

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*National Redress Scheme for Institutional Child Sexual Abuse Act 2018*

*National Redress Scheme for Institutional Child Sexual Abuse Amendment  
(Eligibility for Redress of Former Child Migrants) Rules 2023*

### **Purpose**

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Eligibility for Redress of Former Child Migrants) 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 extend eligibility for redress to certain former child migrants who are not Australian citizens or permanent residents at the time that they apply for redress under the National Redress Scheme for Institutional Child Sexual Abuse ('the Scheme').

### **Background**

Subsection 13(1) of the Act outlines when a person is eligible for redress. One of the eligibility requirements in subsection 13(1) is that a person is an Australian citizen or permanent resident at the time the person applies for redress.

This issue of eligibility has been raised by Scheme stakeholders and in the *Final Report of the Second Year Review of the National Redress Scheme for Institutional Child Sexual Abuse*, undertaken by Ms Robyn Kruk AO, which recommended that eligibility for the Scheme be extended to non-citizens and non-permanent residents.

Section 179 of the Act provides the Minister with 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.

Subsection 13(2) of the Act enables the Rules to prescribe additional circumstances in which a person will be eligible for redress. The explanatory memorandum to the *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018* acknowledged that the Rules could enable persons who are not Australian citizens or permanent residents to apply for redress and noted that this might include former child migrants.

The Instrument amends the Rules in relation to certain former child migrants from the United Kingdom and Malta to remove the requirement to be an Australian citizen or permanent resident at the time the person applies for redress. The instrument makes no other changes to the eligibility requirements applying to former child migrants.

Historically, children were sent to Australia from the United Kingdom and from Malta under child migration schemes. Some of these child migrants experienced institutional sexual abuse in Australia. This Instrument changes the eligibility requirements for these former child migrants to ensure they can access redress under the Scheme.

## **Commencement**

The instrument commences on the day after it is registered on the Federal Register of Legislation.

## **Consultation**

The amendments have been consulted with officials from all states and territories and the Ministers' Redress Scheme Governance Board, in acknowledgement of jurisdictions' role as Scheme partners.

## **Explanation of the provisions**

### Section 1 - Name

Section 1 provides that the name of the instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Eligibility for Redress of Former Child Migrants) Rules 2023*.

### Section 2 – Commencement

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

### Section 3 – Authority

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

### Section 4 – Schedules

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 new Part 1A into the Rules. This part of the Rules prescribes when a person is or is not eligible for Redress, under section 13 of the Act.

New section 4A provides a simplified outline for new Part 1A.

New section 4B sets out eligibility requirements for redress for certain persons who were sent to Australia as children under former child migrant schemes. Unlike the general requirement in section 13 of the Act, these eligibility requirements do not require a person who was a former child migrant to be an Australian citizen or permanent resident at the time the person applies for redress in order to be eligible for redress.

## 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 (Eligibility for Redress of Former Child Migrants) Rules 2023*

This Legislative 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**

This Instrument makes minor amendments to the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules) to ensure the ongoing improvement of the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) and to enhance a survivor's access to redress.

The amendments form part of the Australian Government's response to the Final Report of the Second Year Review of the National Redress Scheme for Institutional Child Sexual Abuse (the Review), which was undertaken by Ms Robyn Kruk AO.

The amendments made by the Instrument will ensure that former child migrants who were abused in Australian institutions and who are not Australian citizens or permanent residents at the time of making an application to the Scheme, are able to access redress under the Scheme.

#### **Human rights implications**

This Instrument does not introduce any limitations on human rights, but rather positively engages several human rights conventions.

The Instrument introduces survivor focussed changes to the Scheme.

This Instrument engages the following rights:

- Convention on the Rights of the Child (CRC)
  - article 39 – state supported recovery for child victims of neglect, exploitation and abuse
- International Covenant on Civil and Political Right (ICCPR)
  - article 2(3) – right to an effective remedy

The Scheme currently provides an effective remedy to people and supports the recovery of people who have experienced institutional child sexual abuse by enabling recognition of past abuse and providing access to redress, including a redress payment, a direct personal response from the responsible institution and access to counselling and psychological care services. The Instrument further

promotes these rights by increasing a survivor's ability to access redress and outcomes under the Scheme.

Currently, paragraph 13(1)(e) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* only allows a person to apply for redress under the Scheme if they are an Australian citizen or permanent resident at the time of application. This means that some survivors who are former child migrants are not eligible for redress if they do not have Australian citizenship or permanent residency status, despite being abused in an Australian institution as a child.

Historically, child migrants arrived in Australia as unaccompanied minors from the United Kingdom and Malta under former child migrant schemes, and were placed into institutions by the government. Some of these former child migrants may not have sought or maintained Australian citizenship or permanent residency status; meaning they currently are not eligible for redress under the Scheme. This Instrument facilitates the inclusion and promotes the rights of former child migrants to access redress from responsible institutions.

A person who does not, or cannot, access redress under the Scheme is still able to seek a remedy through the civil justice system. This right is not impacted by the Instrument.

## **Conclusion**

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