

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 (2020 Measures No. 2) Rules 2020

Purpose

The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the **Act**) establishes the National Redress Scheme for Institutional Child Sexual Abuse (the **Scheme**). 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 the Act. Paragraph 115(4)(b) of the Act provides that the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the **Rules**) may prescribe a later day for institutions to join the Scheme, beyond the second anniversary of the “scheme start day”. The scheme start day is defined at section 6 as the day the Act commenced, which is 1 July 2018, making the second anniversary of the scheme start day 1 July 2020. There is no time limit for defunct institutions to be declared as participating institutions. The *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2020 Measures No. 2) Rules 2020* (this **Instrument**) amends the Rules to prescribe a later day for the Minister to declare that an institution, other than a defunct institution, is a participating institution under subsection 115(2) of the Act.

The effect of extending the time for the Minister to declare that institutions are participating institutions is that more institutions, particularly those that are currently engaging with the Scheme will have the opportunity to join the Scheme. This will enable more individuals to apply for and receive redress under the Scheme.

The amendments to the Rules will provide that institutions now have until 31 December 2020 to join the Scheme. This additional period reflects the time it takes to become a participating institution and takes into account the changed capacity of many institutions due to the coronavirus (COVID-19) pandemic. This measure ensures that as many individuals as possible who experienced institutional child sexual abuse will have access to redress beyond 1 July 2020.

Commencement

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

Consultation

In accordance with the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, all participating jurisdictions were consulted on and agreed to extending the deadline for institutions to join the Scheme.

This Instrument does not impact a person's eligibility for redress or any other aspect of the Scheme's processes that may otherwise warrant broader consultation.

Regulation Impact Statement (RIS)

A regulatory impact statement was not required (OBPR reference number is 42558).

Explanation of the provisions

Section 1 provides that the name of this Instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2020 Measures No. 2) Rules 2020*.

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

Section 3 provides that the authority for making this Instrument is section 179 of the Act. This is the general power to make Rules under the Act.

Section 4 provides that each instrument that is specified in Schedule 1 to this Instrument is amended or repealed as set out in the applicable items in Schedule 1, and that any other item in Schedule 1 to this 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

Item 1 inserts new section 56A into the Rules, which provides that the prescribed day for the purposes of paragraph 115(4)(b) of the Act is 31 December 2020. This has the effect of extending the time for the Minister to declare under subsection 115(2) of the Act that institutions, other than defunct institutions, are participating institutions.

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 (2020 Measures No. 2) Rules 2020

Overview

The Instrument extends the Minister for Families and Social Services' ability to declare an institution as participating in the National Redress Scheme (the Scheme) until 31 December 2020. Without this Instrument, the Minister's power to declare an institution as participating would cease on the second anniversary of the 'scheme start day', being 1 July 2020.

This Instrument is beneficial as it enables more institutions to participate in the Scheme by providing an extension of the deadline to join. This change will not disadvantage a person who applies for redress under the Scheme and ensures survivors are able to apply for and receive redress from those institutions.

The Instrument does not introduce any limitations on human rights. The assessment process for all applicants 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:

- the right to state-supported recovery for child victims of abuse – article 39 of the Convention on the Rights of the Child (CRC);
- the right to protection from sexual abuse – article 19 and article 34 of the CRC;
- the right to effective remedy – article 3 of the International Covenant on Civil and Political Rights (ICCPR); and
- the right to health – article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

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

Article 39 of the CRC guarantees the right to state-supported recovery for child victims of neglect, exploitation and abuse. The 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 administered by the state or territory where the person resides. 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 extending the time available for institutions to join the Scheme, ensuring the right to state-supported recovery for child victims of abuse can continue to be available to an increased number of survivors via 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 Scheme seeks to recognise and alleviate the impact of historical failures of the Commonwealth and other government and non-government institutions to uphold this right. The Instrument promotes this right through maximising the number of participating institutions in the Scheme to ensure that survivors are able to gain recognition of the past wrong and access supports that will assist their recovery.

The right to effective remedy

Article 3 of the ICCPR guarantees the right to effective remedy for those whose rights outlined in the ICCPR are violated. Article 24 of the ICCPR guarantees the right of every child to protection by society. The Instrument protects this right by ensuring more institutions have time to join the Scheme, providing the opportunity for survivors to apply for and receive redress. The Instrument does not change other aspects of the Scheme, such as the eligibility or assessment process for survivors. Survivors still have access to the free, trauma informed, culturally appropriate and expert legal support services provided by the Scheme. These services ensure that survivors have access to legal support services throughout the application process allowing them to make an informed choice as to whether they wish to apply to the Scheme and/or accept their offer.

The Scheme offers people who have experienced institutional child sexual abuse an alternative to civil litigation, however requires voluntary participation by institutions, meaning that institutions named in applications cannot be forced to join and provide opportunities of redress to survivors. The Instrument provides additional time for the Scheme and state and territory governments to engage with these institutions to encourage their participation. If a person chooses not to seek redress through the Scheme or is unable to do so due to the responsible institution not participating, they are still able to seek a remedy through the civil justice system.

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 due to advanced age or ill health. This increases the urgency of applying for redress for many applicants and makes the Scheme more accessible compared to proceeding

through civil litigation and the associated time limitations and costs. The Instrument extends the time for the Scheme to engage with institutions to encourage them to participate, thus promoting survivors' right to health by providing further opportunities for survivors to seek recognition for past institutional child sexual abuse and access to counselling and psychological services (one of the three elements of redress), maximising survivors' access to health services.

Conclusion

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

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