

EXPLANATORY STATEMENT

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

Coronavirus Economic Response Package (Modifications—National Redress Scheme for Institutional Child Sexual Abuse) Determination 2020

Purpose

The *Coronavirus Economic Response Package (Modifications—National Redress Scheme for Institutional Child Sexual Abuse) Determination 2020* (the **Instrument**) modifies the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the **Redress Act**). The Instrument temporarily changes the requirements for a valid application for redress for the period of 1 March 2020 to 31 December 2020. The current requirements for applications, which require a statutory declaration to be completed, are acting as a barrier to accessing redress during the COVID-19 pandemic.

The Instrument is made under subitem 1(2) of Schedule 5 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020* (the **Omnibus Act**). The Instrument is made in response to circumstances relating to the COVID-19 pandemic. For the purposes of Schedule 5 of the Omnibus Act, the Minister for Families and Social Services is a **responsible Minister** for the Redress Act and section 19 of the Redress Act is an **affected provision**.

The Instrument temporarily dis-applies the requirement under section 19 of the Redress Act that an application for redress must include a signed and witnessed statutory declaration in order to be valid. The effect of the modification made by the Instrument is to support applicants to apply for, or have an application for redress progressed and finalised, under the Redress Act during the COVID-19 pandemic, where government public health directives and social distancing restrictions may prevent them from submitting a valid application.

The Instrument is a legislative instrument subject to disallowance. Pursuant to subitem 1(7) of Schedule 5 to the Omnibus Act, the Instrument has no operation after 31 December 2020.

Commencement

The Instrument commences the day after it is registered on the Federal Register of Legislation. However, the Instrument modifies the operation of section 19 of the Redress Act in relation to applications for redress made or considered on or after 1 March 2020. Subitem 1(3) of Schedule 5 to the Omnibus Act permits the Instrument to dis-apply an affected provision for a period before the Instrument commences and before the day that Item 1 of Schedule 5 to the Omnibus Act commenced (9 April 2020).

The operation of the Instrument is entirely beneficial and it does not affect any person's rights at the time the Instrument is registered so as to disadvantage the

person, or impose any liabilities on a person in respect of anything done, or omitted to be done, before the Instrument is registered.

Consultation

The Instrument was developed in part in response to feedback received from peak bodies representing survivors of institutional child sexual abuse and Commonwealth funded support services supporting people applying to the National Redress Scheme for Institutional Child Sexual Abuse (the **Scheme**), concerning barriers to accessing redress due to COVID-19 restrictions.

The Commonwealth consulted with state and territory government officials through the Scheme's Interjurisdictional Committee on the Instrument. Jurisdictions did not have any concerns with the approach, which will enable ongoing access to redress for survivors.

The Instrument was made in consultation with the Attorney-General's Department.

The Instrument does not negatively impact on a person's eligibility for redress under the Scheme or on any other aspect of the Scheme.

Regulation Impact Statement (RIS)

A regulatory impact statement is not required (OBPR reference number is 26371).

Explanation of the provisions

Section 1 provides that the name of this Instrument is the *Coronavirus Economic Response Package (Modifications—National Redress Scheme for Institutional Child Sexual Abuse) Determination 2020*.

Section 2 provides that the Instrument commences the day after it is registered.

Section 3 provides that the authority for making the Instrument is subitem 1(2) of Schedule 5 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*.

Section 4 provides that the modifications to section 19 of the Redress Act as set out in Schedule 1 to the Instrument are made for the purposes of subitem 1(2) of Schedule 5 to the Omnibus Act.

Schedule 1

Item 1 provides that paragraph 19(2)(a) of the Redress Act does not apply, to the extent that it requires a signature of a person or the witnessing of a signature on the application form, for the period starting on 1 March 2020 until 31 December 2020 (the **relevant period**). The dis-application of that paragraph will apply to applications made under section 19 of the Redress Act during the relevant period or to applications made under that section before the start of the relevant period if the application is dealt with during the relevant period. An application is “dealt with” if it is progressed through any stage of the application process, determined or otherwise finalised by the Scheme Operator. This item does not remove or modify the other requirements for a valid application under section 19 of the Redress Act.

Paragraph 19(2)(a) of the Redress Act requires a valid application for redress to be in the approved form. As a result of the dis-application of that paragraph, in relation to the requirement for a signature of a person or the witnessing of a signature, a person’s application will not be invalid if those requirements are not met during the relevant period.

Item 2 provides that paragraph 19(2)(d) of the Redress Act does not apply, to the extent that it requires a signature of a person or the witnessing of a signature for the relevant period. The dis-application of that paragraph will apply to applications made under section 19 of the Redress Act during the relevant period or to applications made under that section before the start of the relevant period if the application is dealt with during the relevant period. An application is “dealt with” if it is progressed or processed through any stage of the application process, determined or otherwise finalised by the Scheme Operator. This item does not remove or modify the other requirements for a valid application under section 19 of the Redress Act.

Paragraph 19(2)(d) of the Redress Act requires a person who is applying for redress to verify the information in their application by statutory declaration, in order for their application to be valid. As a result of the dis-application of that paragraph, in relation to the requirement for a signature of a person or the witnessing of a signature, a person’s application will not be invalid if those requirements are not met during the relevant period.

The Instrument does not modify requirements for statutory declarations except in the context of applications for redress under section 19 of the Redress Act.

Statement of Compatibility with Human Rights

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

Coronavirus Economic Response Package (Modifications—National Redress Scheme for Institutional Child Sexual Abuse) Determination 2020

Overview

The purpose of the *Coronavirus Economic Response Package (Modifications—National Redress Scheme for Institutional Child Sexual Abuse) Determination 2020* (the **Instrument**) is to temporarily remove the requirement under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the **Redress Act**) for an application to the National Redress Scheme for Institutional Child Sexual Abuse (the **Scheme**) to be accompanied by a signed and witnessed statutory declaration.

This is to enable people to apply for, and receive, redress during the COVID-19 pandemic, where government public health directives and social distancing restrictions may otherwise prevent them from submitting a valid application.

The Instrument is made under subitem 1(2) of Schedule 5 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*. The Instrument is made in response to circumstances relating to the COVID-19 pandemic.

The Instrument does not introduce any limitations on human rights. The assessment process for all applications remains unchanged and the Instrument does not affect an applicant's potential eligibility or an institution's liability under the Scheme.

Human rights implications

The Instrument does not introduce any limitations on human rights.

The Instrument supports the following rights:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - article 12 – achieving the highest attainable standard of physical and mental health
- Convention on the Rights of the Child (CRC)
 - article 39 – state-supported recovery for child victims of neglect, exploitation and abuse

The Scheme was established to provide redress to people who have experienced institutional child sexual abuse, and includes a monetary payment, a direct personal response from the responsible institution(s) and access to counselling and psychological care services. The Scheme provides an alternative to civil litigation.

The Redress Act outlines the requirements for making a valid application to the Scheme, which currently includes submitting a signed and witnessed statutory declaration. Applications that do not meet these requirements are not valid.

Government public health directives to remain at home and practice social distancing during the COVID-19 pandemic are preventing applicants from submitting valid applications to the Scheme. Some applicants are unable to physically sign the

application form's statutory declaration or have it signed in the presence of an authorised witness.

Right to health

Article 12 of the ICESCR recognises the right of everyone to the highest attainable standard of physical and mental health and provides for states to take steps to achieve the full realisation of this right. Many redress applicants are vulnerable to COVID-19, due to advanced age or ill health. This increases the urgency of applying for many applicants. The Scheme's current statutory declaration requirement may motivate applicants to contravene public health directives and put their health, or the health of witnesses and the broader community, at risk in order to complete the application form.

The Instrument promotes article 12 by removing the prohibitive application requirements which are acting as a barrier to accessing redress and ensuring citizens can follow government rules for social distancing during this period.

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

Article 39 of the CRC guarantees the right to state-supported recovery for child victims of neglect, exploitation and abuse. The Scheme supports the recovery of people that have experienced institutional child sexual abuse by enabling recognition of past abuse and providing access to redress, including counselling and psychological care services. The Commonwealth Government administers the Scheme. Where a Commonwealth government institution was responsible for the abuse, it will also be responsible for the redress payment, and providing counselling and psychological care services and a direct personal response to survivors.

The Instrument promotes article 39 by removing the prohibitive application requirements and ensuring the right to state-supported recovery for child victims of abuse can continue unhindered via the Scheme during this period.

Conclusion

The beneficial Instrument promotes the protection of human rights and does not introduce any new limitations on human rights.

**[Circulated with the authority of the Minister for Families and Social Services,
Senator the Hon Anne Ruston]**