Tehan MP, Minister for Social Services**