

## **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  
(Expanded Funder of Last Resort) Rules 2022*

### **Purpose**

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Expanded Funder of Last Resort) Rules 2022* (the instrument) is made under section 179 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* ('the Act').

The purpose of the instrument is to amend the *National Redress Scheme for Child Sexual Abuse Rules 2018* ('the Rules'), to incorporate the consequential amendments made by the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021* ('the Amendment Act') into the Rules.

The Amendment Act, amongst other things, expands the funder of last resort arrangements in the Act to encompass three new categories of listed institutions:

1. defunct institutions with which participating jurisdictions do not share equal responsibility for the abuse;
2. non-defunct institutions that are ordinarily unable to participate in the Scheme due to not meeting its liabilities, but they can provide a direct personal response (known as partly-participating); and
3. non-defunct institutions that are ordinarily unable to participate in the Scheme due to not meeting its liabilities and they are also unable to provide a direct personal response. Institutions are only listed for a participating jurisdiction within this category if exceptional circumstances exist to justify it.

Under the three new arrangements, participating jurisdictions can agree to assume funder of last resort responsibility for these institutions, providing a mechanism for applications for redress to be progressed to determination where these institutions are named in applications as being responsible for abuse.

Sections 164A, 164B and 164C of the Act provide the framework for listing the three new categories of listed institutions.

### **Background**

Section 179 of the Act provides the Minister with the powers 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.

Under subsections 164A(1) and (2), 164B(1) and (2) and 164C(1) and (2) of the Act, the Minister may declare that an institution is listed for one or more participating

jurisdictions if the institution is a non-government institution and not already participating in the Scheme. For institutions listed under sections 164B and 164C, the institution must not be defunct.

Section 29 of the Act sets out that the Operator must make a determination to approve, or not approve, an application for redress as soon as practicable. The Amendment Act inserts new requirements for the Operator to follow if an institution is listed for a participating jurisdiction under section 164A, 164B or 164C of the Act.

Paragraph 29(2)(k) of the Act requires the Operator to determine each participating jurisdiction that is an eligible funding jurisdiction for the institution in relation to the abuse, in order for the institution to be responsible for the abuse under paragraph 29(2)(j) of the Act.

Section 164D of the Act sets out the various definitions of 'eligible funding jurisdiction'.

## **Commencement**

The instrument commences on the day after it is registered.

## **Consultation**

All State and Territory Governments were consulted in the preparation of this instrument in line with the Scheme's governance arrangements set out in the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse. No objections were raised by States and Territories in relation to the proposed changes.

## **Regulation Impact Statement (RIS)**

The Office of Best Practice Regulation (OBPR) has been consulted and has advised that a RIS is not required (OBPR ID 43843).

## **Explanation of the provisions**

### Part 1

#### Section 1

Section 1 provides that the name of the instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Expanded Funder of Last Resort) Rules 2021*.

#### Section 2

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

### Section 3

Section 3 provides that the instrument is made under section 179 of the Act.

### Section 4

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### Schedule 1 - Amendments

#### Item 1

Schedule 1, Item 1 of the instrument inserts a reference in the section 4 note of the Rules to the definitions of defunct institution, participating institution and partly participating in the Act.

#### Item 2

Schedule 1, Item 2 of the instrument inserts a reference in the section 4 note of the Rules to the definition of eligible funding jurisdiction in the Act.

#### Item 3

Schedule 1, Item 3 of the instrument omits “Participating institution” in the heading of section 11 of the Rules and substitutes “Institution” to capture the three new types of listed institutions.

#### Item 4

Schedule 1, Item 4 of the instrument omits “a participating” in paragraph 11(1) (a) of the Rules and substitutes “an” to capture the three new types of listed institutions.

#### Item 5

Schedule 1, Item 5 of the instrument repeals the simplified outline in section 18 of the Rules and substitutes a simplified outline with the inclusion of references to partly participating institutions and institutions listed under section 164C of the Act to capture the three new types of listed institutions.

The simplified outline does not insert an explicit reference to the listed defunct institutions under the inserted section 164A of the Act (being a defunct institution where a participating jurisdiction is not equally responsible) as the simplified outline already includes a reference to a defunct institution for the purposes of section 164 of the Act.

## Item 6

Schedule 1, Item 6 of the instrument repeals subsection 19(2) note 1 of the Rules and substitutes a note that references the new determination by the Operator paragraphs in section 29 of the Act. It also references partly participating institutions and institutions listed under section 164C of the Act to capture the three new types of listed institutions.

The note does not insert a reference to the new listed defunct institution category under the newly added section 164A of the Act (being a defunct institution where a participating jurisdiction is not equally responsible) as the note already includes a reference to defunct institutions for the purposes of section 164 of the Act.

## Item 7

Schedule 1, Item 7 of the instrument repeals subsection 28(1) of the Rules and substitutes a subsection, that references the new determination by the Operator paragraphs in paragraphs 29(2)(i) to (m) of the Act and with references to partly-participating institutions and institutions listed under section 164C of the Act to capture the three new types of listed institutions.

The subsection does not insert a reference to the new listed defunct institution under newly added section 164A of the Act (being a defunct institution where a participating jurisdiction is not equally responsible) as the subsection already includes a reference to a defunct institution for the purposes of section 164 of the Act.

## Item 8

Schedule 1, Item 8 of the instrument repeals the note to subsection 28(3) of the Rules and substitutes a note that references both the existing section 165 and the new section 165A of the Act. It also references the new category of funder of last resort being the participating jurisdiction category.

## Item 9

Schedule 1, Item 9 of the instrument repeals paragraphs 28(3)(a) and (b) of the Rules and substitutes a subsection with references to partly-participating institutions and institutions listed under section 164C of the Act to capture the three new types of listed institutions.

The paragraphs do not insert a reference to the new listed defunct institutions under the new section 164A of the Act (being a defunct institution where a participating jurisdiction is not equally responsible) as the paragraph already includes a reference to a defunct institution for the purposes of section 164 of the Act.

## Item 10

Schedule 1, Item 10 of the instrument amends paragraph 29(3)(c) of the Rules to omit the word 'participating' to capture the new institutions that are listed for a participating jurisdiction under sections 164A, 164B or 164C of the Act, to ensure that new types of listed institutions are also calculated under section 29 of the Rules.

### Item 11

Schedule 1, Item 11 of the instrument inserts a new note 3 in section 31 of the Rules to clarify that institutions that are listed for a participating institution under sections 164, 164A, 164B or 164C are not released from civil liability under section 43 of the Act.

### Item 12

Schedule 1, Item 12 of the instrument inserts a reference to partly-participating institution in subsection 34(1) of the Rules.

### Item 13

Schedule 1, Item 13 of the instrument repeals subsection 34(2) note 2 of the Rules and substitutes a similar note, with reference to section 35A of the Act to incorporate a notice of determination to funders of last resort.

### Item 14

Schedule 1, Item 14 of the instrument repeals the note to subsection 35(4) of the Rules and substitutes a note that removes reference to section 35 of the Act and instead references section 79 of the Act to ensure that funders of last resort are notified of a varied or substituted outcome.

### Item 15

Schedule 1, Item 15 of the instrument inserts a reference to partly-participating institutions to paragraph 37(2)(b) of the Rules.

### Item 16

Schedule 1, Item 16 of the instrument repeals subparagraph 39(2)(b)(i) of the Rules and substitutes a subparagraph that references section 35A of the Act.

### Item 17

Schedule 1, Item 17 of the instrument repeals the simplified outline of Part 13 of the Rules and substitutes a new simplified outline to subsection 66 of the Act. The new simplified outline references an institution's or funder of last resorts contribution to the costs of the administration of the scheme to reflect the expanded definition of funder of last resort.

The simplified outline also references defunct institutions, partly-participating institutions and institutions listed under section 164C of the Act so as to capture the three new types of listed institutions.

### Item 18

Schedule 1, Item 18 of the instrument repeals subsection 67(4) of the Rules and substitutes a subsection with a new determination by the Operator under paragraphs 29(2)(i) to (m) of the Act and with references to partly-participating institutions and institutions listed under section 164C of the Act to capture the three new types of listed institutions.

The subsection does not insert a reference to the new listed defunct institution under newly added section 164A of the Act (being a defunct institution where a participating jurisdiction is not equally responsible) as the subsection already includes a reference to a defunct institution for the purposes of section 164 of the Act.

### Item 19

Schedule 1, Item 19 of the instrument repeals subsection 67(5) of the Rules and substitutes a subsection with a new determination by the Operator under paragraphs 29(2)(b) and (i) to (m) of the Act and with references to partly-participating institutions and institutions listed under section 164C of the Act so as to capture the three new types of listed institutions.

The subsection does not insert a reference to the new listed defunct institution under newly added section 164A of the Act (being a defunct institution where a participating jurisdiction is not equally responsible) as the subsection already includes a reference to a defunct institution for the purposes of section 164 of the Act.

### Item 20

Schedule 1, Item 20 of the instrument repeals section 68 of the Act and the heading, and substitutes a new section and heading. It removes reference to defunct institutions for the jurisdiction from the heading and the section. The substituted section references subsection 164A(3) and paragraphs 164B(3)(a) and 164C(3)(b) of the Act.

### Item 21

Schedule 1, Item 21 of the instrument repeals section 69 of the Act and the heading, and substitutes a new section and heading. It removes reference to defunct institutions for the jurisdiction from the heading and the section. The substituted section references paragraph 164A(6)(b) and subparagraphs 164B(6)(b)(i) and 164C(6)(b)(i) of the Act.

### Item 22

Schedule 1, Item 22 of the instrument amends paragraph 71(1)(a) of the Rules to insert reference to sections 164, 164A, 164B and 164C of the Act to capture the expanded categories.

### Item 23

Schedule 1, Item 23 of the instrument amends subparagraph 71(1)(b)(ii) of the Rules to reference participating institutions and participating jurisdictions to capture the expanded funder of last resort definition in the Act.

### Item 24

Schedule 1, Item 24 of the instrument amends subparagraph 71(1)(b)(iii) of the Rules to insert references to partly-participating institutions and institutions listed under section 164C of the Act so as to capture the three new types of listed institutions. It also references participating jurisdictions under sections 164, 164A, 164B and 164C of the Act to capture the expanded funder of last resort definition.

### Item 25

Schedule 1, Item 25 of the instrument amends subparagraph 73(1)(b)(i) of the Rules to insert reference to participating jurisdictions under sections 164, 164A, 164B and 164C of the Act to capture the expanded funder of last resort definition.

## **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 (Advance Payment) Rules 2022**

The 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*.

#### **Overview of the legislative instrument**

The purpose of this Instrument is to amend the *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018* (Rules) to facilitate amendments made by the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021* to expand Funder of Last Resort (FOLR) provisions.

The Rules currently outline how the existing FOLR arrangements are applied. This Instrument updates the Rules to also reflect the expanded FOLR arrangements, that were passed by parliament in November 2021. That is, the Rules are to reflect the primary legalisation changes and will mirror the current FOLR Rules where needed, such as the giving of notices under the Scheme and the calculation of FOLR payments.

#### **Human rights implications**

This Instrument does not engage any of the applicable rights or freedoms. The Instrument only seeks to ensure the expanded FOLR arrangements are included in the provisions of the Rules, to align with the recently amended FOLR provisions in the Act.

#### **Conclusion**

This Instrument is compatible with human rights as it does not raise any human rights issues.

**Anne Ruston, Minister for Families and Social Services**