



National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort) Rules 2022

I, Anne Ruston, Minister for Families and Social Services, make the following instrument.

Dated 25 January 2022

Anne Ruston
Minister for Families and Social Services

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Schedules	1
Schedule 1—Amendments	2
<i>National Redress Scheme for Institutional Child Sexual Abuse Rules 2018</i>	2

1 Name

This instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort) Rules 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 179 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

4 Schedules

Each instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to this instrument has effect according to its terms.

Schedule 1—Amendments

National Redress Scheme for Institutional Child Sexual Abuse Rules 2018

1 Section 4 (note)

After (b), insert:

- (ba) defunct institution;
- (bb) participating institution;
- (bc) partly-participating institution

2 Section 4 (note)

After (d), insert:

- (da) eligible funding jurisdiction;

3 Section 11 heading

Omit “Participating institution”, substitute “Institution”

4 Paragraph 11(1)(a)

Omit “a participating”, substitute “an”.

5 Section 18 Simplified outline of this Part

Repeal the simplified outline, substitute:

There are requirements for working out a responsible institution’s share of the maximum amount of redress payment that could be payable to a person (which affects the institution’s share of the costs of the payment and the overall amount of the payment). The requirements depend on how many institutions are responsible for abuse of the person, and whether the person suffered abuse for which different institutions, or groups of institutions, are responsible.

There are special requirements that ensure Commonwealth institutions equally responsible under Part 3 with State or Territory institutions (and possibly non-government institutions) for abuse of certain child migrants are not liable for more than half of the governmental part of the maximum amount of redress payment for the abuse.

Certain payments made to a person by or on behalf of an institution responsible for abuse of the person are not (in whole or in part) relevant prior payments that reduce the institution’s share of the costs of the redress payment to the person.

A responsible institution’s share of the costs of the counselling and psychological component of redress for abuse is either:

- (a) 100% if it is the only institution responsible for the abuse; or
- (b) proportional to the institution’s share of the maximum amount of redress payment if more than one institution is responsible for the abuse.

There are special rules to ensure that a defunct institution, partly-participating institution or institution listed under section 164C of the Act for which a participating institution or participating jurisdiction is a funder of last resort is taken into account in working out all responsible institutions' shares of the maximum amount of redress payment and shares of the counselling and psychological component.

There are special rules to ensure that an institution that is not responsible because it is ordered by a court to pay compensation or damages for abuse is taken into account in working out all responsible institutions' shares of the maximum amount of redress payment and shares of the counselling and psychological component.

6 Subsection 19(2) (note 1)

Repeal and substitute:

Note 1: The requirements are modified by section 28 if the Operator has made a determination under paragraphs 29(2)(i) to (m) of the Act that a participating institution or participating jurisdiction is the funder of last resort for a defunct institution, partly-participating institution or institution listed under section 164C of the Act in relation to the abuse. The modifications apply for working out the amount of every responsible institution's share (even the share of a responsible institution other than the participating government institution).

7 Subsection 28(1)

Repeal and substitute:

This section applies if the Operator has made a determination under paragraphs 29(2)(i) to (m) of the Act that a participating institution or participating jurisdiction is a funder of last resort for a defunct institution, partly-participating institution or institution listed under section 164C of the Act in relation to abuse of a person.

8 Paragraphs 28(3) (note)

Repeal and substitute:

Note: This is consistent with the approach taken in sections 165 and 165A of the Act for working out the participating institution's or participating jurisdiction's liabilities but ensures that a similar approach is taken when working out the liabilities of all institutions that the Operator has determined were responsible (because under this Part the liabilities of each of those institutions are affected by how many participating institutions and responsible institutions there are and amounts worked out for the rest of those institutions).

9 Paragraphs 28(3)(a) and (b)

Repeal and substitute:

(a) the defunct institution, partly-participating institution or institution listed under section 164C of the Act were a participating institution and a responsible institution; and

(b) the defunct institution, partly-participating institution or institution listed under section 164C of the Act's gross liability amount worked out under step 2 of the redress payment method statement for the person were the amount worked out under that step when applying it in accordance with paragraph 165(2)(a) and subsection 165A(2) of the Act.

10 Paragraph 29(3)(c)

Omit "participating".

11 Section 31 (Note 2)

After Note 2, insert:

Note 3: Institutions that are listed for a participating jurisdiction under sections 164, 164A, 164B or 164C of the Act are not released from civil liability under section 43 of the Act.

12 Subsection 34(1)

After "(except a participating institution", insert "or partly-participating institution".

13 Subsection 34(1) (Note 2)

Repeal and substitute:

Note 2: Sections 35 and 35A of the Act require institutions and funders of last resort specified in the determination to be given notice too.

14 Subsection 35(4) (note)

Repeal and substitute:

Note: If the outcome is that the determination is varied or substituted, section 79 of the Act requires each participating institution, partly-participating institution, funder of last resort or representative for a participating group specified in the determination, as varied or substituted, to be given notice of that fact.

15 Paragraph 37(2)(b)

After "participating institutions", insert: "or partly-participating institutions"

16 Subparagraph 39(2)(b)(i)

Repeal and substitute:

(i) by sections 35 and 35A of the Act to give notice of the determination; or

17 Subsection 66 Simplified outline of this Part

Repeal and substitute:

This Part explains how to work out an institution's or funder of last resort's contribution to the costs of the administration of the scheme for a quarter.

Also, this Part requires written agreement, and written withdrawal of agreement, by the Commonwealth or a participating Territory to the listing of a defunct institution, partly-participating institution or institution listed under section 164C of the Act as one for which the Commonwealth or Territory will be a funder of last resort.

18 Subsection 67(4)

Repeal and substitute:

- (4) Subsection (5) of this section applies in relation to a redress payment for abuse of a person if the Operator has made a determination under paragraphs 29(2)(i) to (m) of the Act that a participating government institution is the funder of last resort for a defunct institution, partly-participating institution or institution listed under section 164C of the Act in relation to the abuse.

19 Subsection 67(5)

Repeal and substitute:

- (5) Subsections (2) and (3) of this section apply, in relation to every institution that the Operator has determined under paragraphs 29(2)(b), and (i) to (m) of the Act is responsible for the abuse of the person, as if:
- (a) the defunct institution, partly-participating institution or institution listed under section 164C of the Act were a liable participating institution; and
 - (b) the defunct institution's, partly-participating institution's or institution listed under section 164C of the Act's gross liability amount were the amount worked out under step 2 of the redress payment method statement when applying it in accordance with paragraph 165(2)(a) and subsection 165A(2) of the Act.

20 Section 68

Repeal section 68 and the heading, substitute:

68 Written agreement by the Commonwealth or a participating Territory to a listing

For the purposes of subsections 164(3) and 164A(3) and paragraphs 164B(3)(a) and 164C(3)(b) of the Act, an agreement by the Commonwealth or a participating Territory to the listing an institution for the jurisdiction is to be in writing.

21 Section 69

Repeal section 69 and the heading, substitute:

69 Written withdrawal of agreement by the Commonwealth or a participating Territory to a listing

For the purposes of paragraphs 164(6)(b) and 164A(6)(b) and subparagraphs 164B(6)(b)(i) and 164C(6)(b)(i) of the Act, a withdrawal by the Commonwealth or a participating Territory of its agreement to the listing for the jurisdiction to be in writing.

22 Paragraph 71(1)(a)

After "participating institution", insert "or institutions that are listed for a participating jurisdiction under sections 164, 164A, 164B or 164C of the Act".

23 Subparagraph 71(1)(b)(ii)

Omit “participating”. After “institution”, insert “or participating institution or participating jurisdiction”.

24 Subparagraph 71(1)(b)(iii)

After “participating institution”, insert “, partly-participating institution, institution listed for a participating jurisdiction under section 164C or a participating jurisdiction that is the funder of last resort for an institution listed under sections 164, 164A, 164B or 164C”.

25 Subparagraph 73(1)(b)(i)

After “participating institution”, insert “or institutions that are listed for a participating jurisdiction under sections 164, 164A, 164B or 164C of the Act”.