

REPLACEMENT EXPLANATORY STATEMENT

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

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

National Redress Scheme for Institutional Child Sexual Abuse Amendment (2019 Measures No. 1) Rules 2019

Purpose

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2019 Measures No. 1) Rules 2019* (the **Instrument**) amends the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (the **Rules**) to provide that eight Queensland grammar schools do not fall within the definition of 'State institution' in section 111 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the **Act**).

The effect of excluding these schools from the definition of 'State institution' is that they can only participate in the National Redress Scheme for Institutional Child Sexual Abuse (the **Scheme**) if they apply to join the Scheme as non-government institutions. These schools operate independently of government control, but fell within the definition of 'State institution' due to being established under State legislation. It is therefore appropriate that if these schools choose to participate in the Scheme, they do so in their own right, rather than as State institutions.

The Instrument also amends the Rules to prescribe various Queensland, New South Wales and Victorian laws for the purposes of section 27 of the Act. By prescribing these laws for the purposes of section 27 of the Act, a person would be able to rely upon the laws as a basis for refusing to provide information to the Scheme.

Background

Section 179 of the Act provides the Minister with the power to make rules prescribing matters required or permitted by the Act to be made, or that are necessary or convenient to be made for carrying out or giving effect to this Act.

Prescribed state laws amendments

Section 27 of the Act provides:

Nothing in a law of a State or a Territory prevents a person from giving information that the person is requested to give to the Operator for the purposes of the scheme unless that law is prescribed by the rules.

Section 27 operates to prevent a person from relying upon a law of a State or a Territory as a basis for not providing information requested by the Operator under the Scheme.

This Instrument prescribes various Queensland, New South Wales and Victorian laws for the purposes of section 27 of the Act. The effect of prescribing these laws

is that a person would be able to refuse to provide information in response to a request for information under the Act where a law prescribed by this Instrument prevents them from disclosing the information to the Operator.

State institution amendments

Subsection 111(1) of the Act sets out when an institution is a 'State institution':

(1) *An institution is a **State institution** if:*

- (a) *it is or was part of a State; or*
- (b) *it is or was a body (whether or not incorporated) established for a public purpose by or under a law of a State; or*
- (c) *the rules prescribe that it is a State institution.*

Subsection 111(2) of the Act provides:

(2) *However, an institution is not a **State institution** if the rules prescribe that it is not a State institution.*

The power to prescribe that an institution is not a State institution under section 111 of the Act allows the Scheme to deal instances where it is more appropriate for an institution to pay redress for a person, rather than the State, such as in the case of the eight Queensland schools named in this Instrument.

This Instrument prescribes eight Queensland grammar schools for the purposes of this subsection. Historically, these schools were incorporated under State legislation to advance public purposes such as religious education, but they were never controlled by the Queensland state government. As a result of the amendments, the eight Queensland schools named in this instrument will need to separately agree to participate in the Scheme as non-government institutions, which will provide opportunities for people who have experienced institutional child sexual abuse in these institutions to seek an effective remedy through the Scheme.

This beneficial amendment puts the schools named in this instrument in a position to fully participate in the Scheme. Prior to these amendments being made any applications naming these schools would not have been able to progress as the institution was not participating in the Scheme in its own right and the Queensland state government did not intend for the schools to be State institutions for the purposes of the Act.

Commencement

This Instrument commences the day after this Instrument is registered on the Federal Register of Legislation.

Consultation

The New South Wales, Queensland and Victorian governments were consulted in preparing this Instrument. The eight Queensland grammar schools named in this

instrument were not consulted prior to the amendment being made as the amendment removes a technical impediment to the schools participating in the Scheme as non-government institutions, given the Queensland government is not willing for the institutions to participate in the Scheme as state institutions.

Regulation Impact Statement (RIS)

A regulatory impact statement was not required (OBPR reference number is 25663).

Explanation of the provisions

Section 1

This section provides that the name of this Instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2019 Measures No. 1) Rules 2019*.

Section 2

This section provides that the Instrument commences the day after it is registered.

Section 3

This section provides that the authority for making the Instrument is section 179 of the Act.

Section 4

This section provides that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms.

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.

Schedule 1

Schedule 1, item 1

This item inserts new Part 4A into the Rules. This new Part contains new sections 15A and 15B.

New section 15A contains a simplified outline of new Part 4A.

New section 15B provides that certain laws specified in the table at the end of the new section are prescribed for the purposes of section 27 of the Act. The laws are prescribed as in force at the commencement of this Instrument.

The table at the end of new section 15B lists various Queensland, New South Wales and Victorian legislative provisions which limit the ability of individuals to disclose information and would, in the absence of section 27 of the Act, provide a basis for a person to refuse to provide information to the Operator pursuant to a request for information under the Scheme.

By prescribing these provisions for the purposes of section 27 of the Act, a person will be able to rely upon these provisions as grounds for not providing information in response to a request for information under the Act.

Schedule 1, item 2

This item inserts new Part 11A into the Rules. This new Part contains new sections 54A and 54B.

New section 54A contains a simplified outline of new Part 11A.

New section 54B provides that the institutions specified in the table at the end of new section 54B are prescribed for the purposes of subsection 111(2) of the Act as institutions that are not State institutions. The table in new section 54B names eight Queensland grammar schools and the boards of trustees for each of these schools.

Statement of Compatibility with Human Rights

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

National Redress Scheme for Institutional Child Sexual Abuse Amendment (2019 Measures No. 1) Rules 2019

Overview

The purpose of this instrument is to deal with the circumstances in which a State or Territory law may prevent the disclosure of information or a document by a person to the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme), and the ability for Queensland grammar schools to participate in the Scheme, in their own right, as a non-government institutions.

Human rights implications

The proposed amendments to the Rules engage the following rights:

- Convention on the Rights of Persons with Disabilities (CRPD)
 - article 3 general principles
 - article 6 violence against women
 - article 7 violence against children
 - article 16(5) freedom from exploitation
 - article 22 respect for privacy
- Convention on the Rights of the Child (CRC)
 - article 16 arbitrary and unlawful interference
 - article 19 protecting children from abuse
- International Covenant on Civil and Political Rights (ICCPR)
 - article 17 arbitrary and unlawful interference of privacy

General principles

The Scheme was established to provide redress to those who have experienced institutional child sexual abuse; including those with disabilities who are more likely to experience violence due to their perceived vulnerabilities. Redress includes a monetary payment, a direct personal response from the responsible institutions and access to counselling services.

While the ICCPR applies to everyone; the CRPD recognises the barriers that persons with disabilities may face in realising their rights, and the CRC recognises the barriers that children face in realising their rights.

The preamble of the CRPD and the General Principles set out in Article 3 reflect the need for respect for the inherent dignity, individual autonomy, the need to be able to participate fully and effectively and be included in society. As well as the need for respecting differences and acceptance of persons with disabilities as part of human diversity and providing persons with disabilities the opportunity to be involved actively in decision-making processes about policies and programmes, including those directly concerning them.

The preamble of the CRC sets out that children are in a known category of persons that are entitled to special care and assistance.

The *National Redress Scheme for Institutional Child Sexual Abuse Act* (the Act) recognises that children in institutional settings are especially vulnerable to sexual abuse and did not necessarily have the ability to report or gather evidence about the abuse. The Scheme aims to provide an alternative to civil litigation for those who have experienced institutional sexual abuse to access justice.

To acknowledge the particular challenges of survivors of institutional child sexual abuse accessing justice the Scheme has its own information gathering processes. The proposed amendment to the Rules will allow State and Territory laws to operate to limit the disclosure of information to the Scheme where providing that information would not be appropriate. For example, information gathered relating to national security and undercover policing operations would not be appropriate to disclose.

The Scheme is premised on the basis that the institutions which are responsible for the abuse provide redress. The Act does not compel institutions to join and access to redress for survivors who experienced abuse in state, territory or non-government institutions is reliant on the responsible institution having voluntarily joined the Scheme. Excluding Queensland grammar schools from the definition of 'State institution' will allow them to join the Scheme independently from the Queensland Government. Queensland grammar schools being able to join the Scheme provides greater potential institutional coverage, potentially making redress available to more survivors.

Respect for privacy

Article 17 of the ICCPR, article 22 of the CRPD and article 16 of the CRC respectively deal with respecting a person's privacy. The CRPD provides that no person with disability, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication, or to unlawful attacks on his or her honour and reputation. It also provides that the privacy of personal, health and rehabilitation information of persons with disabilities should be protected on an equal basis with others.

The prescribing of certain 'secrecy laws' in the Rules pursuant of section 27 of the Act limits the extent to which a person is required to share certain information with the Scheme including information that may affect people with disabilities. This means that information will not need to be shared with the Scheme where to do so would breach a secrecy provision. The prescription of certain secrecy laws under section 27 of the Act is consistent with the right to privacy as it provides a person with a justification to refuse to provide information to the Scheme.

Equal access to justice

Article 19 of the CRC is about protecting children against abuse, providing social programs to support children. Where abuse has already occurred to report, refer and investigate the abuse.

Articles 6 and 7 of the CRPD are about recognising that females and children with disabilities are at greater risk of discrimination. Article 16 of the CRPD includes that legislation and policies should address that violence against those with disabilities be investigated and if appropriate, prosecuted.

Amending the Rules to allow Queensland grammar schools to participate in the Scheme will potentially provide greater access to redress through the Scheme. This is important as redress can only be provided where there is a participating institution found to be responsible for the abuse.

Conclusion

Prescribing secrecy laws and allowing Queensland grammar schools to participate in the Scheme as non-government institutions is compatible with human rights. It prevents unnecessary information sharing that may affect people with disabilities in a manner consistent with the ICCPR, CRC and CRPD. Further, it allows for greater inclusion in the Scheme by allowing Queensland grammar schools to participate. To the extent that these amendments limit human rights in some circumstances, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the scheme.