

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. 3) 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 be declared as participating in the Scheme, beyond the second anniversary of the Scheme start day. There is no time limit for defunct institutions to be declared as participating institutions. The Scheme start day is defined in section 6 of the Act as the day the Act commenced, which is 1 July 2018, making the second anniversary of the scheme start day 1 July 2020.

The National Redress Scheme for Institutional Child Sexual Abuse Amendment (2020 Measures No. 2) Rules 2020 prescribed a date of 31 December 2020 for the purposes of paragraph 115(4)(b) of the Act.

The National Redress Scheme for Institutional Child Sexual Abuse Amendment (2020 Measures No. 3) Rules 2020 (**this Instrument**) amends the Rules to prescribe 31 January 2028 as the last 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, including those that are currently engaging with the Scheme, will have the opportunity to join the Scheme up until this date, which is seven months after the last date by which applications for redress may be made. It also allows institutions newly identified applications over the life of the Scheme to be able to join. Currently, no institution can join the Scheme after 31 December 2020.

An applicant can only access redress if the responsible institution is participating in the Scheme. This means that people who experienced child sexual abuse at those institutions will be unable to access redress through the Scheme if the institution does not have an opportunity to join.

Extending the timeframe to 31 January 2028 will enable a greater number of institutions to join the Scheme and take responsibility for past child sexual abuse and provide redress to a greater number of survivors throughout the life of the Scheme.

At the commencement of the Scheme, the purpose of the initial two year deadline for institutions to join the Scheme (ending on 1 July 2020) was to encourage institutions to join the Scheme quickly. Whilst it was successful in encouraging most larger and high profile institutions to join in this timeframe, a short term legislated deadline is no longer proving to be a persuasive mechanism to encourage the participation of smaller and lower profile non-government institutions.

This measure will support the various mechanisms the Government has committed to placing on institutions who continue to refuse to join the Scheme. The Government's expectation is that institutions will join within six months after they first engage with the Scheme.

This Instrument is a legislative instrument subject to disallowance.

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 to 31 January 2028.

Though this Instrument does not impact a person's eligibility for redress or any other aspect of the Scheme's processes, consultation has occurred with key stakeholders, including a range of survivor advocacy groups and redress support services and they are supportive of the amendment.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that a regulatory impact statement was not required (OBPR reference number is 19894).

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. 3) 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 amends section 56A of the Rules. Existing section 56A provides that the prescribed day for the purposes of paragraph 115(4)(b) of the Act is 31 December 2020. The amendment to section 56A repeals that date and substitutes a new date of 31 January 2028. 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. 3) Rules 2020

Overview

The National Redress Scheme for Institutional Child Sexual Abuse Amendment (2020 Measures No. 3) Rules 2020 (this Instrument) extends the period during which Minister for Families and Social Services may declare an institution as participating in the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) until 31 January 2028. Without this Instrument, the Minister's power to declare an institution as participating would cease on 31 December 2020 and institutions would no longer be able to join the Scheme after that time.

This Instrument is beneficial as it enables more institutions to participate in the Scheme by providing an extension of the deadline to join until 31 January 2028. The Scheme works on an opt-in basis and institutions cannot be compelled to join the Scheme. Where an institution is not participating in the Scheme, survivors of institutional child sexual abuse are unable to receive redress from that institution. 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.

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

The timeframe for institutions to join the Scheme was previously extended from 1 July 2020 to 31 December 2020, in the National Redress Scheme for Institutional Child Sexual Abuse Amendment (2020 Measures No. 2) Rules 2020.

Human rights implications

This Instrument does not introduce any limitations on human rights.

This 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.

This 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. This 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. This 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. This 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. This means that institutions named in applications cannot be forced to join and

provide opportunities of redress to survivors. This 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. This 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*. This 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]**