



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

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I, Dan Tehan, Minister for Social Services, make the following rules.

Dated 29 June 2018

Dan Tehan  
Minister for Social Services

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018*.

### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the commencement of the <i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i> ; and (b) the start of the day after this instrument is registered.	1 July 2018 (paragraph (a) applies)

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) abuse;
- (b) institution;
- (c) Operator;
- (d) responsible;
- (e) scheme.

In this instrument:

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

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

Section 4

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***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**

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

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.

### **6 Abuse by child**

For the purposes of subsection 14(3) of the Act, 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.

Section 7

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## **Part 3—Responsibility of institutions**

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

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

This Part prescribes circumstances in which:

- (a) government institutions are equally responsible (for the purposes of the scheme only) with other institutions for abuse; or
- (b) institutions are not responsible for abuse.

Under the Act, institutions that are equally responsible for abuse will not necessarily have equal shares of the costs of any redress payment for the abuse (or related costs). The Act lets the rules affect each institution's share of those costs. Division 2 of Part 6 of this instrument ensures Commonwealth institutions equally responsible under this Part with State or Territory institutions (and possibly non-government institutions) for abuse of certain child migrants are not liable for more than half of the governmental part of the maximum amount of a redress payment for the abuse.

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

### **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**

- (1) For the purposes of subsection 15(5) of the Act, subsections (2), (3), (4) and (5) of this section together prescribe the circumstances in which a participating government institution is equally responsible with a non-government institution for the sexual abuse or non-sexual abuse of a person (the *child*).

Note 1: All the circumstances prescribed by subsections (2), (3), (4) and (5) must exist for the participating government institution and the non-government institution to be equally responsible.

Note 2: 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.

- (2) The participating government institution 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.
- (3) 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.

Note: Paragraph (a) or (b) may apply to a Commonwealth institution if the arrangement was made for the care of the child in a Territory and was made before self-government of the Territory.

- (4) While the arrangement had effect, the only persons or institutions with parental responsibility for the child 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.
- (5) The abuse occurred while the child was in the care of the non-government institution and not in the care of another institution.
- (6) For the purposes of subsection 15(6) of the Act, if, apart from this section, 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 this section).

Section 9

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

- (1) For the purposes of subsections 15(5) and (6) of the Act, this section applies to abuse of a person if:
  - (a) the abuse occurred on or after 1 January 1977; and
  - (b) the abuse was connected with the person's membership of a unit of a cadet force provided for by Commonwealth legislation; and
  - (c) the unit was associated with an institution (except a Commonwealth institution that deals with defence); and
  - (d) apart from this section, either:
    - (i) an institution (except a Commonwealth institution that deals with defence) would be primarily responsible for the abuse; or
    - (ii) 2 or more institutions (none of them a Commonwealth institution that deals with defence) would be equally responsible for the abuse.
- (2) The following institutions are equally responsible for the abuse:
  - (a) each institution that would be responsible for the abuse apart from this section;
  - (b) a Commonwealth institution that deals with defence.
- (3) If, apart from this section, an 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 subsection (2)).

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

- (1) For the purposes of subsections 15(5) and (6) of the Act, this section applies to abuse of a person if:
  - (a) the person arrived in Australia before 1984 as a child who was sent from the United Kingdom or Malta by an institution and, when the person arrived in Australia, there were not any other members of the person's family in Australia except one or more children; and
  - (b) either:
    - (i) the person was sent to Australia under a scheme carried out under the *Empire Settlement Act 1922* (United Kingdom); or
    - (ii) the person 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.
- (2) 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 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 institution or Territory institution that, when the abuse occurred, had responsibility for the person as a ward of the jurisdiction the institution belongs to;
- (c) each institution that:
  - (i) would have been responsible for the abuse apart from this section; and
  - (ii) is not covered by paragraph (a) or (b).

Note 1: Although the institutions mentioned in this subsection are equally responsible, special rules in subsections 21(2) and 25(2) for working out each institution's share of the maximum amount of a redress payment ensure 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' liabilities for funding contribution.

Note 2: 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.

- (3) If, apart from this section, an institution would be responsible for the abuse, the institution is not primarily responsible or equally responsible for the abuse, except under subsection (2).

Section 11

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## Division 3—When an institution is not responsible

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

- (1) For the purposes of subsection 15(6) of the Act, this section applies 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) if the order is that the defendant institution pay the group—the person does not choose not to accept the person’s share of the payment to the group.

*Defendant institution is not responsible for abuse*

- (2) The defendant institution is not responsible, primarily responsible or equally responsible for the abuse.

Note: 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 abuse for the purposes of working out other institutions’ liabilities associated with redress for the person: see section 29.

*Effect on responsibility of other institutions*

- (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 (2) the defendant institution would have been primarily responsible for the abuse;
- none of the other institutions is equally responsible (or primarily responsible or responsible) for the abuse.

*Relationship with other provisions*

- (4) If the defendant institution is described in an item of the following table, the section described in that item does not apply to the abuse of the person.

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<b>Sections that do not apply in relation to the abuse of the person</b>	
<b>If the defendant institution is:</b>	<b>This section does not apply in relation to the abuse of the person:</b>
1 A participating government institution for which the conditions in subsections 8(2), (3) and (4) are met	Section 8
2 An institution described in paragraph 9(2)(b)	Section 9
3 An institution described in paragraph 10(2)(a) or (b)	Section 10

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- (5) If section 8, 9 or 10 applies to the abuse of the person, it has effect subject to this section.

Note: Because of subsection 15(6) of the Act, this section also overrides subsections 15(1), (2) and (3) of the Act.

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

- (1) For the purposes of subsection 15(6) of the Act, subsection (2) of this section prescribes circumstances in which an institution (the *government authority*) that is an authority of the Commonwealth, a State or a Territory is not responsible, primarily responsible or equally responsible for sexual abuse 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.
- (2) The circumstances are that the only connection between the government authority 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 jurisdiction that the government authority belongs to.
- (3) This section has effect subject to Division 2.

## Part 4—Applications for redress

### 13 Simplified outline of this Part

Before the Operator determines there are exceptional circumstances that justify a person in gaol making an application, the Operator must consult the Attorney-General of the State or Territory where the person is in gaol and, if the person suffered abuse in another State or Territory, the Attorney-General of that other State or Territory, about whether the Operator should make the determination.

An application made by a person who has not turned 18 must not be determined until the person turns 18, but must be determined shortly afterwards.

### 14 Requirements for determining exceptional circumstances justifying application

#### *Application*

- (1) For the purposes of subsection 20(3) of the Act, this section prescribes requirements that apply before making under subsection 20(2) of the Act a determination that there are exceptional circumstances justifying the making of an application by a person who is in gaol (within the meaning of subsection 23(5) of the *Social Security Act 1991*).

#### *Exception*

- (2) However, 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 (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.

#### *Requirements*

- (3) The Operator must give a notice meeting the requirements of subsection (4) to:
  - (a) the Attorney-General of the State or Territory in which the person is in gaol, or someone nominated by that Attorney-General; 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; or
    - (ii) if that Territory is not a participating Territory—the Attorney-General of the Commonwealth, or someone nominated by that Attorney-General.
- (4) A notice under subsection (3) must:



- (a) request the recipient of the notice to 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 (which must be at least 28 days starting on the date of the notice) in which the recipient may provide that advice.
- (5) The Operator must consider:
- (a) any advice provided in accordance with the notice given under paragraph (3)(a); and
  - (b) any advice provided in accordance with the notice (if any) given under paragraph (3)(b); and
  - (c) any other matter that the Operator considers is relevant to the question of whether the determination should be made.
- (6) When considering the matters set out in subsection (5), the Operator must give greater weight to any advice described in paragraph (5)(b) than to any matter described in paragraph (5)(a) or (c).

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

- (1) 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.
- (2) If the application is made at least 4 months before the day the person turns 18, the Operator must give the person a notice at least 3 months, but not more than 6 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.

Note: Under section 24 of the Act, the Operator may also request the person to give the Operator information specified in the request.

- (3) 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.
- (4) 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 (whether or not the person has given information in response to the invitation under paragraph (2)(b) of this section).

Section 16

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

### 16 Simplified outline of this Part

The Operator may revoke a determination about an application for redress for abuse of a person if, after the Operator made the determination, the Operator receives information that would have affected the determination if the Operator had received it earlier.

The Operator must revoke a determination about an application for redress for abuse of a person if, after the Operator made the determination, the Operator receives:

- (a) notice that the person has accepted an offer of payment by, or on behalf of, a responsible institution relating to the abuse for which it is responsible; or
- (b) information about a payment under a court order that an institution pay compensation or damages for the abuse (which causes the institution not to be responsible) or a payment affecting the amount of an institution's share of the costs of a redress payment.

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

- (1) For the purposes of subsection 29(4) of the Act, this section provides for when the Operator may or must revoke under that subsection a determination made under subsection 29(2) or (3) of the Act in relation to abuse of a person.

Note: Under subsection 29(5) of the Act, if the person has been given an offer of redress as a result of the determination, the determination can be revoked only before the offer is accepted.

#### *When determination may be revoked*

- (2) The Operator may revoke the determination if, after the Operator made the determination, 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, the Operator would not have made the determination or would have made a different determination.

#### *When determination must be revoked*

- (3) However, the Operator must revoke the determination if, after the Operator made 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 (4) was paid to the person before or after the determination was made.

- (4) This subsection covers the following:
- (a) a payment paid to the person under an order described in paragraphs 11(1)(a) and (b);
  - (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 any of subsections 26(3), (4) and (5).

Note 1: Paragraphs 11(1)(a) and (b) 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: Subsections 26(3), (4) and (5) prescribe the extent to which payments are not relevant prior payments.

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

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

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

There are requirements for working out a responsible institution's share of the maximum amount of redress payment that could be payable to a person (which affects the institution's share of the costs of the payment and the overall amount of the payment). The requirements depend on how many institutions are responsible for abuse of the person, and whether the person suffered abuse for which different institutions, or groups of institutions, are responsible.

There are special requirements that ensure Commonwealth institutions equally responsible under Part 3 with State or Territory institutions (and possibly non-government institutions) for abuse of certain child migrants are not liable for more than half of the governmental part of the maximum amount of redress payment for the abuse.

Certain payments made to a person by or on behalf of an institution responsible for abuse of the person are not (in whole or in part) relevant prior payments that reduce the institution's share of the costs of the redress payment to the person.

A responsible institution's share of the costs of the counselling and psychological component of redress for abuse is either:

- (a) 100% if it is the only institution responsible for the abuse; or
- (b) proportional to the institution's share of the maximum amount of redress payment if more than one institution is responsible for the abuse.

There are special rules to ensure that a defunct institution for which a government institution is a funder of last resort is taken into account in working out all responsible institutions' shares of the maximum amount of redress payment and shares of the counselling and psychological component.

There are special rules to ensure that an institution that is not responsible because it is ordered by a court to pay compensation or damages for abuse is taken into account in working out all responsible institutions' shares of the maximum amount of redress payment and shares of the counselling and psychological component.

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

### **Subdivision A—Introduction**

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

- (1) For the purposes of step 2 of the redress payment method statement, this Division prescribes requirements for working out the amount that:
  - (a) is an institution's share of the maximum amount of redress payment that could be payable to a person; and
  - (b) is worked out under step 1 of that method statement.
- (2) The requirements that apply depend on whether there is only one set of abuse of the person or more than one set of abuse of the person.

Note 1: The requirements are 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 the funder of last resort for a defunct institution in relation to the abuse. The modifications 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: 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).

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

- (1) A *set of abuse* of the person covers all the abuse of the person for which a particular institution is primarily responsible.

Note 1: There may be multiple distinct sets of abuse of the person under this subsection because it could apply multiple times, each time in relation to a different institution.

Note 2: It does not matter whether all the abuse covered by a particular set of abuse under this subsection was by the same abuser or not.

- (2) A *set of abuse* of the person covers all the abuse of the person for which the same institutions are equally responsible.

Note 1: There may be multiple distinct sets of abuse of the person under this subsection because it could apply multiple times, each time in relation to a different group of equally responsible institutions.

Note 2: It does not matter whether all the abuse covered by a particular set of abuse under this subsection was by the same abuser or not.

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

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

##### *General rule*

- (1) If there is only one set of abuse of the person, the amount that is the institution's share of the maximum amount must be worked out using the following formula:

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$$\frac{\text{Maximum amount}}{\text{Number of institutions that are responsible for abuse covered by the set}}$$

Note: There could be either a single primarily responsible institution (in which case the institution’s share of the maximum amount will be the whole of that amount) or 2 or more equally responsible institutions (all of which will be counted, whether or not they are participating institutions and therefore liable for providing redress to the person under the scheme).

*Special rule for child migrant covered by section 10*

- (2) However, if the institution is responsible because 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 following table.

<b>Institution’s share of maximum amount</b>	
<b>If:</b>	<b>The institution’s share is this fraction of the maximum amount:</b>
1 (a) the institution is responsible because of paragraph 10(2)(a) or (b); and (b) either: (i) there are not any other institutions responsible for the abuse because of paragraph 10(2)(c); or (ii) 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	Half
2 (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)	$2 \times \frac{1}{\left( \text{Number of non-government institutions responsible} + 1 \right)}$
3 (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	$2 \times \left( \frac{\text{Number of non-government institutions responsible} + 1}{\left( \text{Number of other key jurisdiction institutions} + 1 \right)} \right)$

<b>Institution's share of maximum amount</b>	
<b>If:</b>	<b>The institution's share is this fraction of the maximum amount:</b>
(c) there are one or more other government institutions (the <i>other key jurisdiction institutions</i> ) that belong to the same jurisdiction as the institution and are responsible because of section 10	
4 (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 <i>other key jurisdiction institutions</i> ) that belong to the same jurisdiction as the institution and are responsible because of section 10	$\frac{1}{2 \times \left( \text{Number of other key jurisdiction institutions} + 1 \right)}$
5 The institution is a non-government institution	$\frac{1}{\text{Number of non-government institutions responsible} + 1}$

*Rounding*

- (3) If the amount worked under subsection (1) or (2) is not a whole number of cents, round the amount up to the next whole number of cents.

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

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

If there are 2 or more sets of abuse of the person, the amount of the share for the institution (the *key institution*) of the maximum amount must be worked out in accordance with this Subdivision.

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

- (1) For each set of abuse of the person, apply the assessment framework to work out the maximum amount of redress payment that could be payable to the person assuming the only abuse of the person were the abuse covered by that set.

Note: This must be done for a set of abuse of the person whether or not the key institution was responsible for abuse covered by that set.

*If 2 or more institutions are equally responsible for abuse covered by set*

- (2) 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, multiply

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the amount worked out under subsection (1) for the set by the amount worked out using the following formula:

$$\frac{\text{Number of participating institutions responsible for the abuse covered by the set}}{\text{Number of institutions responsible for the abuse covered by the set}}$$

- (3) If the amount worked out under subsection (2) for a set is expressed to more than 4 decimal places of a cent, round the amount to 4 decimal places of a cent (rounding upwards if the number in the fifth decimal place is at least 5).

*Notional maximum amount*

- (4) The result of the last of subsections (1), (2) and (3) to apply to a set is the ***notional maximum amount*** for the set.

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

- (1) Use the following formula to work out the share, for each set of abuse of the person for which the key institution is responsible, of the maximum amount worked out under step 1 of the redress payment method statement for the person:

$$\frac{\text{Notional maximum amount for the set}}{\text{Total of notional maximum amounts for all sets of abuse of the person}} \times \text{Maximum amount worked out under step 1 of the redress payment method statement for the person}$$

Note 1: 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 with one or more other institutions (whether participating institutions or not) for that abuse.

Note 2: The total of notional maximum amounts for all sets of abuse of the person takes account of every such set, whether or not the key institution was responsible for the abuse covered by the set.

- (2) If the amount worked out under subsection (1) for a set is expressed to more than 4 decimal places of a cent, round the amount to 4 decimal places of a cent (rounding upwards if the number in the fifth decimal place is at least 5).
- (3) The result of the last of subsections (1) and (2) to apply in relation to a set of abuse is the ***set of abuse share of maximum amount*** for the set.

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

*General rule*

- (1) Use the following formula to work out the key institution's portion of the set of abuse share of maximum amount for each set of abuse of the person for which the key institution is responsible:

$$\frac{\text{Set of abuse share of maximum amount for the set}}{\text{Number of responsible institutions for abuse covered by the set}}$$



Note: The Act defines *responsible institution* (and that definition applies in this instrument). An institution can be a responsible institution (as defined) only if it is a participating institution: see paragraph 29(2)(b) of the Act and the definition of *responsible institution* in section 6 of the Act.

*Special rule for set of abuse of child migrant covered by section 10*

- (2) However, 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.

*Rounding*

- (3) If an amount worked out under subsection (1) or (2) is not a whole number of cents, round the amount up to the next whole number of cents.

*If key institution is responsible for abuse covered by multiple sets*

- (4) If the key institution is responsible for abuse of the person covered by 2 or more sets, add up the result of whichever of subsections (1), (2) and (3) is applicable for each of those sets.

*Key institution's gross liability amount*

- (5) The result of the last of subsections (1), (2), (3) and (4) to apply to the key institution is the amount of the institution's share of the maximum amount worked out under step 1 of the redress payment method statement.

Note: This is called the gross liability amount for the institution by step 2 of that method statement.

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

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

- (1) For the purposes of step 3 of the redress payment method statement, this section prescribes, as not being relevant prior payments, payments that are paid to a person by, or on behalf of, a responsible institution in relation to abuse for which the responsible institution is responsible.
- (2) The subsections of this section do not limit one another.

Note: If one subsection provides that a payment is not a relevant prior payment, the payment is not a relevant prior payment even if another subsection would not prevent it from being a relevant prior payment.

*Kinds of payments that are never relevant prior payments*

- (3) Each of the following payments is not a relevant prior payment (to any extent):
  - (a) a payment under the *Safety, Rehabilitation and Compensation Act 1988*;
  - (b) a payment under any of the following provisions of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*:
    - (i) Part II (about compensation);
    - (ii) Part III (about rehabilitation);
    - (iii) Part XI (about the operation of that Act in relation to certain injuries and deaths);
  - (c) a payment under any of the following provisions of the *Military Rehabilitation and Compensation Act 2004*:
    - (i) Chapter 3 (about rehabilitation);
    - (ii) Chapter 4 (about compensation for members and former members of the Australian Defence Force);
    - (iii) Chapter 5 (about compensation for dependants of deceased members and former members of the Australian Defence Force);
    - (iv) Chapter 5A (about family support for members and former members of the Australian Defence Force and related persons);
    - (v) Chapter 6 (about treatment for injuries and diseases of members and former members of the Australian Defence Force);
    - (vi) Chapter 11 (about miscellaneous matters);
  - (d) a payment under any of Parts II, III, IIIA, IIIAA, IIIAB, IIID, IIIE, IIIF, IV, V, VA, VI, VIA, VIB, VII, VIIAA, VIIAB, VIIAD, VIID, VIIE, VIIF, VIIG and VIH of the *Veterans' Entitlements Act 1986*;
  - (e) a payment under any of the following provisions of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*:
    - (i) Part 2 (about treatment);
    - (ii) Part 3 (about travelling expenses);
    - (iii) Part 3A (about pharmaceutical supplement).

*Payment not a relevant prior payment so far as it is not in recognition of abuse or harm caused by abuse or it is attributable to expenses*

- (4) A payment is not a relevant prior payment to the extent that:
- (a) it is not in recognition of:
    - (i) the abuse; or
    - (ii) harm caused by the abuse; or
  - (b) it is reasonably attributable to:
    - (i) expenses of medical, dental or other treatment; or
    - (ii) any other expenses.

Note: Living expenses are an example of other expenses for the purposes of subparagraph (4)(b)(ii).

*Payment for non-sexual abuse is not a relevant prior payment if the abuse is not covered by a set of abuse also covering sexual abuse*

- (5) A payment to the person in relation to non-sexual abuse for which the responsible institution is responsible is not a relevant prior payment (to any extent) if the non-sexual abuse is not covered by a set of abuse that also covers sexual abuse of the person.

*Payment not a relevant prior payment to extent necessary to prevent double counting*

- (6) A payment:
- (a) paid by the responsible institution on behalf of one or more other responsible institutions responsible for the abuse; or
  - (b) paid on behalf of the responsible institution by another responsible institution responsible for the abuse;

is not a relevant prior payment (for working out the responsible institution's share of the costs of the redress payment) to the extent worked out using the following formula:

$$\text{Amount of the payment} \times \frac{\text{Number of responsible institutions by, or on behalf of, which the payment was paid} - 1}{\text{Number of responsible institutions by, or on behalf of, which the payment was paid}}$$

Note: Because this subsection will operate separately in relation to each of the responsible institutions by, or on behalf of, which the payment was paid, it effectively splits the payment equally among all those institutions and thus prevents double counting of the payment.

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

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

- (1) For the purposes of subsection 31(3) of the Act, this section prescribes how the amount that is a responsible institution's share of the costs of the counselling and psychological component of redress for a person is to be worked out.
- (2) The amount of the share must be worked out using the formula in subsection (3) and, if the result of the formula is not a whole number of cents, rounded up to the next whole number of cents.
- (3) The formula is as follows:

$$\text{Amount of the component} \times \frac{\text{The institution's gross liability amount worked out under step 2 of the redress payment method statement for the person}}{\text{Total of gross liability amounts of all responsible institutions worked out under step 2 of the redress payment method statement for the person}}$$

Note: This section 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 for a defunct institution in relation to the abuse. The modifications apply for working out every responsible institution's share of the costs of the counselling and psychological component of redress for the person (even the share of a responsible institution other than the participating government institution).

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

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

- (1) This section applies 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 for a defunct institution in relation to abuse of a person.
- (2) This section modifies the operation of Divisions 2 and 4 for the purposes of working out:
  - (a) the amount that:
    - (i) is a responsible institution's share of the maximum amount of redress payment that could be payable to the person; and
    - (ii) is worked out under step 1 of the redress payment method statement; and
  - (b) the amount that is a responsible institution's share of the costs of the counselling and psychological component of redress for the person.
- (3) For the purposes of working out the amounts described in paragraphs (2)(a) and (b) for every institution that the Operator has determined under paragraph 29(2)(b) of the Act is responsible for abuse of the person, 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.

Note: This is consistent with the approach 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 liabilities of all institutions that the Operator has determined were responsible (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).

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

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

- (1) This section applies if:
  - (a) because of subsection 11(2) an institution (the *defendant institution*) is not responsible for abuse of a person; and
  - (b) one or more other institutions are responsible institutions in relation to that abuse.

Note: 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.

*Modified operation of Division 2*

- (2) This section modifies the operation of Division 2 for the purposes of working out the amount that:
  - (a) is a responsible institution's share of the maximum amount of redress payment that could be payable to the person; and
  - (b) is worked out under step 1 of the redress payment method statement.
- (3) For the purposes of working out the amount described in subsection (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 institutions 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 of this subsection.

*Modified operation of subsection 26(6)*

- (4) 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.

*Effect on subsection 27(3)*

- (5) 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 (2) and (3) of this subsection; 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.

## Part 7—Acceptance of redress

### 30 Simplified outline of this Part

A person's acceptance document for an offer of redress for abuse must include:

- (a) information about the amount of each responsible institution's share of the costs of the redress payment and how that amount has been affected by any relevant prior payments made to the person by or on behalf of the institution; and
- (b) the person's consent to each released institution or official identified in the document using and disclosing protected information in the document to try to ensure that the institution or official is not liable for paying or contributing to damages payable to the person for the abuse and that the person is not party to civil proceedings against the institution or official for that abuse.

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

- (1) For the purposes of paragraph 42(2)(j) of the Act, this section sets out requirements about the content of an acceptance document for an offer of redress given to a person for abuse of the person.
- (2) The document must include, for each responsible institution that is responsible for any of the abuse:
  - (a) the amount of the institution's share of the costs of the redress payment; and
  - (b) if a relevant prior 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.
- (3) The 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, that 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 a contribution to, damages relating to abuse of the person that is 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: An official may be identified by reference to an institution.

Note 2: 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 section also provides that the person cannot (whether as an



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individual, a representative party or a member of a group) 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**

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

A person's redress payment or counselling and psychological services payment must be paid to a bank account nominated by the person or, if it cannot be paid to that account because the account has been closed after the person's death, a bank account nominated by the person's executor or administrator.

If the applicant for redress dies before the Operator has determined the application or before an offer of redress arising from the application has been accepted, the Operator must give notice relating to any redress payment payable as a result of a decision on the application or on review of such a decision (if the review was applied for, but not completed, before the applicant died).

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

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

- (1) This section is for the purposes of subsections 48(2) and 51(4) of the Act (about matters relating to the payment of redress payments and counselling and psychological services payments).
- (2) A redress payment, or a counselling and psychological services payment, for a person must be paid to an account that:
  - (a) the person holds with a financial institution; and
  - (b) the person has nominated in writing to the Operator.
- (3) Despite subsection (2), a redress payment, or a counselling and psychological services payment, for a person must be paid to an account, with a financial institution, nominated in writing to the Operator by the executor or administrator of the person's estate if:
  - (a) the person has died after becoming entitled to redress under the scheme; and
  - (b) the payment has not been made in accordance with that subsection; and
  - (c) it is no longer possible to make the payment in accordance with that subsection.

Note: Division 2 of Part 3-1 of the Act explains what happens if the person dies after making the application for redress but before accepting the offer of redress.

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

**34 Notice of determination made because of section 58 of the Act**

- (1) For the purposes of subsection 58(5) of the Act, if the Operator makes a determination under section 29 of the Act because of section 58 of the Act, the Operator must give written notice of the determination to the person (except a participating institution) the Operator considers most appropriate.

Note 1: Section 58 of the Act requires an application for redress to be determined despite the death of the applicant.

Note 2: Section 35 of the Act requires participating institutions specified in the determination to be given notice too.

- (2) The notice 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.

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

- (1) This section is for the purposes of subsection 59(5) of the Act.

Note: Section 59 of the Act applies if an applicant for redress dies after being given an offer of redress but before the offer is accepted, declined or withdrawn. That section provides that the redress payment is payable under section 60 of the Act.

- (2) If subsection 59(3) of the Act applies, the Operator must give written notice to each person the Operator determines under section 60 of the Act should be paid the redress payment, stating the amount of the redress payment to be paid to the person.
- (3) If subsection 59(4) of the Act applies because an application for review of a determination of an application for redress had been made but the review had not been completed, the Operator must give written notice of the outcome of the review to the person (or persons) the Operator considers most appropriate.
- (4) The notice under subsection (3) must state:
- (a) the outcome of the review (including, if relevant, the fact that the redress payment is payable in accordance with section 60 of the Act and each person to whom the payment is to be made under that section); and
  - (b) the reasons for that outcome.

Note: If the outcome is that the determination is varied or substituted, section 35 of the Act requires participating institutions specified in the determination, as varied or substituted, to be given notice too.

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

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

The Operator must give notice if a person has been sentenced to imprisonment for 5 years or longer for an offence and the Operator decides not to determine that the person is not prevented from being entitled to redress.

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

- (1) 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 of the Act not to make a determination that the person is not prevented from being entitled to redress under the scheme.
- (2) The Operator must give written notice of the decision to:
  - (a) the person; and
  - (b) if, under section 25 of the Act, the Operator has requested one or more participating institutions to give the Operator information that may be relevant to the application or to determining the application—each of those institutions.

## Part 10—Notices about effect of security notices

### 38 Simplified outline of this Part

Under the Act, the giving of a security notice about a person causes withdrawal of an application by the person for redress, revocation of any determination made on the application and withdrawal of any offer of redress resulting from the application. The Operator must give notice of that effect to the person and to any institution notified of the determination or offer.

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

- (1) For the purposes of subsection 71(3) of the Act, this section applies if:
  - (a) because of subsection 71(1) of the Act, a person's application for redress under the scheme is taken to have been withdrawn; or
  - (b) because of subsection 71(2) of the Act:
    - (i) a person's application for redress under the scheme is taken to have been withdrawn; and
    - (ii) the determination made under subsection 29(2) of the Act on the application is taken to have been revoked; and
    - (iii) the offer of redress given to the person is taken to be withdrawn.
- (2) The Operator must give written notice of the withdrawal of the application and, if relevant, the revocation of the determination and withdrawal of the offer, to:
  - (a) the person; and
  - (b) if the determination is revoked and the offer withdrawn—each institution and person to which the Operator was required:
    - (i) by section 35 of the Act to give notice of the determination; or
    - (ii) by section 41 of the Act to give notice of the offer.
- (3) Paragraph (2)(b) does not require the Operator to give notice to an institution if, because of the withdrawal of the application, section 23 of the Act (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.

## Part 11—Disclosure of protected information

### 40 Simplified outline of this Part

In certifying that disclosure of certain protected information about a person is in the public interest (enabling it to be disclosed), the Operator must have regard to the impact of the disclosure on the person and be 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 will occur in certain circumstances (such as law enforcement, Ministerial briefing and inquiries into the person dying or going missing); and
- (c) the person to whom the information will be disclosed has a proper interest in the information.

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

This Part is for the purposes of paragraph 95(4)(a) of the Act.

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

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 and that was provided to, or obtained by, an officer of the scheme for the purposes of the scheme, is necessary in the public interest, the Operator must have regard to the impact the disclosure might have on the person.

### 43 When public interest certificate may be given

- (1) The Operator may certify for the purposes of paragraph 95(1)(a) of the Act that disclosure of protected information, that relates to a person and was provided to, or obtained by, an officer of the scheme for the purposes of the scheme, 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 this instrument; 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 (2) of this section.
- (2) This subsection covers the following Ministers:
  - (a) the Minister;
  - (b) the Minister administering the *Human Services (Centrelink) Act 1997*;
  - (c) the Prime Minister;
  - (d) the Premier of a State;

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- (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.

### 44 Protecting public revenue

This section covers disclosure necessary to prevent an act that may have a significant adverse effect on the public revenue.

### 45 Protecting the Commonwealth, States and Territories

This section covers disclosure 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 property of the Commonwealth, a State or a Territory; or
- (c) on premises of the Department or of the Human Services Department.

### 46 Proceeds of crime order

- (1) This section covers disclosure to a Commonwealth, State or Territory law enforcement agency necessary for:
  - (a) the making, or proposed or possible making, of an order covered by subsection (2); or
  - (b) the enforcing of such an order.
- (2) This subsection covers the following orders:
  - (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); 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.

### 47 Extradition

This section covers disclosure 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.



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**48 International assistance in criminal matters**

This section covers disclosure 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).

**49 Mistake of fact**

This section covers disclosure necessary to correct a mistake of fact in relation 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).

**50 Ministerial briefing**

This section covers disclosure necessary to brief a Minister covered by subsection 43(2):

- (a) so that 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 that Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement.

**51 Missing person**

This section covers disclosure 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.

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**52 Deceased person**

- (1) This subsection covers disclosure 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.
- (2) This subsection covers disclosure to establish:
  - (a) the death of a person; or
  - (b) the place where the death of a person is registered.

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

This section covers disclosure necessary for the purpose of:

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

**54 Reparations**

This section covers disclosure 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**

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

There are certain requirements for the form of agreement needed before participating institutions or groups of institutions can be declared.

Also, an institution can be declared a participating institution only if there are reasonable grounds for expecting the institution's liabilities and obligations arising from the declaration will be met.

All existing and proposed new members of a participating group, and the representative for the group, must agree before the declaration of the group can be varied to add a new member.

Before revoking a declaration of a participating institution, or a representative for a defunct non-government institution, unincorporated lone institution or participating group, the Minister must generally seek the views of the declared institution or representative about why the declaration should not be revoked.

There are limits on who can be a representative, to prevent there being multiple different representatives with powers, functions, duties, or other responsibilities, relating to a particular institution.

## **Division 2—Participating institutions**

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

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

##### *Agreement*

- (1) For the purposes of section 186 of the Act as it applies in relation to the agreement mentioned in paragraph 115(3)(b), (c) or (d) of the Act, the agreement must be in writing.

Note: 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.

- (2) For the purposes of section 186 of the Act as it applies in relation to the agreements mentioned in paragraph 115(3)(e) of the Act:
  - (a) each of the agreements must be in writing; and
  - (b) all of the agreements must be contained in the same document.

Note: Paragraph 115(3)(e) of the Act is about declaring unincorporated lone institutions to be participating institutions.

##### *Ability for liabilities and direct personal response obligations to be met*

- (3) For the purposes of paragraph 115(3)(f) of the Act, there must be reasonable grounds for expecting that, if an institution is declared to be a participating institution, its liabilities under the Act, and its obligations under section 54 of the Act (relating to providing direct personal responses), will be discharged.

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

- (1) For the purposes of subsection 116(6) of the Act, if the Minister proposes to revoke under subsection 116(2) of the Act a declaration that an institution is a participating institution, the Minister:
  - (a) must give written notice of the proposal as described in subsection (2) of this section, inviting the provision to the Minister within 10 business days of written advice why the declaration should not be revoked; and
  - (b) must not revoke the declaration until after:
    - (i) the Minister has considered written advice received in response to the invitation within 10 business days of the notice being given; or
    - (ii) if written advice is not received by the Minister in response to the invitation within that period—that period has passed.
- (2) The notice 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.
- (3) Subsections (1) and (2) do not apply if:
  - (a) the participating institution is insolvent; or
  - (b) the revocation has been requested in accordance with subsection 116(3) of the Act; or
  - (c) subsection 116(4) or (5) of the Act applies.

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

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

- (1) This section is for the purposes of subsection 120(3) of the Act.

##### *Prerequisite for revocation*

- (2) If the Minister proposes to revoke under subsection 120(1) of the Act a declaration that a person is the representative for a defunct non-government institution, the Minister:
  - (a) must give the person written notice of the proposal, inviting the person to give the Minister within 10 business days written advice why the declaration should not be revoked; and
  - (b) must not revoke the declaration until after:
    - (i) the Minister has considered written advice received in response to the invitation within 10 business days of the notice being given; or
    - (ii) if written advice is not received by the Minister in response to the invitation within that period—that period has passed.

##### *Prerequisite for variation*

- (3) Subsection (4) applies if the Minister proposes to vary under subsection 120(1) of the Act 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 for the defunct institution; and
  - (b) another person will be declared to be the representative for the defunct institution instead of the old representative.
- (4) The Minister:
  - (a) must give the old representative written notice of the proposal, inviting the old representative to give the Minister within 10 business days written advice why the declaration should not be varied so that the old representative will no longer be declared to be the representative for the defunct institution; and
  - (b) must not vary the declaration until after:
    - (i) the Minister has considered written advice received in response to the invitation within 10 business days of the notice being given; or

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- (ii) if written advice is not received by the Minister in response to the invitation within that period—that period has passed.

*When subsections (2) and (4) do not apply*

- (5) Subsections (2) and (4) do not apply if:
  - (a) the representative or old representative has died, ceased to exist or is insolvent; or
  - (b) subsection 120(2) of the Act applies (about revocation on request by the representative).

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

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

- (1) This section is for the purposes of subsection 128(3) of the Act.

*Prerequisite for revocation*

- (2) If the Minister proposes to revoke under subsection 128(1) of the Act a declaration that a person is the representative for an unincorporated lone institution, the Minister:
  - (a) must give the person written notice of the proposal, inviting the person to give the Minister within 10 business days written advice why the declaration should not be revoked; and
  - (b) must not revoke the declaration until after:
    - (i) the Minister has considered written advice received in response to the invitation within 10 business days of the notice being given; or
    - (ii) if written advice is not received by the Minister in response to the invitation within that period—that period has passed.

*Prerequisite for variation*

- (3) Subsection (4) applies if the Minister proposes to vary under subsection 128(1) of the Act 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 for the lone institution; and
  - (b) another person will be declared to be the representative for the lone institution instead of the old representative.
- (4) The Minister:
  - (a) must give the old representative written notice of the proposal, inviting the old representative to give the Minister within 10 business days written advice why the declaration should not be varied so that the old representative will no longer be declared to be the representative for the lone institution; and
  - (b) must not vary the declaration until after:
    - (i) the Minister has considered written advice received in response to the invitation within 10 business days of the notice being given; or

- (ii) if written advice is not received by the Minister in response to the invitation within that period—that period has passed.

*When subsections (2) and (4) do not apply*

- (5) Subsections (2) and (4) do not apply if:
  - (a) the representative or old representative has died, ceased to exist or is insolvent; or
  - (b) subsection 128(2) of the Act (about revocation on request) applies.

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

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

*Participating government institutions*

- (1) For the purposes of section 186 of the Act as it applies in relation to the agreement mentioned in paragraph 134(2)(a) or (c) of the Act, the agreement must be in writing.

*Participating non-government institutions*

- (2) For the purposes of section 186 of the Act as it applies in relation to agreements mentioned in subparagraph 134(2)(d)(i) of the Act in relation to a particular group:
  - (a) each of the agreements must be in writing; and
  - (b) all the agreements must be contained in the same document.

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

- (1) For the purposes of subsection 135(4) of the Act, the Minister must be satisfied of the matters in subsections (2), (3), (4) and (5) of this section before the Minister may vary a declaration that 2 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*).

*Characteristics of the proposed new member*

- (2) The proposed new member:
  - (a) is a participating institution; and
  - (b) has agreed in writing to:
    - (i) the proposed new member being a member of the group; and
    - (ii) 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.

*Agreement of the existing members and representative*

- (3) 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.

*Agreements in a single document*

- (4) All the agreements described in paragraph (2)(b) and subsection (3) are in a single document.



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*Connection between group members*

- (5) There is a sufficient connection between all of the following:
- (a) the existing members;
  - (b) the proposed new member.

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

- (1) For the purposes of subsection 135(4) of the Act, the Minister must be satisfied of the matter in subsection (2) of this section before the Minister may vary a declaration that 3 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.
- (2) All the 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.

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

For the purposes of section 186 of the Act as it applies in relation to the agreements mentioned in paragraphs 137(2)(a) and (b) of the Act in relation to a particular group:

- (a) each of the agreements must be in writing; and
- (b) all the agreements must be contained in the same document.

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

- (1) This section is for the purposes of subsection 138(3) of the Act.
- (2) If the Minister proposes to revoke under subsection 138(1) of the Act a declaration that a person is the representative for a participating group, the Minister:
- (a) must give the person written notice of the proposal, inviting the person to give the Minister within 10 business days written advice why the declaration should not be revoked; and
  - (b) must not revoke the declaration until after:
    - (i) the Minister has considered written advice received in response to the invitation within 10 business days of the notice being given; or
    - (ii) if written advice is not received by the Minister in response to the invitation within that period—that period has passed.
- (3) Subsection (2) does not apply if:
- (a) the representative has died, ceased to exist or is insolvent; or
  - (b) subsection 138(2) of the Act (about revocation on request) applies.

## Division 4—General rules about representatives

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

- (1) The purpose of this section is to prevent there being multiple different representatives with powers, functions, duties, or other responsibilities, relating to a particular institution (either directly as a representative for the institution or indirectly as a representative for a participating group that includes either the institution or a representative for the institution).

*Limit on representative for defunct institution or lone institution*

- (2) A person must not:
- (a) agree to be; or
  - (b) become; or
  - (c) be;
- the representative for a participating defunct institution or a participating lone institution if the person is, or proposes to become:
- (d) a participating incorporated lone institution with a representative; or
  - (e) a member of a participating group with a representative for the group other than the person.

*Limit on representative for participating group*

- (3) A person must not:
- (a) agree to be; or
  - (b) become; or
  - (c) be;
- the representative for a participating group if:
- (d) the person is, or proposes to become, a participating incorporated lone institution with a representative; or
  - (e) a member of the group, other than the person, is or will be a representative for either a participating defunct institution or a participating lone institution.

*Empowering provisions*

- (4) This section is for the purposes of paragraph 179(2)(d) of the Act.
- (5) Subsection (2) of this section also has effect for the purposes of paragraph 115(3)(f) of the Act (which affects whether the defunct institution or lone institution may be declared to be a participating institution and therefore whether the person must, under section 119 or 126 of the Act, be declared to be the representative for the institution if it is defunct or an unincorporated lone institution).
- (6) Subsection (3) of this section also has effect for the purposes of:
- (a) subparagraph 134(2)(e)(iii) of the Act (which affects whether the participating group may be declared); and

(b) paragraph 137(2)(d) of the Act (which affects whether the person may be declared to be the representative for the group).

Note: This section is also relevant to the Operator's consideration whether to exercise powers to revoke a declaration of a person as representative or vary a declaration of the person as representative so the person ceases to be declared.

**Part 13** Financial matters

**Division 1** Simplified outline of this Part

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**Part 13—Financial matters**

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

**66 Simplified outline of this Part**

This Part explains how to work out an institution's contribution to the costs of the administration of the scheme for a quarter.

Also, this Part requires written agreement, and written withdrawal of agreement, by the Commonwealth or a participating Territory to the listing of a defunct institution as one for which the Commonwealth or Territory will be a funder of last resort.

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

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

- (1) For the purposes of subsection 152(2) of the Act, an institution's contribution to the costs of the administration of the scheme for a quarter must be determined in accordance with this section.
- (2) The institution's 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 to which persons become entitled in the quarter or, if that percentage of the total is not a whole number of cents, that percentage of the total rounded up to the next whole number of cents; and
  - (b) the total of the amounts that are:
    - (i) worked out using the formula in subsection (3) of this section 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.
- (3) The formula is as follows:

$$\$1,000 \times \frac{\text{The institution's gross liability amount for the redress payment}}{\text{Total of gross liability amounts of all liable participating institutions for the redress payment}}$$

Note 1: 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 because of steps 3 to 6 of the redress payment method statement (which reduce the institution's gross liability amount for the payment by amounts worked out by reference to relevant prior payments made by, or on behalf of, the institution in relation to abuse of the person entitled to the redress payment).

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

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

- (4) Subsection (5) of this section applies in relation to a redress payment for abuse of a person 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 for a defunct institution in relation to the abuse.
- (5) Subsections (2) and (3) of this section apply, in relation to every institution that the Operator has determined under paragraph 29(2)(b) of the Act is responsible for the abuse of the person, 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.

**Part 13** Financial matters

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

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Note: This is consistent with the approach 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**

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

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

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

For the purposes of paragraph 164(6)(b) of the Act, a withdrawal by the Commonwealth or a participating Territory of its agreement to the listing of a defunct institution for the jurisdiction is to be in writing.

**Part 14** Other matters

**Division 1** Simplified outline of this Part

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**Part 14—Other matters**

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

**70 Simplified outline of this Part**

Provisions in settlements for claims of liability for abuse within the scope of the scheme (such as secrecy provisions) cannot be relied on to inhibit access to, and operation of, the scheme.

This Part also sets out requirements for:

- (a) notice to the Operator of a person's conviction of certain offences or acceptance of certain offers of payment relating to abuse of the person; and
- (b) the content of annual reports by the Operator on the operation of the scheme.



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

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

- (1) For the purposes of paragraph 179(2)(e) of the Act, this section applies to a provision that:
- (a) is a provision of an agreement or deed, under which a person releases a participating institution from liability for abuse of the person that is within the scope of the scheme; and
  - (b) apart from this section, 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 this instrument in connection with abuse of the person;
    - (iii) disclosure by the person or the participating institution, in connection with the operation of the scheme, of information about the abuse, the agreement or deed or a payment made under the agreement or deed.

Note: Some examples of disclosure in connection with the operation of the scheme are disclosure in an application by the person for redress under the scheme, in response to a request made by the Operator under Division 3 of Part 2-3 of the Act or in a notice required under this instrument in relation to a payment under the agreement or deed.

- (2) The provision does not have that effect, and is not enforceable so far as it would have that effect.

Note: This does not limit any other effects of the provision.

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

### **72 Notice of conviction**

For the purposes of subsection 181(1) of the Act (about a person notifying the Operator of the person's sentence to at least 5 years' imprisonment for an offence), the notification must be made in writing in the approved form as soon as practicable after the person knows of the sentence.

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

- (1) For the purposes of subsection 181(2) of the Act, this section applies 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.
- (2) The person must, as soon as practicable, notify the Operator in writing of the person's acceptance of the offer.
- (3) The notification must identify the institution by, or on behalf of, which the payment is to be paid.

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

- (1) For the purposes of subsection 181(2) of the Act, this section applies 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.
- (2) 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 the payment.
- (3) The notification must identify the institution by, or on behalf of, which the payment is to be paid.
- (4) Subsections (2) and (3) cease to apply if the person declines the offer of redress.

## **Division 4—Annual report**

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

For the purposes of paragraph 187(2)(a) of the Act (about matters on which information must be included in the annual report), the following matters are prescribed:

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