

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

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

### **Background**

The *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the Rules) prescribe matters for the purposes of 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 recognise and alleviate the impact of past child sexual abuse that has occurred in an institutional context by providing three elements of redress to eligible survivors. Redress under the Scheme consists of a monetary payment of up to \$150,000 as a tangible means of recognising the wrong suffered by people who have experienced child sexual abuse, access to counselling and psychological services (either through a lump sum payment or through state or territory based services) and the option to receive a direct personal response from a responsible institution(s).

Section 179 of the Act provides the Minister with the power to make rules prescribing matters required or permitted by the Act to be made, or that are necessary or convenient to be made for carrying out or giving effect to this Act. The necessary and convenient power provided in this section ensures that the Commonwealth is able to incorporate additional matters that arise over the 10 year course of the Scheme.

It is difficult to estimate the types of cases that will arise and so the Rules will allow for flexibility in managing these different circumstances. The Rules additionally contain a number of safeguard provisions that deal with situations that may arise in the operation of the Scheme. A significant benefit of the Rules is that they will allow the Scheme to deal with issues as they arise rather than cause significant delay to people applying to the Scheme by seeking the passage of an amendment through Parliament.

The Rules provide the detailed requirements necessary to support and implement the Scheme. Among other things, the Rules prescribe the circumstances in which a participating government institution is equally responsible with a non-government institution for the sexual or non-sexual abuse, the circumstances in which a government institution is not responsible, the requirements for institutions to opt into the Scheme and how to work out an institution's share of the costs as well as their proportion of the costs for administering the Scheme.

### **Commencement**

The Rules commence at the same time as the Act commences.

### **Consultation**

The Rules 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 Rules was also undertaken with Commonwealth Departments and key non-government institutions

In addition, the Act which these Rules support was 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 Rules 2018*.

#### **Section 2 Commencement**

Section 2 provides that the instrument will commence at the same time as the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* commences; or the start of the day after the instrument is registered, whichever occurs last.

#### **Section 3 Authority**

Section 3 provides that this instrument is made under 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 *abuse*, *institution*, *Operator*, *responsible* and *scheme*.

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

**key institution** has the meaning given by section 22.

**notional maximum amount** for a set of abuse has the meaning given by section 23.

**redress payment method statement** means the method statement in subsection 30(2) of the Act.

**set of abuse** of a person has the meaning given by section 20.

### **Part 2 – Abuse within the scope of the scheme**

## **Section 5 Simplified outline of this Part**

Section 5 provides a simplified outline of Part 2. This Part sets out when abuse is considered not to be within the scope of the Scheme.

## **Section 6 Abuse by child**

For the purposes of subsection 14(3) of the Act, section 6 of the Rules provides that sexual abuse of a person by a child is not within the scope of the Scheme if the abuse did not involve physical contact with, or penetration of, the person.

### Example:

- (1) At age 12, a child went on a youth camp where they were raped by one of the teenage camp leaders (aged 16). As this act of sexual abuse involved penetration of the child, this abuse *is* within the scope of the Scheme.
- (2) When a child was 14, they attended boarding school. Every couple of weeks the child received a sexually suggestive text from one of the older students (aged 17). As this harassment did not involve physical contact with, or penetration of the child, this abuse *is not* within the scope of the Scheme.

## **Part 3 – Responsibility of institutions**

### **Division 1 — Simplified outline of this Part**

#### **Section 7 Simplified outline of this Part**

Section 7 sets out a simplified outline of Part 3. This Part sets out certain circumstances in which an institution is deemed to be equally responsible, or not responsible, for the sexual abuse or non-sexual abuse of a person.

### **Division 2 — When institutions are equally responsible**

#### **Section 8 Participating government institution that arranged for non-government institution's responsibility for day-to-day care of person is equally responsible with that institution**

Subsection 15(5) of the Act provides for the Rules to prescribe circumstances in which an institution is responsible, primarily responsible or equally responsible for the sexual abuse or non-sexual abuse of a person. For the purposes of this subsection, section 8 of the Rules prescribes certain circumstances in which a participating government institution is equally responsible with a non-government institution for such abuse.

Note 1 at the end of subsection 8(1) clarifies that all the circumstances prescribed by subsections 8(2), (3), (4) and (5) must exist for the participating government institution and the non-government institution to be equally responsible.

Note 2 at the end of subsection 8(1) clarifies that an institution that is 'equally responsible' for the abuse of the person due to the application of section 8 of the

Rules is also 'responsible' for the abuse within the meaning of the Act. This is because subsection 15(1) of the Act states that an institution is 'responsible' for abuse if it is primarily responsible or equally responsible for that abuse.

Subsections 8(2), (3) and (4) then set out the circumstances that must exist for the participating government institution to be deemed equally responsible for abuse of a person (the child).

Under subsection 8(2), the government institution must have made an arrangement with the non-government institution for the non-government institution to have responsibility for the day-to-day care of the child.

Subsection 8(3) requires that, at the time of the abuse, either:

- (a) the participating government institution had parental responsibility for the child under an order of a court (whether or not another institution or person also had parental responsibility for the child); or
- (b) the child was a ward of the jurisdiction that the participating government institution belongs to.

The note at the end of subsection 8(3) clarifies that, if the arrangement was made for the care of the child in a Territory and was made before self-government of the Territory, paragraph (a) or (b) may apply to a Commonwealth institution.

Subsection 8(4) requires that, while the arrangement had effect, the only persons or institutions with parental responsibility were one or more of the following:

- (a) the non-government institution;
- (b) a person who had such responsibility under an order of a court;
- (c) the participating government institution;
- (d) the jurisdiction that the participating government institution belongs to;
- (e) if the arrangement was for day-to-day care of the child in a Territory and the arrangement had effect both before and after self-government of the Territory started—the Territory or a Territory institution of the Territory.

Under subsection 8(5), the abuse must have occurred while the child was in the care of the non-government institution, and not in the care of another institution.

Under subsection 15(6) of the Act, the Rules may prescribe when an institution is not responsible, primarily responsible or equally responsible for abuse. For these purposes, subsection 8(6) of the Rules provides that, if, apart from this subsection, the non-government institution would be primarily responsible for the abuse, the institution is not primarily responsible for the abuse (but is equally responsible for the abuse under section 8 of the Rules). This means that the institution will be regarded as equally responsible if the requirements of this section are met, even if it would otherwise have been found primarily responsible.

This section recognises government's unique role in the guardianship and placement of children, and notably includes cases where children were wards of the state.

Example:

- (1) In 1985, a child living in the Australian Capital Territory (ACT) prior to self-government in the territory was under the parental responsibility of the Commonwealth government. No other person or institution had parental responsibility for the child at the time. The child was placed by an agency of the Commonwealth government in the care of an ACT-based orphanage, run by a non-government institution (NGI). At the orphanage, the child was abused by an employee of the orphanage. In this case, whilst the NGI might ordinarily be found primarily responsible for the abuse, the application of this rule would see the Commonwealth and the NGI equally responsible for the abuse.
- (2) A child was a ward of the state of New South Wales (NSW). No other person or institution had parental responsibility for the child at the time. The child was placed by an agency of the NSW government in the care of a children's home, run by a non-government institution. At the children's home, the child was abused by a volunteer of the home. In this case, whilst the NGI might ordinarily be found primarily responsible for the abuse, the application of this rule would see the NSW government and the NGI equally responsible for the abuse.
- (3) A child was a ward of the state of Victoria. No other person or institution had parental responsibility for the child at the time. The child was placed by an agency of the Victorian government in the care of an orphanage, run by a non-government institution. The orphanage arranged for the child to attend a weekly class at a local sporting club. Whilst the child was at these classes, they were in the care of both the sporting club and the orphanage. As the child was in the care of two institutions, this Rule does not apply (in view of subsection 8(5)), and is assessed according to section 15 of the Act.

## **Section 9 Equal responsibility of Commonwealth defence institution and other institution for abuse of cadet**

As described above, subsections 15(5) and (6) of the Act provide for the Rules to prescribe circumstances in which an institution is, or is not, responsible for abuse. For these purposes, section 9 sets out the circumstances in which a Commonwealth defence institution and other institution will be deemed equally responsible for certain abuse. If those circumstances exist, an institution that might otherwise have been found primarily responsible for the abuse will be regarded as equally responsible.

Subsection 9(1) sets out the relevant circumstances. Firstly, the abuse must have occurred on or after 1 January 1977. Secondly, the abuse must have been connected with the person's membership of a unit of a cadet force provided for by Commonwealth legislation. Thirdly, the unit must have been associated with an institution (other than a Commonwealth institution that deals with defence). Finally, under paragraph 9(1)(d), it must be the case (but for this section) that an institution other than the Commonwealth defence institution would have been primarily responsible for the abuse, or two or more such institutions (that is, none being a Commonwealth institution that deals with defence) would have been equally responsible for the abuse.

Subsection 9(2) provides that, where those circumstances exist, the Commonwealth defence institution, and each institution that would be responsible for the abuse apart from that section, are equally responsible for the abuse. Due to subsection 9(3), this remains the case even where the institution would have been primarily responsible for the abuse, but for this section.

This section recognises the association of the cadet 'brand' with the Commonwealth, regardless of the actual level of involvement between Commonwealth defence institutions and relevant cadet units.

The Commonwealth should share responsibility for these cases, as even though the administration and organisation of various cadet models has varied over history, it is consistent with the Commonwealth's response to the Royal Commission, where it acknowledged its "sponsorship" of cadets. However, limiting this category to applications post 1 January 1977 acknowledges the Commonwealth's more limited role prior to 1977, particularly in the period from mid-1970s to 1976, when the Cadet Corps was disbanded by the Government (but programs continued to run in schools and other organisations).

Example:

In 1980, a public school ran a cadet program during school hours on school grounds, with some support from the Australian Defence Force (ADF) – however, the degree of ADF involvement was unknown. At one of the classes, a child was abused by the cadets' leader, who was also a teacher at the school. In this case, whilst the school might ordinarily be found to be primarily responsible for the abuse, the application of this rule would see the Commonwealth and the relevant state or territory (the school) equally responsible for the abuse.

**Section 10 Responsibility for abuse of certain child migrants from the United Kingdom and Malta**

As described above, subsections 15(5) and (6) of the Act provide for the Rules to prescribe circumstances in which an institution is, or is not, responsible for abuse. For these purposes, section 10 sets out the circumstances in which an institution is equally responsible for abuse of child migrants. If those circumstances exist, an institution that might otherwise have been found primarily responsible for the abuse will be regarded as equally responsible.

Subsection 10(1) sets out the relevant circumstances and applies to abuse of a person if:

- (a)
- (b) either the person was sent to Australia under a scheme carried out under the *Empire Settlement Act 1922* (United Kingdom) or became a ward under the *National Security (Overseas Children) Regulations* or the *Immigration (Guardianship of Children) Act 1946*; and
- (c) the person became a ward of a participating State or participating Territory; and
- (d) the abuse occurred while the person was a ward of the State or Territory.

Subsection 10(2) provides that, where those circumstances exist, the following institutions are all equally responsible for the abuse of the person (with their shares of the maximum amount of any redress payment for the abuse as set out in subsection 21(2) or 25(2)):

- (a) the Department administered by the Minister administering section 6 of the *Immigration (Guardianship of Children) Act 1946*;
- (b) the State or Territory institution, when the abuse occurred, has responsibility for the person as a ward of the jurisdiction the institution belongs to;
- (c) each institution that would have been responsible for the abuse apart from this section and is not covered by paragraph (a) or (b).

This deeming of responsibility reflects an agreement between the Commonwealth and states and territories to be equally responsible for relevant abuse of child migrants, such that agreed cost-sharing arrangements (as set out in subsection 21(2) or 25(2)) will apply. This deeming of responsibility (and subsequent cost-sharing arrangement) is not relevant to any civil liability of relevant institutions for the abuse apart from the Scheme.

Note 1 clarifies that although the institutions mentioned in subsection 10(2) are equally responsible, special rules in subsections 21(2) and 25(2) for working out each institution's share of the maximum amount of redress payment ensure that Commonwealth institutions are not liable for more than half of the governmental part of that amount. Those rules also indirectly have a similar effect on Commonwealth institutions' shares of the costs of the counselling and psychological component and Commonwealth institutions' liability for funding contribution.

This clarification is particularly important as ordinarily, equally responsible institutions would equally share the amount of redress (e.g. if there are three equally responsible institutions, they would pay 33.33 per cent of the redress amount each). However, this section results in shares of the redress amount being apportioned differently, in accordance with subsection 21(2) or 25(2).

Note 2 clarifies that under subsection 15(1) of the Act, an institution that, because of this section, is equally responsible for the abuse of the child is also responsible for the abuse.

Subsection 10(3) provides that if, apart from this section, an institution would be responsible for the abuse, the institution is not primarily or equally responsible for the abuse, except under subsection 10(2). This means that an institution would be equally responsible for the abuse, even if the institution would otherwise not be primarily or equally responsible.

#### Example:

In 1950, a person migrates unaccompanied to Australia under the *Immigration (Guardianship of Children) Act 1946*. They are initially under the guardianship of the Commonwealth Minister but become a ward of the state of Western Australia. The Western Australian government then places the child in a children's home run by a non-government institution, where the child is abused. In this case, whilst the non-government institution might ordinarily be found to be primarily responsible for

the abuse, the application of this rule would see the non-government institution equally responsible with the relevant Commonwealth and participating state institutions.

### **Division 3 — When an institution is not responsible**

#### **Section 11 Participating institution ordered by court to pay compensation or damages is not responsible**

As described above, subsection 15(6) of the Act provides for the Rules to prescribe circumstances in which an institution is not responsible for abuse. For these purposes, section 11 sets out the circumstances in which an institution is not responsible for abuse if the participating institution has been ordered by a court to pay compensation or damages. If those circumstances exist, an institution will be regarded as not responsible for the abuse.

Under subsection 11 (1) the relevant circumstances are if:

- (a) a court makes an order (except a consent order) that a participating institution (the **defendant institution**) pay compensation or damages for abuse of a person to the person or a group that includes the person; and
- (b) the order is not set aside on appeal; and
- (c) the person does not choose not to accept the person's share of the payment to the group if the order is that the defendant institution pay the group.

Subsection 11(2) provides that, where those circumstances exist, the defendant institution is not responsible, primarily responsible or equally responsible for the abuse. The note clarifies that, although the defendant institution is not responsible, and therefore not liable under the Act, for the abuse of the person, it is treated as if it were responsible for the purposes of working out other institutions' liability associated with redress for the person (see section 29).

Subsection 11(3) provides for the effect on responsibility of other institutions. Under subsection 11(3) if:

- (a) the defendant institution and one or more other institutions are approximately equally responsible for the abuser having contact with the person; and
- (b) apart from subsection 11(2), the defendant institutions would have been primarily responsible for the abuse;

none of the other institutions is equally responsible (or primarily responsible or responsible) for the abuse.

Subsection 11(4) sets out the relationship this section has with other provisions. Subsection 11(4) provides that if the defendant institution is described in an item of the table, the section described in that item does not apply to the abuse of the person. The table sets out the sections that do not apply in relation to the abuse of the person.



Item 1 provides that if the defendant institution is a participating government institution for which the conditions in subsections 8(2), (3) and (4) are met, then section 8 does not apply in relation to the abuse of the person.

Item 2 provides that if the defendant institution is an institution described in paragraph 9(2)(b), then section 9 does not apply in relation to the abuse of the person.

Item 3 provides that if the defendant institution is an institution described in paragraph 10(2)(a) or (b), then section 10 does not apply in relation to the abuse of the person.

Subsection 11(5) provides that if section 8, 9 or 10 applies to the abuse of the person, it has effect subject to this section. The note clarifies that because subsection 15(6) of the Act, this section also overrides subsection 15(1), (2) and (3) of the Act.

These provisions ensure that institutions are not found responsible for abuse under the Scheme where they have already been ordered by a court to pay damages or compensation. This reflects that a court has already applied a higher standard of proof and weighed all available evidence about the level of damage and loss suffered by the person to determine the institution's legal liability. The responsibility of other institutions is not affected.

## **Section 12 Circumstances in which government authority is not responsible**

Subsection 15(6) of the Act provides for the Rules to prescribe circumstances in which an institution is not responsible, primarily responsible or equally responsible for the sexual or non-sexual abuse of a person. Subsection 12(1) provides that, for the purposes of subsection 15(6) of the Act, subsection 12(2) prescribes circumstances in which an institution (the **government authority**) that is an authority of the Commonwealth, a State or a Territory has no such responsibility for sexual or non-sexual abuse of a person that:

- (a) occurred while another institution was responsible for the day-to-day care or custody of the person or was the legal guardian of the person; or
- (b) was carried out by a person who was an official of another institution at the time of the abuse; or
- (c) occurred:
  - (i) on the premises of another institution; or
  - (ii) where activities of another institution took place; or
  - (iii) in connection with the activities of another institution.

Where those circumstances exist, subsection 12(2) provides that the government authority is not responsible for the abuse when the only connection between the government institution and the abuse is one or more of the following:

- (a) the government authority regulated the other institution or an activity of the other institution;

- (b) the government authority funded the other institution or an activity of the other institution;
- (c) the other institution was established by or under the law of the Commonwealth, a State or a Territory that the authority belongs to.

Accordingly, the government authority is not responsible for the abuse if one or more of the circumstances in subsection 12(2) apply with respect to one of the scenarios in subsection 12(1).

The use of **government authority** rather than the term 'government institution', (which is defined in the Act), is to ensure that section 12 of the Rules operates in relation to the widest possible range of governmental institutions, including some that may not fall within the definition of 'government institution'. For example, it is intended to include authorities of Territories other than the Australian Capital Territory, and the Northern Territory.

This section ensures that minor or incidental connections between a government institution and an act of abuse do not result in a finding of responsibility for the government institution, as it would be more appropriate for the 'other institution' to be primarily responsible (or equally responsible with another institution that is not the government institution).

For clarity, the government institution can be found responsible if it had a minor or incidental connection to the other institution (such as providing funding to it), but there was also another connection between the government institution and the abuse (including any of the circumstances outlined in subclause 15(4) of the Act).

Example:

- (1) In 2007, a child attending church was abused by a priest of the church. The church received a number of grants from the relevant state government for charity functions and events. As the state government otherwise has no connection to the abuse, the application of this rule means that they are not responsible for the abuse.
- (2) In 2004, a child in the care of a private hospital for an illness is abused by an employee of the hospital. The hospital complies with the regulation of the relevant territory government and the company which owns the hospital is incorporated under the *Corporations Act 2001*. As the territory government and the Commonwealth government otherwise have no connection to the abuse, the application of this rule means that they are not responsible for the abuse.

Subsection 12(3) provides that this section has effect subject to Division 2.

## **Part 4 – Applications for redress**

### **Section 13 Simplified outline of this Part**

Section 13 sets out the simplified outline of Part 4. This Part sets out the processes for applications for redress, including the special processes for dealing with an application made by person in gaol and a child.

#### **Section 14 Requirements for determining exceptional circumstances justifying application**

Subsection 20(3) of the Act provides a rule making power to require the Operator to comply with any requirements set out in the Rules when determining whether there are exceptional circumstances justifying an application. Section 14 prescribes requirements that will apply before a determination under subsection 20(2) of the Act can be made that there are exceptional circumstances justifying a person making an application for redress, by a person who is in gaol (within the meaning of subsection 23(5) of the *Social Security Act 1991* (the Social Security Act)).

Subsection 23(5) of the Social Security Act provides that a person is *in gaol* if the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence, or if the person is undergoing a period of custody pending trial or sentencing for an offence.

Subsection 14(2) provides that the requirements do not apply if the person:

- (a) is so ill that it is reasonable to expect that the person will not be able to make an application for redress, or respond to a request for information under section 24 of the Act (which is about the Operator requesting information from an applicant), after ceasing to be in gaol; or
- (b) is expected to remain in gaol until after the Scheme sunset day.

It is the policy intent that where one of the circumstances of subsection 14(2) is satisfied, that the Operator will determine that exceptional circumstances exist, allowing the person to make an application for redress. Where the Operator does not consider the circumstances in subsection 14(2) to exist, the Operator must satisfy the requirements in subsection 14(3) before making a determination.

Subsection 14(3) provides that before a determination under subsection 20(2) can be made, the Operator must give a notice that meets the requirements of subsection 14(2) to:

- (a) the Attorney-General (or someone nominated by that Attorney-General) of the State or Territory in which the person is in gaol; and
- (b) if the person claims to have suffered abuse within the scope of the Scheme in another State or Territory:
  - (i) the Attorney-General of that State or Territory or someone nominated by that Attorney-General;
  - (ii) if the Territory is not a participating Territory, the Attorney-General of the Commonwealth or someone nominated by that Attorney-General.

For ease of administration, subsection 14(3) allows the relevant Attorney-General to nominate a person who can be given a notice under that subsection. Subsection

14(4) requires the notice to request the nominated person to provide advice about whether the Operator should make a determination that exceptional circumstances apply, and subsection 14(5) requires the Operator to consider the advice provided.

Subsection 14(4) provides that a notice under subsection 14(3) must:

- (a) request the recipient provide advice about whether the Operator should make a determination under subsection 20(2) of the Act; and
- (b) include sufficient information to enable the recipient to provide that advice; and
- (c) specify the period in which the recipient may provide that advice (which must be at least 28 days starting on the date of the notice).

Subsection 14(5) provides that the Operator must consider any advice provided in accordance with the notice given under paragraph 14(3)(a) or, if given, under paragraph 14(3)(b) and any other matter the Operator considers is relevant to whether or not a determination should be made.

Subsection 14(6) provides that the Operator must give greater weight to any advice described in paragraph 14(5)(b) than to any matter described in paragraph 14(5)(a) or (c) when considering the matters set out in subsection 14(5).

## **Section 15 Dealing with application by child**

Section 21 of the Act provides a rule making power to deal with applications for redress under the Scheme if the applicant is a child who will turn 18 before the Scheme sunset date. Subsection 15(1) provides that this section has effect for the purposes of section 21 of the Act if an application for redress is made by a person who is a child who will turn 18 before the Scheme sunset day.

Subsection 15(2) provides that if the application is made at least four months before the day the person turns 18, the Operator must give the person a notice at least three months, but not more than six months, before that day:

- (a) informing the person that a determination under section 29 of the Act to approve, or not approve, the application will be made as soon as practicable after the person turns 18; and
- (b) inviting the person to give the Operator, before the person turns 18, any further information that is relevant to making the determination and that the person wishes to give.

The note at the end of subsection 15(2) clarifies that the Operator may also request the person to give the Operator information specified in the request in accordance with section 24 of the Act (power to request information from the applicant).

Subsection 15(3) provides that the Operator must not make a determination under section 29 of the Act to approve or not approve the application before the person turns 18.

Subsection 15(4) provides that the Operator must make a determination under section 29 of the Act to approve, or not approve, the application as soon as practicable after the person turns 18. This applies whether or not the person has

given information in response to the invitation under paragraph 15(2)(b) of this section.

The Scheme will be accepting applications from children who will turn 18 during the life of the Scheme, but will not be making a determination on those applications until those people turn 18. As a requirement of the Scheme is to release responsible participating institutions from any liability for sexual abuse and related non-sexual abuse within the scope of the Scheme (restricting their right to later pursue civil litigation), it is necessary to ensure that the effect of the release is fully understood. Children are unlikely to be able to fully weigh the implications of such a decision, especially when the impact of their abuse may not have been fully realised yet. The Scheme will accept applications from children who will turn 18 during the life of the Scheme to allow them to communicate current information relevant to the abuse which can be considered when their application is assessed after the child turns 18.

## **Part 5 – When determination about application for redress may be revoked**

### **Section 16 Simplified outline of this Part**

Section 16 sets out the simplified outline of Part 5. This Part sets out the circumstances for revoking a determination about an application for redress.

### **Section 17 Circumstances in which determination may or must be revoked**

Subsection 29(4) of the Act provides a rule making power to require or permit the Operator to revoke a determination made under subsection 29(2) or (3) of the Act. Subsection 17(1) provides that this section provides for when the Operator may or must revoke a determination made under subsection 29(2) or (3) to approve or not to approve an application for redress in relation to abuse of a person.

The note at the end of subsection 17(1) clarifies that, under subsection 29(5) of the Act, the determination can only be revoked before an offer of redress made as the result of that determination is accepted.

Subsection 17(2) provides for when a determination made under subsection 29(2) and (3) may be revoked. The Operator may revoke the determination after the making the determination, if the Operator receives information that:

- (a) the Operator did not have before making the determination; and
- (b) is such that, had the Operator had the information before making the determination, they would not have made the determination, or would have made a different determination.

Subsection 17(3) provides for when a determination made under subsection 29(2) and (3) must be revoked. The Operator must revoke the determination if, after making the determination, the Operator:

- (a) receives notification from the person under section 74 (about acceptance of an offer of payment relating to the abuse); or

(b) is informed (for the first time), that a payment covered by subsection 17(4) was paid to the person before or after the determination was made.

Subsection 17(4) covers the following payments:

- (a) a payment paid to the person under an order described in paragraphs 11(1)(a) and (b) of the Rules; and
- (b) a payment paid to the person by, or on behalf of, a responsible institution in relation to abuse for which the institution is responsible, except to the extent that the payment is covered by either subsection 26(3), (4) and (5).

Note 1 to subsection 17(4) provides that paragraphs 11(1)(a) and (b) of the Rules deal with an order by a court that an institution pay compensation or damages for abuse of the person causing the institution not to be responsible.

Note 2 to subsection 17(4) provide that subsections 26(3), (4) and (5) of the Rules prescribe the extent to which payments are not relevant to prior payments.

## **Part 6 – Sharing of costs of redress components**

### **Division 1 — Simplified outline of this Part**

#### **Section 18 Simplified outline of this Part**

Section 18 sets out the simplified outline of Part 6. This Part provides the requirements for working out a responsible institution's share of the maximum amount of redress payment, including the special requirements relating to child migrants, defunct institutions and court ordered compensation or damage.

Part 6 sets out the methods for calculating each liable institution's share of redress payment and their share of the costs of the counselling and psychological component. This Part also sets out types of payments that are not relevant payments for the purposes of calculating the amount of a person's redress payment.

### **Division 2 — Requirements for working out institution's gross liability amount**

#### **Subdivision A — Introduction**

#### **Section 19 Scope of this Division**

Section 30 of the Act sets out how the Operator is to determine the amount of a redress payment, and how the costs are to be shared where more than one entity is responsible for the abuse. Subsection 30(2) provides a 'method statement' by which the Operator must calculate the relevant institution's share of the costs of the redress payment. This is known as the **redress payment method statement** for the purposes of the Rules. Firstly, the Operator must apply the assessment framework to calculate the maximum amount of redress payment that could be payable to a person. Step 2 then requires the Operator to work out the liable institution's share of the maximum amount. In particular, step 2 provides for the Rules to prescribe requirements governing how the Operator is to determine this amount.

Section 19 explains that Division 1 sets out requirements for the purposes of step 2, as described above. The requirements that apply will vary depending on whether there is one set of abuse (see Subdivision B) or more than one set of abuse (see subdivision C) of the person.

Note 1 at the end of subsection 19(2) provides that any requirements under this Division will be modified by section 28 if the Operator has made a determination under paragraph 29(2)(i) of the Act that a participating government institution is a funder of last resort for a defunct institution in relation to the abuse. Any such modifications will apply for working out the amount of every responsible institution's share (even the share of a responsible institution other than the participating government institution).

Note 2 provides that the requirements are modified by section 29 if, because of subsection 11 (2), an institution is not responsible for abuse of a person but one or more other institutions are responsible for the abuse. The modifications apply for working out the amount of every responsible institution's share (even the share of an institution responsible only for other abuse of the person).

## **Section 20 What is a *set of abuse*?**

Section 20 of the Rules defines a 'set of abuse'. Subsection 20(1) specifies that a 'set of abuse' of a person covers all of the abuse of the person for which a particular institution is primarily responsible. The abuse need not have been perpetrated by the same abuser – a set of abuse may be perpetrated by multiple abusers for which the one institution is responsible, under this subsection (as described in note 2).

Note 1 clarifies that there may be several distinct sets of abuse under this subsection because it could apply multiple times, each time in relation to a different institution.

Subsection 20(2) further provides that a 'set of abuse' of a person also covers all the abuse of the person for which the same institutions are equally responsible. As above, the abuse need not have been perpetrated by the same abuser within those institutions (as described in Note 2).

Again, as described in Note 1, there may be several distinct sets of abuse under this subsection because it could apply multiple times, each time in relation to a different group of equally responsible institutions.

The purpose of this section is to group acts of abuse in order to appropriately apportion institutions' liability for the total redress payment.

### Example:

- (1) A person was a ward of the state of New South Wales. The person was placed in an orphanage where they were abused by one of their carers. The state of New South Wales and the orphanage are found responsible for that abuse, and so that abuse falls under one set.
- (2) A person was left at a home for boys where they suffered abuse for a number of years. During their time at the home, the person was sent to a local

community group as part of a program run by the home. While at the community group, the person suffered abuse from a staff member. The home for boys is found responsible for the abuse at the home, which is one set of abuse, and the community group and the home for boys are found equally responsible for the abuse at the community group, which is another set of abuse.

## **Subdivision B — Requirement if there is only one set of abuse of person**

### **Section 21 Requirement if there is only one set of abuse**

Subsection 21(1) sets out the formula for determining the institution's share of the maximum amount where there is only one set of abuse of the person. The formula is the maximum amount of redress payment (worked out under step 1 of section 30(2) of the Act) divided by the number of institutions responsible for the abuse within that set.

The note at the end of subsection 21(1) clarifies that where there is a single primarily responsible institution, that institution's share will simply be the whole of the maximum amount. Where there are two or more equally responsible institutions, the maximum amount will be divided between them. All responsible institutions are counted, whether or not they are participating institutions (and therefore liable for providing redress to the person).

Subsection 21(2) provides for a special rule for child migrants covered by section 10. Under subsection 21(2), if the institution is responsible because of the operation of section 10 for abuse covered by the set, the amount that is the institution's share of the maximum amount must be worked out using the table in that subsection.

Item 1 provides that if

- (a) the institution is responsible because of paragraph 10(2)(a) or (b); and
- (b) there are not any other institutions responsible for the abuse because of paragraph 10(2)(c) or the only institutions responsible for the abuse because of paragraph 10(2)(c) are one or more government institutions belonging to a jurisdiction other than the one the institution belongs to;

then the institution's share is half of the maximum amount.

Item 2 provides that if:

- (a) the institution is responsible because of paragraph 10(2)(a) or (b); and
- (b) there are one or more non-government institutions responsible for the abuse because of paragraph 10(2)(c); and
- (c) there are not any other government institutions belonging to the same jurisdiction as the institution that are responsible because of paragraph 10(2)(c);

then the institution's share of the maximum amount is one divided by the total of (the number of non-government institutions responsible plus one, multiplied by two).



Item 3 provides that if:

- (a) the institution is a government institution; and
- (b) there are one or more non-government institutions responsible for the abuse because of paragraph 10(2)(c); and
- (c) there are one or more other government institutions (the **other key jurisdiction institutions**) that belong to the same jurisdiction as the institution and are responsible because of section 10;

then the institution's share of the maximum amount is one divided by the total of two multiplied by (the number of non-government institutions responsible plus one) multiplied by (the number of other key jurisdiction institutions plus one).

Item 4 provides that if:

- (a) the institution is a government institution; and
- (b) there are not any non-government institutions responsible for the abuse because of paragraph 10(2)(c); and
- (c) there are one or more other government institutions (the **other key jurisdiction institutions**) that belong to the same jurisdiction as the institution and are responsible because of section 10;

then the institution's share of the maximum amount is one divided by the total of (the number of other key jurisdiction institutions plus one, multiplied by two).

Item 5 provides that if the institution is a non-government institution then the institution's share of the maximum amount is one divided by the number of non-government institutions responsible plus one.

As explained in relation to section 10, this cost-sharing arrangement reflects an agreement between the Commonwealth and states and territories, and is not relevant to any civil liability of relevant institutions for the abuse apart from the Scheme. This section, in effect, means that the Commonwealth is not liable for more than half of the governmental part of the maximum amount of a redress payment for the abuse.

Ordinarily, equally responsible institutions would equally share the amount of redress (e.g. if there are three equally responsible institutions, they would pay 33.33 per cent of the redress amount each). Under subsection 21(2), redress payments are split into an equal share for each responsible non-government institution, and one equal share for all responsible government institutions. The one share for all governments is then split equally between jurisdictions, and then each jurisdiction's share is split equally between all responsible institutions from that jurisdiction.

Example:

There is a set of abuse for which an orphanage, and the New South Wales Department of Families and Community Services (FaCS), and the Commonwealth Department of Home Affairs (DHA) are found equally responsible under section 10.

Assume for the purposes of this example that the share of the maximum amount for this set of abuse is \$100,000.

- Orphanage: Because the orphanage is a non-government institution, its share is determined by Item 5. Under Item 5, the orphanage's share of the maximum of amount is one divided by (the number of non-government institutions responsible plus one), which equals one half. One half of \$100,000 is \$50,000.
- FaCS: Because FaCS is a government institution, and there is a non-government institution responsible, and there are no other government institutions belonging to the New South Wales Government, FaCS's share is determined by Item 2. Under Item 2, FaCS' share of the maximum amount is one divided by the total of (the number of non-government institutions responsible plus one, multiplied by two), which equals one quarter. One quarter of \$100,000 is \$25,000.
- DHA: Because DHA is a government institution, and there is a non-government institution responsible, and there are no other government institutions belonging to the Australian Government, DHA's share is determined by Item 2. Under Item 2, DHA's share of the maximum amount is one divided by the total of (the number of non-government institutions responsible plus one, multiplied by two), which equals one quarter. One quarter of \$100,000 is \$25,000.

#### Example:

There is a set of abuse for which a sporting club, a local church, an orphanage run by the New South Wales Government, the New South Wales Department of Families and Communities (FaCS), and the Commonwealth Department of Home Affairs (DHA) are found equally responsible under section 10.

Assume for the purposes of this example that the share of the maximum amount for this set of abuse is \$36,000.

- Sporting club: Because the sporting club is a non-government institution, its share is determined by Item 5. Under Item 5, the sporting club's share of the maximum of amount is one divided by (the number of non-government institutions responsible plus one), which equals one third. One third of \$36,000 is \$12,000.
- Local church: Because the local church is a non-government institution, its share is determined by Item 5. Under Item 5, the local church's share of the maximum of amount is one divided by (the number of non-government institutions responsible plus one), which equals one third. One third of \$36,000 is \$12,000.
- State-run orphanage: Because the state-run orphanage is a government institution, and there are non-government institutions responsible, and there is another government institution belonging to the New South Wales Government, its share is determined under Item 3. Under Item 3, the state-run orphanage's share of the maximum amount is one divided by the total of two multiplied by (the number of non-government institutions responsible plus

one) multiplied by (the number of other key jurisdiction institutions plus one), which equals one twelfth. One twelfth of \$36,000 is \$3,000.

- FaCS: Because FaCS is a government institution, and there are non-government institutions responsible, and there is another government institution belonging to the New South Wales Government, its share is determined under Item 3. Under Item 3, the FaCS' share of the maximum amount is one divided by the total of two multiplied by (the number of non-government institutions responsible plus one) multiplied by (the number of other key jurisdiction institutions plus one), which equals one twelfth. One twelfth of \$36,000 is \$3,000.
- DHA: Because DHA is a government institution, and there is a non-government institution responsible, and there are no other government institutions belonging to the Australian Government, DHA's share is determined by Item 2. Under Item 2, DHA's share of the maximum amount is one divided by the total of (the number of non-government institutions responsible plus one, multiplied by two), which equals one sixth. One quarter of \$36,000 is \$6,000.

Subsection 21(3) provides that, if the amount worked out under subsection 21(1) or 21(2) is not a whole number of cents, the amount will be rounded up to the next whole number of cents.

#### Example:

An application is made by a person who was a ward of the state of New South Wales. The person was placed in an orphanage where they were abused by one of their carers. This is one set of abuse.

An assessment against the matrix determines the person's maximum amount to be \$100,000. As there is one set of abuse, each institution's liability is worked out by dividing the maximum amount of \$100,000 by two (\$50,000 each), as both the state of New South Wales and the orphanage are equally responsible.

### **Subdivision C — Requirements if there are 2 or more sets of abuse of person**

#### **Section 22 Requirements if there are 2 or more sets of abuse**

Section 22 provides that, if there are two or more sets of abuse of the person, an institution's share of the maximum amount is to be worked out in accordance with Subdivision C. The institution whose share is to be calculated is referred to as the **key institution**.

#### **Section 23 First, work out notional maximum amount for each set**

Section 23 sets out the first step in calculating an institution's share of the maximum amount.

Subsection 23(1) requires the assessor to first apply the assessment framework (in accordance with step 1 of section 30(2) of the Act) to calculate the maximum amount of redress payment that could be payable to the person in relation to each set of abuse only. The note clarifies that this must be done for a set of abuse, regardless of whether the key institution was responsible for that particular set.

Subsection 23(2) provides that, if 2 or more institutions are equally responsible for the abuse covered by a set and one or more (but not all) of them are not participating institutions, the Operator is to multiply the amount worked out under subsection 23(1) for the set by the amount worked out using the formula set out in this subsection. This formula divides the number of *participating* institutions responsible for the abuse covered by the set by the total number of *institutions* (including non-participating institutions) responsible for that abuse.

Subsection 23(3) provides for the rounding up of the result to the nearest 4 decimal places of a cent (6 decimal places of a dollar), where an amount worked out under subsection 15(2) is expressed to more than 4 decimal places of a cent.

Subsection 23(4) provides that the figure produced by the calculation in this section is the ***notional maximum amount*** for the relevant set of abuse.

#### **Section 24 Secondly, work out share of maximum amount for each set of abuse for which key institution is responsible**

Subsection 24(1) sets out the formula to determine the key institution's share of the maximum amount worked out under step 1 of the redress payment method statement for each set of abuse for which that institution is responsible. This formula divides the notional maximum amount for the set (worked under section 23 of the Rules) by the total of the institution's notional maximum amount for all sets of abuse of the person. This figure is then multiplied by the maximum amount worked out under step 1 of the redress payment method statement for the person.

Note 1 clarifies that the share must be worked out for a set, whether the key institution is primarily responsible for the abuse covered by the set, or equally responsible for it with other institutions (whether or not they are participating institutions).

Note 2 further states that the total of the notional maximum amounts for all sets of abuse takes account of every such set, whether or not the key institution was responsible for the abuse covered by a particular set.

Subsection 24(2) provides for the rounding up of the result to the nearest 4 decimal places of a cent (6 decimal places of a dollar), where an amount worked out under subsection 23(2) is expressed to more than 4 decimal places of a cent.

Subsection 24(3) provides that the figure produced by the calculation in this section is the ***set of abuse share of maximum amount*** for the relevant set of abuse

#### **Section 25 Thirdly, work out key institution's portion of share of maximum amount for each set of abuse for which key institution is responsible**

Subsection 25(1) provides the formula to determine the key institution's portion of the result of the calculation in section 16 of the Rules (the ***set of abuse share of***

**maximum amount**) for each set of abuse of the person for which the key institution is responsible. This formula divides the result of section 24 for a particular set of abuse share of maximum amount for the set by the number of participating institutions responsible for the abuse covered by that set.

Subsection 25(2) provides a special rule for working out a set of abuse of child migrants covered by section 10. If the key institution is responsible because of section 10 for abuse covered by the set, the key institution's portion of the set of abuse share of maximum amount for the set is the fraction worked out for the key institution using the table in subsection 21(2) as if:

- (a) the set were the only set of abuse of the person; and
- (b) any other institution that is responsible for the abuse covered by the set because of section 10 but is not a participating institution were not responsible because of that section;

of that share.

Subsection 25(3) provides for the rounding up of that amount to the next whole number of cents, where the amount worked out under subsection 25(1) is not a whole number of cents.

Subsection 125(4) then requires the Operator to add together the results of the calculation in subsection 25(1) (or, if applicable, the rounded-up figure in subsection 25(2)) for each set of abuse for which the key institution is responsible (if the institution is responsible for abuse covered by 2 or more sets).

The resulting amount is the institution's 'gross liability amount' under step 2 of the redress payment method statement – that is, the institution's share of the maximum amount of redress payable to a person as worked out under step 1 of that method statement (subsection 17(4) and accompanying note).

#### Example:

A person became a ward of the state and was placed by the Western Australian (WA) government in a boys' home. In the boys' home, the person was physically and sexually abused. One week, the person was sent by the boys' home on a camp run by a small religious organisation. On the camp, the person was also sexually abused.

Assume for this example that an assessment against the matrix determines the person's maximum amount to be \$150, 000. There is one set of abuse for which the WA government and the boys' home are equally responsible (set 1). There is another set of abuse for which the WA government, the boy' home and the religious organisation are equally responsible (set 2).

Firstly, work out the notional maximum amount for each set. An assessment against the matrix for each set of abuse (if it were the only set of abuse) determines the following notional maximum amounts – \$150,000 for set 1 and \$40,000 for set 2.

Secondly, work out the share of maximum amount for each set of abuse for which the key institution is responsible. The total notional maximum amount for all sets of abuse is \$150,000 (set 1) plus \$40,000 (set 2) which equals \$190,000. As previously established the maximum amount the person is eligible for is \$150,000.

- The share of maximum amount for set of abuse 1 is \$150,000 divided by \$190,000 multiplied by \$150,000, which equals \$118,421.052631 (rounded to four decimal places of a cent).
- The share of maximum amount for set of abuse 2 is \$40,000 divided by \$190,000 multiplied by \$150,000, which equals \$31,578.947368 (rounded to four decimal places of a cent).

Thirdly, work out each institution's portion of the share of maximum amount for each set of abuse for which they are responsible. This involves dividing the share of maximum amount (of the set) by the number of institutions responsible.

- For set 1: \$118,421.052631 divided by 2 equals \$59,210.53 each paid by the WA government and the boys' home (rounded up to the next cent)
- For set 2: \$31,578.947368 divided by 3 equals \$10,526.32 each paid by the WA government, boys' home and the religious institution (rounded up to the next cent).

Lastly, work out the gross liability amount for each responsible participating institution.

- WA government: \$59,210.53 plus \$10,526.32, which equals \$69,736.85
- Salvation Army: \$59,210.53 plus \$10,526.32, which equals \$69,736.85
- Religious organisation: \$10,526.32

### **Division 3 — Payments that are not relevant prior payments reducing institution's share of costs of redress payment**

#### **Section 26 Payments that are not relevant prior payments**

The next step (step 3) in working out an institution's share of the costs of a redress payment under the redress payment method statement is to deduct the amount of any payment made to the person by or on behalf of the liable institution in relation to abuse for which that institution is responsible. These payments are described as 'relevant prior payments'. However, step 3 also provides for the Rules to prescribe amounts that are not relevant prior payments.

Subsection 26(1) of the Rules provides that the section prescribes such payments (that are not relevant prior payments) for these purposes, while subsection 26(2) states that the subsections of section 26 do not limit each other. However, the note clarifies that a payment is not a relevant prior payment if one subsection provides that it is not a relevant prior payment, even if another subsection would not prevent it from being a relevant prior payment.

Subsection 26(3) sets out a range of payments that are never relevant prior payments to any extent. These include various kinds of compensation payments made under Commonwealth statute. Paragraphs 26(3)(a)-(e) will ensure that receipt of statutory compensation payments will not affect a survivor's entitlement to a redress payment. Subsection 26(4) provides that a payment is not a relevant prior payment to the extent that:

- (a) it is not in recognition of the relevant abuse, or harm caused by that abuse; or
- (b) it is reasonably attributable to expenses of medical, dental or other treatment or any other living expenses.

The note to subsection 26(4) clarifies that, for the purposes of subparagraph 26(4)(b)(ii), living expenses are an example of other expenses.

Subsection 26 (5) provides that a payment made in relation to non-sexual abuse for which the liable institution is responsible is not a relevant prior payment, to any extent, if the non-sexual abuse is not part of a set of abuse that also covers sexual abuse of the person.

Example:

A person spent five years in a home run by a religious organisation, and regularly attended the local church (which was associated with the religious organisation). The person was frequently beaten by one of his carers at the home. The person was also sexually abused by the religious leader at the local church. Only the local church is found responsible for providing redress for the sexual abuse. The religious organisation that ran the home and the local church are participating institutions and members of a participating group. The religious organisation previously paid \$50,000 to the person in recognition of the beatings they experienced.

As the beatings did not occur in the same set of abuse as sexual abuse, the \$50,000 compensation payment by the religious organisation will not be a relevant prior payment for the purposes of calculating the person's redress payment.

Subsection 26(6) provides a formula to prevent the possibility of double counting. A payment made by the liable institution on behalf of one or more other liable institutions responsible for the abuse or paid on behalf of the liable institution by another liable institution responsible for the abuse is not a relevant prior payment for the purposes of working out the liable institution's share of the costs of the redress payment to the extent worked out using the formula. To make this calculation, subtract one from the number of liable institutions by or on behalf of which the payment was paid. Divide this number by the number of liable institutions by or on behalf of which the payment was paid and then multiply the result by the amount of the payment.

The note clarifies that as this subsection operates separately in relation to each of the liable institutions, the effect is that it splits the payment equally among all those institutions preventing the payment from being double counted.

Example:

Three institutions are found liable for a set of abuse. Those three participating institutions had previously paid \$90,000 in an out of court settlement to a person for

the abuse, but they are unable to provide information as to the amounts they each contributed to the settlement. To work out the portion of the \$90,000 to count as a relevant prior payment for each of the three liable institutions, multiply \$90,000 by two thirds, which is \$60,000. This is the amount that is NOT a relevant prior payment. To work out the relevant prior payment for each institution, subtract \$60,000 from \$90,000, to get \$30,000 which is the amount of the relevant prior payment to deduct from each liable institution's redress liability. This has the effect of dividing the payment equally between the liable institutions and only deducting one of the equal shares from the liability of each institution that contributed to the payment. Each liable institutions will have \$30,000 adjusted for inflation and deducted from their current redress liability.

#### **Division 4 — Institution's share of costs of counselling and psychological component**

##### **Section 27 Responsible institution's share of costs of counselling and psychological component**

Subsection 31(3) of the Act sets out that the Operator must work out each liable institution's share of the costs of the counselling and psychological component of redress in accordance with the Rules. Subsection 27(1) of the Rules provides that section 27 prescribes how to work out the amount of a liable institution's share of the cost of this component.

Subsection 27(2) provides that the amount of the share of costs must be worked out using the formula in subsection 27(3) and rounded up if the result is not a whole number of cents.

The formula provided by subsection 27(3) is, divide the institution's gross liability amount worked out under step 2 of the redress payment method statement for the person by the total of gross liability amounts of all responsible institutions worked out under step 2. Then multiply the result by the amount of the component.

The note to subsection 27(3) provides that section 27 is affected by section 28 if the Operator has made a determination under paragraph 29(2)(i) of the Act that a participating government institution is the funder of last resort in relation to a defunct institution in relation to the abuse. Any such modifications will apply for working out the amount of every responsible institution's share (even the share of a responsible institution other than the participating government institution).

##### Example:

For the purposes of explaining this method, assume the amount of the counselling and psychological component is the maximum amount of \$5,000.

Two institutions are found to have gross liability amounts of \$75,000 each for a redress payment to a person. The total of all gross liability for this redress payment is \$150,000. The counselling and psychological component of this redress payment is \$5,000. Therefore, each institution's share of the counselling and psychological



component is \$5,000 multiplied by \$75,000 divided by \$150,000, which equals \$2,500 per institution.

## **Division 5 — Special rules for funder of last resort cases**

Subsection 179(1) of the Act provides the Minister with the power to make rules prescribing matters that are necessary or convenient to be prescribed for the carrying out or giving effect to the Act. The 'necessary and convenient' power provided in that subsection ensures that the Commonwealth is able to incorporate additional matters that arise over the 10 year course of the Scheme.

This Division deals with rules that are necessary and convenient for giving effect to the special rules for funder of last resort cases under section 165 of the Act.

## **Section 28 Special rules for funder of last resort cases**

Paragraph 29(2)(i) of the Act provides that the Operator must determine that a participating government institution is the funder of last resort for a defunct institution, where the Operator has determined that the institutions are equally responsible for the abuse and the defunct institution is listed for the participating jurisdiction that the participating government institution belongs to. Subsection 28(1) provides that this section will apply if the Operator has made such a determination under paragraph 29(2)(i) of the Act in relation to abuse of a person.

Subsection 28(2) provides that this section modifies the operation of Divisions 2 and 4 of the Rules, in relation to working out an institution's share of the maximum amount of redress payment that could be payable to the person and an institution's share of costs of counselling and psychological component.

Subsection 28(3) provides that for the purposes of working out the amounts described in subsection 28(2) for every institution that the Operator has determined (under paragraph 29(2)(b) of the Act) responsible for the abuse and therefore liable for providing redress, Divisions 2 and 4 of this part apply as if:

- (a) the defunct institution were a participating institution and a responsible institution; and
- (b) the defunct institution's gross liability amount worked out under step 2 of the redress payment method statement for the person were the amount worked out under that step when applying it in accordance with paragraph 165(2)(a) of the Act.

The note to subsection 28(3) clarifies that this provision is consistent with the approach taken in section 165 of the Act for working out participating government institutions' liabilities. However, this provision ensures that a similar approach is taken when working out the liabilities of all institutions that the Operator has determined were responsible. This is because, under this Part, the liabilities of each of those institutions are affected by how many participating institutions and responsible institutions there are and amounts worked out for the rest of those institutions.

The effect of Section 28 is that when working out institutions' respective shares of the monetary payment and the counselling and psychological component, a defunct institution that has a funder of last resort arrangement is to be treated as a participating institution. This ensures that the payment shares of the defunct institution are appropriately apportioned throughout the method statement, so that they can be accommodated by the relevant government. If the defunct institution was to be treated as a non-participating institution, this would distort institutions' shares of the monetary payment and the counselling and psychological component.

## **Division 6 — Special rules if institution ordered by court to pay compensation or damages**

### **Section 29 Special rules if institution ordered by court to pay compensation or damages for abuse**

Subsection 29(1) provides that this section applies if, because of subsection 11(2), an institution (the **defendant institution**) is not responsible for abuse of a person and one or more other institutions are responsible institutions in relation to that abuse.

The note clarifies that subsection 11(2) basically provides that an institution is not responsible for abuse of a person if a court orders the institution to pay compensation or damages to the person for the abuse.

Subsection 29(2) provides for the modification of Division 2. Subsection 29(2) modifies the operation of Division 2 of this Part for the purposes of working out the amount that is a responsible institution's share of the maximum amount of redress payment that could be payable to the person and is worked out under step 1 of the redress payment method statement.

Subsection 29(3) provides that for the purposes of working out the amount described in subsection 29(2) for every institution that the Operator has determined under paragraph 29(2)(b) of the Act is responsible for abuse of the person, Division 2 of this Part (except subsection 20(1)) applies as if the defendant institution:

- (a) were responsible for abuse of the person despite subsection 11(2); and
- (b) were a responsible institution in relation to the abuse; and
- (c) if the defendant institution would, apart from subsection 11(2), have been equally responsible with one or more other participating institution for the abuse - were equally responsible for the abuse unless each of the other institutions is treated as being responsible for the abuse only because of another application this subsection.

Subsection 29(4) provides that subsection 26(6) (about the extent to which an amount paid by or on behalf of a responsible institution is a relevant prior payment) applies as if the defendant institution were a responsible institution.

Subsection 29(5) provides for the effect of the special rules on subsection 27(3) of the Rules. To avoid doubt, for the purposes of working out the amount that is a responsible institution's share of the costs of the counselling and psychological component of redress for the person:

- (a) the institution's gross liability amount worked out under step 2 of the redress payment method statement for the person is affected by subsections 29(2) and (3); and
- (b) the defendant institution is not to be treated as a responsible institution for the purposes of working out the total of gross liability amounts of all responsible institutions worked out under step 2 of the redress payment method statement for the person.

Example:

A person attended a boarding school. In the boarding school, the person was sexually abused. On one occasion, a priest from the local Anglican church came to the school and sexually abused the person. The boarding school was ordered by a court to pay damages to the person for all abuse they experienced while attending the school. This means that the boarding school will not be found responsible under the Scheme for that abuse, and so will not have liability relating to that abuse. However, for the purposes of calculating the liability of the local Anglican church only, the boarding school will be treated as having responsibility and liability as if it had not been ordered to pay damages.

Assume for this example that an assessment against the matrix determines the person's maximum amount to be \$95,000. There is one set of abuse for which the local Anglican church is equally responsible, and for which the boarding school would have been equally responsible had it not been ordered to pay damages (set 1). There is another set of abuse for which the boarding school would have been primarily responsible for, had it not been ordered to pay damages (set 2).

Firstly, work out the notional maximum amount for each set. An assessment against the matrix for each set of abuse (if it were the only set of abuse) determines the following notional maximum amounts – \$95,000 for set 1 and \$45,000 for set 2.

Secondly, work out the share of maximum amount for each set of abuse for which the key institution is responsible. The total notional maximum amount for all sets of abuse is \$95,000 (set 1) plus \$45,000 (set 2) which equals \$140,000. As previously established the maximum amount the person is eligible for is \$95,000.

- The share of maximum amount for set of abuse 1 is \$95,000 divided by \$140,000 multiplied by \$95,000, which equals \$64,464.285714 (rounded to four decimal places of a cent).
- The share of maximum amount for set of abuse 2 is \$45,000 divided by \$140,000 multiplied by \$95,000, which equals \$30,535.714286 (rounded to four decimal places of a cent).

Thirdly, work out each institution's portion of the share of maximum amount for each set of abuse for which they are responsible. This involves dividing the share of maximum amount (of the set) by the number of institutions responsible.

- For set 1: \$64,464.285714 divided by 2 equals \$32,232.15 to be paid by the local Anglican church, and which would have also been paid by the boarding school had it not been ordered to pay damages (rounded up to the next cent)
- For set 2: \$30,535.72 would have been paid by the boarding school had it not been ordered to pay damages (rounded up to the next cent).

Lastly, work out the gross liability amount for each responsible participating institution.

- The local Anglican church is the only institution with a gross liability amount, which equals \$32,232.15

## **Part 7 – Acceptance of redress**

### **Section 30 Simplified outline of this Part**

Section 30 sets out the simplified outline of Part 7. This Part sets out, in relation to an offer of redress, what must be included in the acceptance document.

### **Section 31 Requirements for content of acceptance document for offer of redress**

Subsection 42(2) of the Act sets out the requirements for acceptance documents that a person must comply with. Paragraph 42(2)(j) provides for the Rules to prescribe further requirements. Subsection 31(1) provides that section 31 is for the purposes of prescribing such requirements.

Subsection 31(2) prescribes that, for each participating institution that is responsible for any of the abuse concerned, an acceptance document for an offer of redress must include:

- (a) the amount of the institution's share of the costs of the redress payment; and
- (b) if a relevant payment has been paid to the person by or on behalf of the institution:
  - (i) the amount of that payment; and
  - (ii) a statement of the effect of the payment on the amount of the institution's share of the costs of the redress payment.

Subsection 31(3) prescribes that an acceptance document must also include the person's consent to each released institution or official identified in the document using and disclosing protected information about the person, which is included in the document, for the purpose of the institution or official obtaining the benefit of section 43 of the Act, including by:

- (a) confirming or communicating that the institution or official is not liable to pay, or to make contribution to, damages relating to abuse of the person within the scope of the Scheme; and

- (b) determining whether the person is bringing or continuing civil proceedings against the institution or official that, under section 43 of the Act, the person cannot bring or continue.

Note 1 to subsection 31(3) provides that an official may be identified by reference to an institution.

Note 2 to subsection 31(3) clarifies that section 43 of the Act discharges a released institution or official from civil liability for abuse of the person within the scope of the Scheme and from liability to make a contribution to damages payable in civil proceedings against another institution or person for such abuse. That provision also provides that the person cannot bring or continue civil proceedings against a released institution or official in relation to such abuse.

## **Part 8 – Provision of redress**

### **Division 1 — Simplified outline**

#### **Section 32 Simplified outline of this Part**

Section 32 sets out the simplified outline of Part 8. This Part sets out the matters relating to the payment of redress payments, such as the counselling and psychological services payment and payment where an applicant dies before accepting or declining an offer of redress .

### **Division 2 — Payment of redress payment and counselling and psychological services payment**

#### **Section 33 Payment of redress payment and counselling and psychological services payment**

Subsections 48(2) and 51(4) of the Act provides for the Rules to prescribe matters relating to the payment of redress payments and counselling and psychological services payments respectively. Subsection 33(1) provides that the purpose of section 33 is to prescribe such matters.

Subsection 33(2) provides that a redress payment, or a counselling and psychological services payment, must be paid to an account that the person holds with a financial institution which the person has nominated in writing to the Operator.

- (a) Subsection 33(3) provides that, despite subsection 33(2), a redress payment or counselling and psychological services payment must be paid to an account, with a financial institution that is nominated in writing to the Operator by the executor or administrator of the person's estate if: the person has died after becoming entitled to redress under the scheme; and
- (b) the payment has not been made in accordance with subsection 33(2); and
- (c) it is no longer possible to make the payment in accordance with that subsection.

The note at the end of subsection 33(3) clarifies that Division 2 of Part 3.1 of the Act explains what happens if the person dies after making an application for redress payment but before accepting the offer.

## **Division 3 — Notice relating to redress payment if applicant dies before accepting or declining offer of redress**

### **Section 34 Notice of determination because of section 58 of the Act**

Subsection 58(5) of the Act provides for the Rules to prescribe matters relating to the giving of notices to a person or a participating institution where the Operator makes a determination under section 29 of the Act, because of section 58 of the Act. Section 58 of the Act applies where a person makes an application for redress and the person dies before a determination on the application is made. In such circumstances, the Operator must continue to deal with the application as if the person had not died. Subsection 34(1) provides that, for the purposes of subsection 58(5) of the Act, once the determination regarding the application has been made, the Operator must give written notice of the determination to the person the Operator considers most appropriate.

Note 1 to subsection 34(1) clarifies that section 58 of the Act requires an application for redress to be determined despite the death of the applicant.

Note 2 to subsection 34(1) clarifies that section 35 of the Act requires that any participating institution specified in a determination under section 29 of the Act must be given notice.

Subsection 34(2) provides that the notice under subsection (1) must state:

- (a) whether or not the application has been approved; and
- (b) the reasons for the determination; and
- (c) if the application is approved – the amount of the redress payment.

### **Section 35 Notice of effect of section 59 of the Act**

Subsection 59(5) of the Act provides for the Rules to prescribe matters in relation to the giving of notices to a person or a participating institution where the Operator makes a determination under section 29 of the Act, and the applicant for redress dies after being given an offer of redress, but before the offer is accepted, declined or withdrawn (subsection 59(1) of the Act)). Subsection 35(1) provides that section 35 is for the purposes of prescribing such matters.

The note to subsection 35(1) clarifies that section 59 of the Act applies where an applicant dies after being given an offer of redress but before the offer is accepted, declined or withdrawn. The redress payment is payable under section 60 of the Act in such circumstances where certain criteria is met.

Subsection 35(2) provides that where subsection 59(3) of the Act applies, that is, if before the person died:

- the person had not applied for a review of the determination; or
- if they had applied for review, the review had been completed;

the Operator must give written notice to each person they determine should be paid the redress payment (under section 60 of the Act), which states the amount to be paid to the person.

Subsection 35(3) provides that where subsection 59(4) of the Act applies, that is, if before the person died:

- the person had applied for a review of the determination; and
- the review had not been completed; then

the Operator must give written notice of the outcome of the review to the person (or persons) the Operator considers most appropriate.

Subsection 35(4) provides that a notice under subsection (3) must state the outcome of the review (including each person to whom a redress payment is to be made if the outcome was that the application was approved) and the reasons for that outcome.

The note to subsection 35(4) clarifies that if the outcome is that a determination is varied or substituted, section 35 of the Act requires that any participating institution specified in the determination, as varied or substituted, must be given notice.

## **Part 9 – Notice of certain decisions affecting entitlement of certain offenders to redress**

### **Section 36 Simplified outline of this Part**

Section 36 the simplified outline of Part 9. This Part sets out the notice requirements relating to entitlement to redress for certain offenders.

### **Section 37 Notice of certain decisions affecting entitlement of certain offenders to redress**

Subsection 63(8) of the Act provides for the rules to prescribe matters relating to the giving of notices to a person or participating institution in relation to a determination that a person is not prevented from being entitled to redress if the Operator is satisfied that providing redress would not bring the scheme into disrepute or adversely affect public confidence in, or support for, the Scheme.

Subsection 37(1) provides that, for the purposes of subsection 63(8) of the Act, this section applies if the Operator:

- (a) becomes aware that a person who has made an application for redress has been or is sentenced to imprisonment for 5 years or longer for an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and
- (b) decides under section 63 not to make a determination that the person is not prevented from being entitled to redress under the Scheme.

Subsection 37(2) provides that the Operator must give written notice of the decision to the person and each participating institution that was given a notice under section 25 of the Act (Operator's power to request information from participating institutions) to provide information that may be relevant to the application or to determining the application.

## **Part 10 – Notices about effect of security notices**

## **Section 38 Simplified outline of this Part**

Section 38 sets out the simplified outline of Part 10. This Part sets out the notice requirements if an application is taken to have been withdrawn.

## **Section 39 Notices about effect of subsections 71(1) and (2) of the Act**

Under subsection 71(1) of the Act, if a person has made an application for redress and a security notice comes into force in relation to a person, the application is taken to have been withdrawn if a determination under section 29 of the Act (Operator must determine whether to approve, or not approve, the application) has not been made or an offer of redress has not been given under section 39 (Operator must give written notice) to the person. Subsection 71(2) of the Act provides that an offer of redress is deemed to be withdrawn if a security notice comes into force and, at that time, an offer of redress that has been given to the person has not been accepted. Subsection 71(3) of the Act provides a rule making power to prescribe matters that relate to the giving of notices to a person or a participating institution in the event a security notice comes into force.

Subsection 39(1) provides that this section applies for the purposes of subsection 71(3) if:

- (a) as a result of subsection 71(1), a person's application for redress is taken to have been withdrawn because of a security notice; or
- (b) as a result of subsection 71(2), a person's application for redress is taken to have been withdrawn, the determination made on the application is taken to have been revoked and an offer of redress that has been given to the person is taken to have been withdrawn, because of a security notice.

Subsection 39(2) provides that the Operator must give the person, (and, if relevant, each institution the Operator is required to give notice to of the determination or the offer), written notice of the result described in paragraphs 39(1)(a) or (b), whichever is relevant.

Subsection 39(3) provides that paragraph 39(2)(b) does not require the Operator to give notice to an institution if, because of the withdrawal of the application section 23 (about notifying institutions requested to give information relevant to an application of the withdrawal of the application) requires notice to be given to the institution. Essentially, this allows the Operator to avoid having to give multiple notices to the same institution if a notice is required under the Act and Rules.

## **Part 11 – Disclosure of protected information**

### **Section 40 Simplified outline of this Part**

Section 40 sets out the simplified outline of Part 11. This Part sets out the matters relating to the disclosure of protected information, including issuing a public interest certificate, enforcement of the criminal law, proceeds of crime orders, etc.

### **Section 41 Power to certify that disclosure is necessary in the public interest**



Section 41 provides that Part 11 is for the purposes of paragraph 95(4)(a) of the Act. Paragraph 95(4)(a) provides the rule making power in relation to the Operator certifying the disclosure of protected information for the purposes of paragraph 95(1)(a). Paragraph 95(1)(a) provides that the Operator may disclose protected information that was acquired by an officer in the performance of his or her functions or duties or in the exercise of his or her powers if the Operator certifies that the disclosure is necessary in the public interest.

## **Section 42 Matters to which the Operator must have regard**

Section 42 provides that, in certifying for the purposes of paragraph 95(1)(a) of the Act that disclosure of protected information (that relates to a person who has applied for redress) is necessary in the public interest, the Operator must have regard to the impact the disclosure might have on the person.

## **Section 43 When public interest certificate may be given**

Subsection 43(1) provides that the Operator may certify for the purposes of paragraph 95(1)(a) that the disclosure of protected information is necessary in the public interest if the Operator is satisfied that:

- (a) the information cannot reasonably be obtained from a source other than the Department and the Human Services Department; and
- (b) the disclosure is covered by any of sections 44 to 54 of the Rules; and
- (c) the person to whom the information will be disclosed either:
  - (i) has a genuine and legitimate interest in the information connected with the circumstances described in a section covering the disclosure; or
  - (ii) is a Minister covered by subsection 43(2).

Subsection 43(2) sets out the Ministers that are covered by subsection 43(2):

- (a) the Minister;
- (b) the Minister administering the *Human Services (Centrelink) Act 1997*;
- (c) the Prime Minister;
- (d) the Premier of a State;
- (e) the Chief Minister of the Australian Capital Territory;
- (f) the chief Minister (however designated) of the Northern Territory;
- (g) the Minister of a State or Territory who is responsible for dealing with redress or other compensation for survivors.

## **Section 44 Protecting public revenue**

Section 44 provides for disclosure of protected information if it is necessary to prevent an act that may have a significant adverse effect on the public revenue.

## **Section 45 Protecting the Commonwealth, States and Territories**

Section 45 provides for disclosure of protected information that is necessary for the investigation, prosecution or prevention of an offence or threatened offence:

- (a) against an officer or employee of the Commonwealth, a State or a Territory;  
or
- (b) against Commonwealth, State or Territory property; or
- (c) on premises of the Department or of the Human Services Department.

## **Section 46 Proceeds of crime order**

Section 46 is aimed at disrupting and combating serious and organised crime. The measure does this by assisting law enforcement agencies in their efforts to deprive individuals of the proceeds, instruments and benefits derived from unlawful activity.

Subsection 46(1) provides that this section applies to a disclosure of protected information to a Commonwealth, State or Territory law enforcement agency which is necessary for:

- (a) the making, or proposed or possible making, of an order covered by subsection 46(2); or
- (b) the enforcing of such an order.

Subsection 46(2) sets out that the following orders are covered:

- (a) an order under:
  - (i) Chapter 2 (the confiscation scheme) or Division 1 of Part 3-1 of Chapter 3 (examination orders) of the *Proceeds of Crime Act 2002*; or
  - (ii) Part II (confiscation) or III (control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or
  - (iii) A law of a State or Territory corresponding to a law mentioned in subparagraph (i) or (ii) above; or
  - (iv) Division 3 of Part XIII (recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*;
- (b) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*);
- (c) a court order (including a declaration or direction):
  - (i) under a law of a State or Territory; and
  - (ii) relating to unexplained wealth.

## **Section 47 Extradition**

Section 47 applies to a disclosure of protected information that is necessary:

- (a) for the extradition of a person to or from Australia; or
- (b) for making or acting on a request for such extradition; or
- (c) for proposed or possible making of, or action on, such a request.

## **Section 48 International assistance in criminal matters**

Section 48 applies to a disclosure of protected information that:

- (a) is to the Minister administering the *Mutual Assistance in Criminal Matters Act 1987* or to the Secretary of, or an APS employee in, the Department administered by that Minister; and
- (b) is necessary for the requesting, provision, or proposed or possible requesting or provision, by or from Australia of international assistance in criminal matters (whether under that Act or not).

### **Section 49 Mistake of fact**

Section 49 provides for the disclosure of protected information if it is necessary to correct a mistake of fact that relates to the administration of the Scheme if:

- (a) the integrity of the Scheme will be at risk if the mistake of fact is not corrected; or
- (b) the mistake of fact relates to a matter that was, or will be, published (whether by, or with or without the consent of, the person to whom the information disclosed relates).

### **Section 50 Ministerial briefing**

Section 50 applies to disclosures of protected information that are necessary to brief a Minister covered by subsection 43(2):

- (a) so that Minister can:
  - (i) consider complaints or issues raised by or on behalf of a person with that Minister (in writing or orally) about institutional child sexual abuse; and
  - (ii) respond to that person in relation to the complaints or issues; or
- (b) for a meeting or forum relating to institutional child sexual abuse that that Minister is to attend; or
- (c) in relation to issues about institutional child sexual abuse raised or proposed to be raised publicly by or on behalf of the person to whom the information disclosed relates so that Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement.

### **Section 51 Missing person**

Section 51 applies to disclosures of protected information to a court, coronial inquiry, Royal Commission, Department or other authority of the Commonwealth or a State or Territory if:

- (a) the information disclosed is about a reported missing person; and
- (b) the disclosure is necessary:
  - (i) to help the court, coronial inquiry, Royal Commission, Department or authority in relation to the whereabouts of the missing person; or
  - (ii) to locate a person (including the missing person); and

- (c) there is no reasonable ground to believe that the missing person would not want the information disclosed.

## **Section 52 Deceased person**

Subsection 52(1) provides that this section applies to disclosures of protected information if:

- (a) the information disclosed is about a deceased person; and
- (b) the disclosure is necessary to help:
  - (i) a court, coronial inquiry, Royal Commission, Department or other authority of the Commonwealth or a State or Territory performing functions relating to the death of the person; or
  - (ii) a person locate a relative or beneficiary of the deceased person; or
  - (iii) a person or authority responsible for the administration of the estate of the deceased person in relation to the administration of the estate; and
- (c) there is no reasonable ground to believe that the deceased person would not have wanted the relevant information disclosed.

Subsection 52(2) applies to disclosures of protected information to establish:

- (a) the death of a person; or
- (b) the place where the death of a person is registered.

## **Section 53 Research, statistical analysis and policy development**

Section 53 applies to disclosures of protected information that are necessary for the purposes of:

- (a) research into (including evaluation or monitoring of, or reporting on) matters relating to institutional child sexual abuse; or
- (b) statistical analysis of those matters; or
- (c) policy development relating to those matters.

## **Section 54 Reparations**

Section 54 applies to disclosures of protected information to an authority of the Commonwealth or a State or Territory that is necessary for contacting a person about the person's possible entitlement to compensation or other form of recompense in a reparation process.

## **Part 12 – Participating institutions and participating groups**

### **Division 1 — Simplified outline of this Part**

#### **Section 55 Simplified outline of this Part**

Section 55 sets out the simplified outline of Part 12. This Part deals with the requirements relating to Ministerial declarations about participating institutions,

participating groups, representatives for participating groups and representatives for participating defunct institutions.

## **Division 2 — Participating institutions**

### **Subdivision A — Participating institutions**

#### **Section 56 Prerequisites for declaration of institution as participating institution**

Section 186 of the Act provides a rule making power in relation to prescribing the way in which an agreement is to be given by the Commonwealth, a participating Territory, an institution or a person.

Section 115 provides for the Minister to make a declaration that an institution is a participating institution. Paragraphs 115(3)(b), (c) and (d) provide that the Minister must be satisfied that the relevant institutions have agreed to the institution participating in the Scheme in accordance with any requirements prescribed by the Rules.

Subsection 56(1) of the Rules provides that the agreement must be in writing for the purposes of paragraphs 115(3)(b), (c) and (d). The note to subsection 56(1) clarifies that paragraphs 115(3)(b), (c) and (d) of the Act are about declaring Territory institutions and non-government institutions (except unincorporated lone institutions) to be participating institutions.

Subsection 56(2) provides that the agreements of the unincorporated lone institution and the agreement of the person must be in writing and contained in the same document for the purposes of paragraph 115(3)(e) of the Act. The note to subsection 56(2) clarifies that paragraph 115(3)(e) of the Act is about declaring unincorporated lone institutions to be participating institutions.

Subsection 56(3) provides that there must be reasonable grounds for an expectation that, if an institution is declared to be a participating institution, its liabilities under the Act, and obligations under section 54 of the Act (relating to providing direct personal responses), will be discharged. This provision establishes the expectation that an institution wishing to join the Scheme must provide evidence that it will be able to meet the costs of participating in the Scheme. If an institution is unable to fund its participation in the Scheme by itself, the Minister may still be satisfied in the institution's ability to meet its financial obligations under the Scheme if another institution agrees to provide sufficient financial assistance.

#### **Section 57 Prerequisite for discretionary revocation of declaration of institution as participating institution**

Subsection 116(6) of the Act provides a rule making power to prescribe requirements that must be satisfied before the Minister can revoke a declaration (under subsection 116(2)) that an institution is a participating institution.

Subsection 57(1) provides that for the purposes of section 116(6), if the Minister proposes to revoke a declaration that an institution is a participating institution, the Minister:

- (a) must give written notice of such a proposal, inviting the institution to provide written advice within 10 business days as to why the declaration should not be revoked; and
- (b) must not revoke the declaration until after:
  - (i) the Minister has considered any written advice provided within the 10 business day period; or
  - (ii) if written advice is not received within the 10 business day period, until after that period has passed.

Subsection 57(2) provides that the notice under subsection (1) must be given to:

- (a) if the participating institution is a State institution – the State; or
- (b) if the participating institution is a Territory institution – the Territory; or
- (c) if the participating institution is a non-government institution other than a defunct institution – the institution; or
- (d) if the participating institution is a non-government institution that is a defunct institution – the representative for the institution.

Subsection 57(3) provides that subsections (1) and (2) do not apply if:

- (a) the participating institution is insolvent; or
- (b) the revocation has been requested by the participating State, Territory or non-government institution (other than a defunct institution) in accordance with subsection 116(3) of the Act; or
- (c) a defunct participating non-government institution or a participating unincorporated lone institution ceases to have a representative (in which case the Minister must revoke the declaration made under subsection 115(2) of the Act), in accordance with subsections 116(4) and (5) respectively.

## **Subdivision B — Representatives for participating defunct institutions**

### **Section 58 Prerequisite for discretionary revocation or variation of declaration of person as representative for defunct non-government institution**

Subsection 120(3) of the Act provides a rule making power to prescribe requirements that must be satisfied before the Minister can revoke a declaration (under subsection 119) that a person is a representative for a defunct non-government institution. Subsection 58(1) provides that the purpose of section 39 is to prescribe such requirements.

Subsection 58(2) provides the prerequisite for the revocation, under subsection 120(1) of the Act, of a declaration that a person is the representative for a defunct non-government institution. The Minister:

- (a) must give written notice of such a proposal, inviting the person to provide written advice within 10 business days as to why the declaration should not be revoked; and
- (b) must not revoke the declaration until after:

- (i) the Minister has considered any written advice provided within the 10 business day period; or
- (ii) if written advice is not received within the 10 business day period, until after that period has passed.

Subsections 58(3) and (4) provide the prerequisite for when the Minister proposes to vary a declaration that a person (the **old representative**) is the representative for a defunct non-government institution so that:

- (a) the old representative will no longer be declared to be the representative; and
- (b) another person will be declared to be the representative instead of the old representative.

Subsection 58(4) will apply if the Minister proposes to vary a declaration as set out in subsection 58(3) above, and provides that the Minister:

- (a) must give the old representative written notice of such a proposal, inviting the old representative to provide written advice within 10 business days as to why the declaration should not be varied; and
- (b) must not vary the declaration until after:
  - (i) the Minister has considered any written advice provided within the 10 business day period; or
  - (ii) if written advice is not received within the 10 business day period, until after that period has passed.

Subsection 58(5) provides that subsections (2) and (4) do not apply if:

- (a) the representative or old representative has died, ceased to exist or is insolvent; or
- (b) the revocation has been requested by the representative for a defunct institution in accordance with subsection 120(2) of the Act.

### **Subdivision C — Representatives for participating lone institutions**

#### **Section 59 Prerequisite for discretionary revocation or variation of declaration of person as representative for unincorporated lone institution**

Subsection 128(3) of the Act provides a rule making power to prescribe requirements that must be satisfied before the Minister can revoke a declaration (made under section 126 or 127) that a person is a representative for an unincorporated or incorporated lone institution. Subsection 59(1) provides that the purpose of section 59 is to prescribe such requirements (in relation to unincorporated lone institutions).

Subsection 59(2) provides the prerequisite for the revocation, under subsection 128(1) of the Act, of a declaration that a person is the representative for an unincorporated lone institution. The Minister:

- (a) must give written notice of such a proposal, inviting the person to provide written advice within 10 business days as to why the declaration should not be revoked; and
- (b) must not revoke the declaration until after:

- (i) the Minister has considered any written advice provided within the 10 business day period; or
- (ii) if written advice is not received within the 10 business day period, until after that period has passed.

Subsections 59(3) and (4) provide the prerequisite for when the Minister proposes to vary a declaration that a person (the **old representative**) is the representative for an unincorporated lone institution so that:

- (a) the old representative will no longer be declared to be the representative; and
- (b) another person will be declared to be the representative instead of the old representative.

Subsection 59(4) will apply if the Minister proposes to vary a declaration as set out in subsection 59(3) above, and provides that the Minister:

- (a) must give the old representative written notice of such a proposal, inviting the old representative to provide written advice within 10 business days as to why the declaration should not be varied; and
- (b) must not vary the declaration until after:
  - (i) the Minister has considered any written advice provided within the 10 business day period; or
  - (ii) if written advice is not received within the 10 business day period, until after that period has passed.

Subsection 59(5) provides that subsections (2) and (4) do not apply if:

- (a) the representative or old representative has died, ceased to exist or is insolvent; or
- (b) the revocation has been requested by the representative or the institution in accordance with subsection 128(2) of the Act.

### **Division 3 — Groups of participating institutions**

Section 186 of the Act provides a rule making power to prescribe the way the Commonwealth, a participating Territory, an institution or a person can give agreement to a matter. This Division deals with institutions agreeing to be members of participating groups of institutions, agreements as to representatives of the group, and the revocation of representatives for participating groups.

#### **Section 60 Single written agreement for participating institutions to be members of participating group**

Section 60 applies in relation to agreements referred to in section 134 of the Act, which provides for institutions becoming members of a participating group.

Subsection 60(1) provides that, in relation to agreements mentioned in paragraphs 134(2)(a) and (c) of the Act, which are agreements made by the Commonwealth or participating Territories respectively, the agreement must be in writing.



Subsection 60(2) provides that, in relation to agreements mentioned in subparagraph 134(2)(d)(i) of the Act, which are agreements made by non-government institutions, each of the agreements must be in writing, and all must be contained in the same document.

### **Section 61 Prerequisite for discretionary variation of declaration of participating group of non-government institutions to add another member**

Subsection 135(4) of the Act provides that the Minister must not vary or revoke a declaration made under subsection 134(1) (the Minister's power to declare two or more participating institutions form a participating group) in relation to a participating group unless any requirements prescribed by the Rules relating to the variation or revocation are satisfied.

Subsection 61(1) provides that, for the purposes of subsection 135(4) of the Act, the Minister must be satisfied of the matters in subsection 61(2), (3), (4) and (5) of this section before the Minister may vary a declaration that two or more participating institutions (the **existing members**) form a participating group of non-government institutions so that the group is formed by the existing members and another non-government institution (the **proposed new member**).

Subsection 61(2) provides for the characteristics of the proposed new member. These characteristics are that the proposed new member:

- (a) is a participating institution; and
- (b) has agreed in writing to the proposed new member being a member of the group and the representative for the group continuing to be the representative for the group if the proposed new member becomes a member of the group; and
- (c) is not a member of another participating group.

Subsection 61(3) provides that each of the existing members, and the representative for the group, has agreed in writing to the proposed new member being a member of the group.

Subsection 61(4) provides that all the agreements described in paragraph 61(2)(b) and subsection 61(3) are in a single document.

Subsection 61(5) provides that there is a sufficient connection between the existing members and the proposed new member.

### **Section 62 Prerequisite for discretionary variation of declaration of participating group of non-government institutions to remove member**

Subsection 135(4) of the Act provides that the Minister must not vary or revoke a declaration made under subsection 134(1) (the Minister's power to declare two or more participating institutions form a participating group) in relation to a participating group unless any requirements prescribed by the Rules relating to the variation or revocation are satisfied.

Subsection 62(1) provides that, for the purposes of subsection 135(4) of the Act, the Minister must be satisfied of the matter in subsection 62(2) of this section before the

Minister may vary a declaration that three or more participating institutions form a participating group of non-government institutions so that one of the institutions (the **member to be removed**) no longer forms part of the group.

Subsection 62(2) provides that all participating institutions forming the group, except the member to be removed, have agreed in writing in a single document that the member to be removed should cease to be a member of the group.

### **Section 63 Single written agreement for declaration of representative for participating group of participating non-government institutions**

Section 63 provides that, in relation to agreements mentioned in paragraphs 137(2)(a) and (b) of the Act, which are:

- (a) the person has agreed to be the representative for the group; and
- (b) each participating institution that is a member of the group has agreed to the person being the representative;

each agreement must be in writing and contained in the same document.

### **Section 64 Prerequisite for discretionary revocation of declaration of person as representative for participating group**

Subsection 138(3) of the Act provides a rule making power to prescribe requirements that must be satisfied before the Minister can revoke a declaration (made under subsection 137(1)) that a person is a representative for a participating group of non-government institutions. Subsection 64(1) provides that the purpose of section 64 is to prescribe such requirements.

Subsection 64(2) provides the prerequisite for the revocation, under subsection 138(1) of the Act, of a declaration that a person is the representative for participating group. The Minister:

- (a) must give written notice of such a proposal, inviting the person to provide written advice within 10 business days as to why the declaration should not be revoked; and
- (b) must not revoke the declaration until after:
  - (i) the Minister has considered any written advice provided within the 10 business day period; or
  - (ii) if written advice is not received within the 10 business day period, until after that period has passed.

Subsection 64(3) provides that subsection (2) does not apply if:

- (a) the representative has died, ceased to exist or is insolvent; or
- (b) the revocation has been requested by the representative or each member of the group in accordance with subsection 138(2) of the Act.

## **Division 4 — General rules about representatives**

Paragraph 179(2)(d) of the Act provides a rule making power to prescribe matters relating to a person becoming, being or ceasing to be a representative for a defunct institution, a lone institutions or a participating group.

### **Section 65 Limit on who can be representative for defunct institution, lone institution or participating group**

Subsection 65(1) provides that the purpose of section 65 is to prevent the occurrence of multiple different representatives with powers, functions, duties or other responsibilities relating to a particular institution.

Subsection 65(2) provides for limitations on representatives for defunct or lone institutions. A person must not agree to be, become or be the representative for either a participating defunct or lone institution if the person is or proposes to become:

- a participating incorporated lone institution with a representative; or
- a member of a participating group with a representative for the group other than the person.

Subsection 65(3) provides for limitations on representatives for participating groups. A person must not agree to be, become or be the representative for a participating group if:

- the person is, or proposes to become, a participating incorporated lone institution with a representative; or
- a member of the group, other than the person, is or will be a representative for either a participating defunct institution or participating lone institution.

Subsections 65(4), (5) and (6) are the empowering provisions. Subsection 65(4) provides that section 65 is to prescribe matters for the purposes of paragraph 179(2)(d) of the Act.

Subsection 65(5) provides that subsection 65(2) also has effect for the purposes of paragraph 115(3)(f) of the Act, which provides the rule making power in relation to a declaration that an institution (in this instance a defunct or lone institution) is a participating institution under subsection 115(2).

Subsection 65(6) provides that subsection 65(3) also has effect for the purposes of subparagraph 134(2)(e)(iii) and paragraph 137(2)(d) of the Act, which provide the rule making powers in relation to:

- (a) a declaration that two or more participating institutions form a participating group; and
- (b) a declaration that a person is the representative for a group.

The note to subsection 65(6) provides that section 65 is also relevant to the Operator's consideration whether to exercise powers to revoke or vary a declaration of a person as representative so the person ceases to be declared.

This limitation ensures that representatives cannot themselves have representatives in the Scheme, which would result in complex hierarchical relationships that would be difficult for the Scheme to administer.

## **Part 13 – Financial Matters**

### **Division 1 — Simplified outline of this Part**

#### **Section 66 Simplified outline of this Part**

Section 66 sets out the simplified outline of Part 13. This Part sets out how to work out an institution's contribution to the costs of the administration of the Scheme for a quarter.

### **Division 2 — Institution's contribution to costs of administration of scheme for quarter**

#### **Section 67 Institution's contribution to costs of administration of scheme for quarter**

Subsection 152(2) of the Act provides that the Operator must determine an institution's contribution to the costs of the administration of the Scheme for the quarter, in accordance with any requirements prescribed by the Rules. Section 67 of the Rules is made for this purpose. An institution's contribution to the costs of administration of the Scheme for the quarter is comprised of an administration fee and a contribution towards legal services.

Subsection 67(2) sets out how an institution's contribution is to be calculated for the quarter. The contribution is the sum of:

- (a) 7.5% of the total of the institution's gross liability amounts worked out under step 2 of the redress payment method statement in relation to redress payments made in that quarter (rounded up if the percentage of the total is not a whole number of cents) and
- (b) the total of the amounts that are:
  - (i) worked out using the formula provided in subsection 67(3) of the Rules for every such redress payment for which the institution has such a gross liability amount; and
  - (ii) if an amount worked out using that formula is not a whole number of cents—rounded up to the next whole number of cents.

#### **Example:**

For the purposes of explaining this method, assume that there is only one redress payment for which the institution has a payable share for the quarter.

An institution's administrative charge is 7.5% of their gross liability amount. Therefore, if an institution's total gross liability is \$75,000, then their administrative charge for that redress payment will be \$5,625 (7.5% of \$75,000).

Subsection 67(3) sets out the formula referred to in paragraph 67(2)(i). The formula is the institution's gross liability amount for the redress payment divided by the total of gross liability amounts of all liable participating institutions for the redress payment. The result is then multiplied by \$1,000.

Note 1 to subsection 67(3) provides that an institution is a liable participating institution for the redress payment, even if the amount of the institution's share of the costs of the redress payment is nil due to the operation of steps 3 to 6 of the redress payment method statement.

Note 2 clarifies that the result of the formula will be \$1,000 if the institution is the only liable participating institution for the redress payment.

#### Example:

For the purposes of explaining this method, assume that there is only one redress payment for which the institutions have a payable share for the quarter.

The Commonwealth government and an orphanage are found to have gross liability amounts of \$75,000 each for a redress payment to a person. The total of all gross liability for this redress payment is \$150,000. The legal services contribution of a redress payment is \$1,000. Therefore, each institution's share of the legal services contribution is \$1000 multiplied by \$75,000 divided by \$150,000, which equals \$500 per institution.

#### *Special rules for funder of last resort cases*

Subsection 67(4) provides that the following subsection 67(5) of the Rules will apply in relation to a redress payment where the Operator has made a determination under paragraph 29(2)(i) of the Act that a participating government institution is the funder of last resort for a defunct institution in relation to the abuse.

Subsection 67(5) states that subsections 67(2) and (3) apply in relation to every responsible institution as determined by the Operator under paragraph 29(2)(b) of the Act; as if:

- (a) the defunct institution were a liable participating institution; and
- (b) the defunct institution's gross liability amount were the amount worked out under step 2 of the redress payment method statement when applying it in accordance with paragraph 165(2)(a) of the Act.

The note to subsection 67(5) of the Rules notes that this subsection takes a consistent approach to that taken in section 165 of the Act for working out the participating government institution's liabilities but ensures that a similar approach is taken when working out the scheme administration element for all institutions that the Operator has determined were responsible for abuse of the person.

### **Division 3 — Funders of last resort**

#### **Section 68 Written agreement by the Commonwealth or a participating Territory to listing of defunct institution for the jurisdiction**

Subsection 164(3) requires that the Minister must not make a declaration to list a defunct institution without being satisfied that the relevant jurisdiction has agreed, as provided for in the Rules.

Section 68 requires that an agreement by the Commonwealth or a participating Territory to the listing of a defunct institution for the jurisdiction be in writing, for the purposes of subsection 164(3) of the Act.

### **Section 69 Written withdrawal of agreement to listing of defunct institution for the Commonwealth or a participating Territory**

Section 69 of the Rules operates in connection with section 468, above, and sets out that a withdrawal of agreement to the listing of a defunct institution must be in writing. This section is made for the purposes of paragraph 164(6)(b). Once a withdrawal is made in writing, the Minister must as soon as practicable vary or revoke the relevant declaration so that the defunct institution is no longer listed.

## **Part 14 – Other Matters**

### **Division 1 — Simplified outline of this Part**

#### **Section 70 Simplified outline of this Part**

Section 45 sets out the simplified outline for Part 14. This Part deals with settlements for claims of liability for abuse, notices relating to the conviction of certain offences or acceptance of certain offers of payment relating to the abuse of the person and content of annual reports.

### **Division 2 — Overriding provisions in settlements inhibiting access to the scheme**

#### **Section 71 Overriding provisions in settlements inhibiting access to the scheme**

Paragraph 179(2)(e) of the Act provides that the Rules may provide for the overriding of provisions in settlement agreements or deeds that relate to confidentiality or would inhibit access to or the operation of the Scheme. Section 71 of the Rules is made for the purposes of that section of the Act and applies to a provision of an agreement or deed that:

- (a) purports to release a participating institution from liability for abuse of the person, that is within the scope of the Scheme; and
- (b) would have the effect of preventing, prohibiting, limiting or otherwise inhibiting any of the following:
  - (i) the person applying for or receiving redress under the Scheme;
  - (ii) the participating institution having a liability, or making a payment, provided for by the Act or the Rules in connection with the abuse of the person;
  - (iii) disclosure by either party, in connection with the operation of the Scheme, of information about the abuse, the agreement or deed or a payment made under it.

The note to subsection 71(1) of the Rules provides some examples of disclosures in connection with the Scheme.

Where a provision of an agreement or deed would have the effect described above, subsection 71(2) operates to provide that the provision would not have that effect and is not enforceable to the extent that it would result in that effect. The note clarifies that this does not limit any other effects of the provision.

### **Division 3 — Notices to the Operator**

#### **Section 72 Notice of conviction**

Subsection 181(1) of the Act requires a person to notify the Operator, in the manner prescribed in the Rules, if they are sentenced to imprisonment for 5 or more years for an offence committed against a law of the Commonwealth, a State, a Territory or a foreign country, after making an application for redress under the Scheme.

Section 72 of the Rules is made for the purposes of subsection 181(1) of the Act, and provides that the notification must be in writing in the approved form as soon as practicable after the sentence is known to the person.

#### **Section 73 Notice by applicant for redress of acceptance to offer of payment relating to abuse**

Under subsection 181(2) of the Act, the Rules may prescribe circumstances for when a person or a participating institution must or may notify the Operator of a matter and the requirements relating to the giving of the notice.

Subsection 73(1) sets out the circumstances under which the person must notify the Operator. If:

- (a) a person has applied for redress under the Act; and
- (b) before the person is given notice of a determination under section 29 of the Act on the application, the person accepts an offer of a payment that:
  - (i) is to be paid to the person by, or on behalf of, a participating institution that is identified in the application as being involved in abuse of the person within the scope of the Scheme; and
  - (ii) relates to the abuse.

Subsection 73(2) provides that the person must, as soon as practicable, notify the Operator in writing of the person's acceptance of the offer.

Subsection 73(3) provides that the notification must identify the institution by, or on behalf of, which the payment is to be paid.

#### **Section 74 Notice by successful applicant for redress of acceptance of offer of payment relating to abuse**

Under subsection 181(2) of the Act, the Rules may prescribe circumstances for when a person or a participating institution must or may notify the Operator of a matter and the requirements relating to the giving of the notice.

Subsection 74(1) sets out the circumstances under which the person must notify the Operator. If:

- (a) a person is given notice of a determination under section 29 of the Act approving the person's application for redress (whether or not the person is given the notice at the same time as being given the offer of redress, because of that approval); and
- (b) after the person is given the notice and before the person accepts the offer of redress, the person accepts an offer of a payment that;
  - (i) is to be paid to the person by, or on behalf of, a responsible institution; and
  - (ii) relates to the abuse of the person for which the institution is responsible.

Section 76 of the Act provides that a notice of a determination under section 29 of the Act may arise under an internal review of an initial decision that was not favourable under section 77 of the Act.

Subsection 74(2) provides that the person must, as soon as practicable and in any case before accepting the offer of redress, notify the Operator in writing of the person's acceptance of the offer of payment.

Subsection 74(3) provides that the notification must identify the institution by, or on behalf of, which the payment is to be paid.

Subsection 74(4) provides that subsections 74(2) and (3) cease to apply if the person declines the offer of redress.

## **Division 4 — Annual Report**

### **Section 75 Requirements for annual report on operation of the scheme**

Section 75 is made for the purposes of paragraph 187(2)(a), which provides for matters on which information must be included in the annual report to be prescribed in the Rules. Accordingly, section 75 prescribes the following matters be reported on for the year:

- (a) the number of people who applied for redress;
- (b) the number of people who the Operator determined to be eligible for redress;
- (c) the number of people who accepted offers of redress;
- (d) the number of people who declined offers of redress;
- (e) the number of institutions that were found responsible for abuse;
- (f) details relating to redress payments that were paid, including the range of the amounts of the payments and the total of the payments;
- (g) details relating to the provision of the counselling and psychological component of redress; and
- (h) details relating to the provision of direct personal responses.



## **Statement of Compatibility with Human Rights**

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

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The Rules are 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 Rules 2018* (the Rules) prescribe matters for the purposes of the National Redress Scheme for 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 survivors have suffered, survivors 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 survivor. The Scheme will commence on 1 July 2018 and will operate for a period of 10 years.

Section 179 of the Act provides the Minister with the power to make rules prescribing matters required or permitted by this Act to be prescribed by the rules or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act. The necessary and convenient power provided in this section ensures that the Commonwealth is able to incorporate additional matters that arise over the 10 year course of the Scheme.

The Rules provide the detailed requirements necessary to support and implement the Scheme. Among other things, the Rules prescribe the circumstances when a participating government institution is equally responsible with a non-government institution for the sexual or non-sexual abuse, the circumstances when a government institution is not responsible, the requirements for institutions to opt into the scheme and how to work out an institution's share of the costs as well as their proportion of the costs for administering the Scheme.

### **Human rights implications**

The Rules engage the following human rights:

- the right to state-supported recovery for child victims of abuse – article 39 of the Convention on the Rights of the Child (the CRC)
- the right to protection from sexual abuse – article 19 and article 34 of the CRC

- the freedom from discrimination in upholding the rights of the child – article 2 of the CRC
- the right to health – article 12 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR)

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

Article 39 of the CRC guarantees the right to state-supported recovery for child victims of neglect, exploitation and abuse.

The Rules promote this right by providing the detailed requirements necessary to support and implement the Scheme.

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 Rules promote 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 freedom from discrimination in upholding the rights of the child**

Article 2 of the CRC guarantees the right of children to freedom from discrimination in the upholding of their other rights in the Convention.

#### Abuse by child

While the Rules exclude sexual abuse of a person by another child if the abuse did not involve physical contact with or penetration of the person, the CRC does not explicitly prohibit this sort of differential process.

However, restricting eligibility on this basis is necessary and proportionate in ensuring the integrity and efficiency of the Scheme. The effect of this policy would be that serious abuse perpetrated by children would be within scope for consideration and assessment, while lower levels of abuse including bullying through exposure to inappropriate material are out of scope.

Attributing responsibility to an institution for such abuse could dramatically increase the exposure of institutions to liability under the Scheme, and threaten their ability to fund their participation in the Scheme. Limiting the inclusion of child-on-child abuse to physical contact and or penetration is necessary to mitigate the risk of institutions electing not to participate in the Scheme due to prohibitive cost.

#### Application by child

Whilst the Rules sets out different operational processes for child applicants, the CRC does not explicitly exclude discrimination on the basis of age.

The postponing of determinations on redress applications until the applicant is 18 years old may be perceived as discrimination on the basis of age. The special process for how children's applications are treated is necessary to protect those children's interests and to ensure the integrity and efficiency of the Scheme. As a requirement of the Scheme is to release responsible participating institutions from any liability for sexual abuse and related non-sexual abuse within the scope of the Scheme (restricting their right to later pursue civil litigation), it is necessary to ensure that the effect of the release is fully understood. Applicants who are children are unlikely to be able to fully weigh the implications of such a decision, especially when the impact of their abuse may not have been fully realised yet. Furthermore, as the impact of child abuse in a person's early years may not be realised until later in the person's life, an application submitted as a child may not contain the relevant detail.

Restricting eligibility on this basis is necessary and proportionate to safeguard the interests of children.

### **The right to health**

Article 12 of the ICESCR guarantees the right of everyone to the highest attainable standard of physical and mental health.

The Rules promote this right through providing the detailed requirements necessary to support and implement the Scheme.

The Scheme promotes the right to health of people who have experienced child abuse by providing access to counselling and psychological services to survivors who seek it as one of the three elements of redress, maximising survivors' 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 survivor.

### **Conclusion**

The Rules are compatible with human rights because they promote the protection of human rights and to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to ensuring the Scheme's integrity and proper functioning.

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