

*National Redress Scheme for Institutional Child Sexual Abuse Assessment
Framework Amendment (Categories of abuse) Declaration 2019*

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

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Background

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

The *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework Amendment (Categories of abuse) Declaration 2019* (the Declaration) amends the definition of penetrative abuse set out in the Assessment Framework, which applies when working out the amount of a redress payment for a person.

Section 32 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) provides the Minister with the power to declare, in writing, a method, or matters to take into account, for the purposes of working out the amount of redress payment, and the amount of the counselling and psychological component of redress, for a person.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Although the Declaration is a legislative instrument, it is exempt from section 42 of the *Legislation Act 2003*, which provides for disallowance, by the operation of subsection 32(3) of the Act. It is necessary to exempt the Assessment Framework and amending instruments from disallowance so that the method or matters to be taken into account for the purpose of working out the amount of redress payment for a person are certain for applicants to the Scheme and decision-makers.

Commencement

The Declaration commences on the day after the instrument is registered.

Consultation

The Declaration was consulted on extensively with officials from all states and territories in acknowledgement of jurisdictions' participation in the Scheme.

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Regulation Impact Statement (RIS)

The Declaration does not require a Regulatory Impact Statement (RIS). The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: 25550).

Explanation of the provisions

Section 1 Name

Section 1 provides that the Declaration is the *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework Amendment (Categories of abuse) Declaration 2019*.

Section 2 Commencement

Section 2 provides that the Declaration will commence on the day after the instrument is registered.

Section 3 Authority

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

Section 4 Schedules

Section 4 provides that each instrument specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

Item 1 Definitions

Item 1 of Schedule 1 repeals the definition of ***penetrative abuse*** in section 4 of the Assessment Framework and substitutes the following new definition:

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

This amendment broadens the range of sexual abuse that constitutes penetrative abuse for the purposes of the Scheme by referring to penetration of ‘or by’ the person, rather than only ‘of’ a person.

Statement of Compatibility with Human Rights

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

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

Overview of the legislative instrument

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

Section 32 of the Act provides that the Minister may declare, in writing, a method, or matters to take into account, for the purposes of working out the amount of redress payment for a person and the amount of the counselling and psychological component of redress. This declaration is the Assessment Framework.

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

The *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework Amendment (Categories of abuse) Declaration 2019* (the Declaration) amends the Assessment Framework by broadening the definition of penetrative abuse that applies when working out the amount of a redress payment for a person. This change will not disadvantage a person who applies for redress under the Scheme and will be advantageous in some circumstances.

Human rights implications

The Declaration is consistent with the following rights promoted by the Assessment Framework.

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

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

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

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

The right to protection from sexual abuse

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

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

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

Conclusion

The Declaration is compatible with human rights because it promotes the protection of human rights and to the extent it may limit human rights, those limitations are reasonable, necessary and proportionate to ensuring the Scheme's integrity and proper functioning.

The Hon Anne Ruston MP, Minister for Families and Social Services