

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 (2024 Measures No. 1) Rules 2024

Purpose

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2024 Measures No. 1) Rules 2024* (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 some of the consequential amendments made by Schedule 1 of the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2024* ('the Amendment Act') into the Rules. Specifically, the instrument will amend the Rules to:

- repeal section 14 of the Rules to take into account the removal of the restriction on people making an application for redress from gaol; and
- amend subsection 37(1) of the Rules to address changes to the assessment process for people with serious criminal convictions applying for redress.

Further, the instrument inserts new section 31A to the Rules to prescribe information contained in notices to funders of last resort when an offer has been accepted for the purposes of notices under subsection 44A(b) of the Act.

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.

Amendments removing references to people making an application for redress from gaol

The Amendment Act removed the restriction on people making a redress application from gaol to increase equity for survivors. These changes ensure survivors have the choice to apply for redress while in gaol or wait to apply upon release from gaol, making the Scheme more trauma-informed and survivor-focused.

The Rules contain references to now-redundant provisions within the Act pertaining to people making applications for redress from gaol. Specifically, section 14 of the Rules sets out the requirements for determining exceptional circumstances justifying an application made by a person in gaol.

The instrument removes those redundant references from the Rules for consistency with the Act.

Amendments to the serious criminal conviction process

The Amendment Act made changes to section 63 of the Act to amend the process for people with serious criminal convictions applying for redress to reduce the number of people required to go through the special assessment process.

Following changes made by the Amendment Act, section 63 of the Act now applies the special assessment process only where a person has committed certain types of serious offences or where the Operator considers that there are exceptional circumstances that make it likely that providing redress to the person may bring the Scheme into disrepute or adversely affect public confidence in the Scheme.

The instrument repeals and substitutes subsection 37(1) of the Rules. The amendments to subsection 37(1) of the Rules update the terms of the provision for consistency with the changes to the special assessment process made by the Amending Act.

Amendments to notices to funders of last resort

Section 44A of the Act states that if a person accepts an offer of redress in accordance with section 42 (which sets out how a person may accept an offer of redress), then the Operator must give each participating jurisdiction (if any) that was notified under section 41A (that is, notices to funders of last resort) about the offer written notice of:

- (a) the person's acceptance of the offer; and
- (b) any matters prescribed by the Rules.

The instrument inserts section 31A into the Rules to require the notice issued under section 44A of the Act to state the total amount of redress the person is going to receive (inclusive of the counselling and psychological component of redress).

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 in this instrument.

Impact Analysis

The Office of Impact Analysis (OIA) has been consulted and has advised that a Regulation Impact Statement is not required (OIA ID24-07409).

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 (2024 Measures No. 1) Rules 2024*.

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 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

Item 1

Schedule 1, Item 1 of the instrument amends the simplified outline in section 13 of the Rules to in accordance with the repeal of section 14 made by Schedule 1, Item 2.

Item 2

Schedule 1, Item 2 of the instrument repeals section 14 of the Rules which lists the requirements for determining exceptional circumstances to justify an application made by persons in gaol. The Amending Act removes the prohibition on persons in gaol applying for redress, and section 14 is redundant.

Item 3

Schedule 1, Item 3 of the instrument inserts text to the simplified outline of Part 7 to outline the changes made by the insertion of section 31A at Item 4 of Schedule 1 of the instrument.

Item 4

Schedule 1, Item 4 of the instrument inserts new section 31A, which sets out additional requirements about the content of a notice to a funder of last resort that an offer is accepted.

New subsection 31A(2) of the Rules requires the notice to funders of last resort to state the total amount of redress the person is going to receive, inclusive of the value of the counselling and psychological component.

New section 31A also contains a note which clarifies that if a Direct Personal Response is offered, and a person accepts this component of redress, this information is not required to be included in the notice to a funder of last resort.

Item 5

Schedule 1, Item 5 of the instrument repeals the simplified outline of Part 9 and substitutes new text to outline the changes made by the substitution of new subsection 37(1) of the Rules at Item 6 of Schedule 1 of the instrument.

Item 6

Schedule 1, Item 6 of the instrument repeals and substitutes the text of subsection 37(1) of the Rules. New subsection 37(1) is made for the purposes of subsection 63(8) of the Act.

If the Operator, under new subsection 37(1):

- a) becomes aware that a person who has made an application for redress has been sentenced for an offence listed at paragraph 63(2)(a) of the Act, or
- b) has determined under subsection 63(2B) of the Act the person should undergo a special assessment process; and
- c) decides under section 63 of the Act not to make a determination that the person is not prevented from being entitled to redress under the Scheme;

the Operator must, in accordance with subsection 37(2), give written notice of the decision to:

- a) the person; and
- b) if, under section 25 of the Act, the Operator has requested one or more participating institutions or partly-participating institutions to give the Operator information that may be relevant to the application or to determining the application—each of those institutions.

Statement of Compatibility of 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 (2024 Measures No.1) Rules 2024

This 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* (the Redress Rules) to align with the updated and new measures enacted by the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2024* (the Amending Act).

The National Redress Scheme for Institutional Child Sexual Abuse Amendment (2024 Measures No.1) Rules 2024 (the Amending Rules) is made under section 179 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Redress Act).

Context

The Redress Rules are subordinate legislation and may deal with matters that the Redress Act requires or permits the rules to deal with, or that are necessary or convenient for giving effect to the Redress Act.

Evidence supporting the amendment

The Amending Rules are aligned with the Amending Act which implements the Government's Response to the Final Report of the Second Year Review of the National Redress Scheme for Institutional Child Sexual Abuse (the Review), undertaken by Independent Reviewer, Ms Robyn Kruk AO.

The Amending Rules have also been made to further align the Scheme with its guiding principles, outlined in section 10 of the Act. These principles require the Scheme to be survivor-focussed, and that redress should be delivered in a way that acknowledges the nature and impact of child sexual abuse and the needs of culturally diverse and vulnerable survivor groups. The Scheme should also avoid doing any further harm to survivors and should be delivered in a way that protects the integrity of the Scheme.

Benefit to amendments

The Amending Rules will support the Scheme to give effect to the intent of the Amending Act by:

1. Increasing the number of people who are eligible to apply for redress via removal of restrictions on applying from gaol. The Amending Rules repeal redundant sections of the Rules that outline applying from gaol provisions. This is consistent with the Second Anniversary Review Final Report which noted the evidence in the Royal Commission report that people in gaol are more likely than the general population to have been victims of child sexual abuse. For this reason, previous restrictions on survivors applying from gaol were perceived to be unjust and were subsequently repealed by the Amending Act.
2. Reducing the number of survivors who are required to undergo the special assessment process before a decision on their eligibility for redress is made. The Amending Rules repeal redundant sections of the Rules related to Serious Criminal Convictions, replacing these with updated references consistent with the Amending Act. The effect of this is that only survivors who have been sentenced to imprisonment for five years or more for unlawful killing, terrorism, sexual offences, or certain related offences, or where a risk to the integrity of the Scheme may arise, will have to undergo the special assessment process.
3. Improving information sharing with participating jurisdictions and the transparency of the Scheme. The Amending Rules include a requirement for the Scheme to provide additional details in the notice to funders of last resort that the offer is accepted (established by section 44A of the Redress Act) . This was requested by state and territory governments as Scheme partners to assist them to meet their Scheme related reporting requirements.

Human rights implications

The Amending Rules do not introduce any limitations on any human rights conventions. They contribute to the rights and freedoms of the following human rights conventions and articles:

- Convention on the Rights of the Child (CRC)
 - Article 39 – state-supported recovery for child victims of neglect, exploitation and abuse
 - These Rights are engaged and promoted via the legislative purpose of the Scheme being to deliver redress to persons who experienced child sexual abuse in institutional settings, as well as via the alignment of the Rules to the Scheme’s enabling legislation. These rights are also enhanced by the changes to the Scheme enabled by this instrument by removing barriers for incarcerated survivors to apply for and receive redress, as well as reducing the number of survivors to whom the special assessment process would be applicable.

- International Covenant on Civil and Political Rights (ICCPR)
 - Article 2(3) – state supported effective remedy for the violation of rights.
 - Article 10(1) - respect for the inherent dignity and humanity of those deprived of liberty.
 - These Rights are engaged and promoted via the legislative purpose of the Scheme being to deliver redress to persons who experienced child sexual abuse in institutional settings, as well as by via the alignment of the Rules to the Scheme’s enabling legislation. They are also enhanced by the changes to the Scheme enabled by this instrument by removing barriers for incarcerated survivors to apply for and receive redress, as well as reducing the number of survivors to whom the special assessment process would be applicable.

- Convention on the Rights of Persons with Disabilities (CRPD)
 - Article 16(4) – promote the recovery and rehabilitation of people with disability who are victims of any form of exploitation, violence or abuse. These Rights are engaged and promoted via the legislative purpose of the Scheme being to deliver redress to persons who experienced child sexual abuse in institutional settings, as well as via the alignment of the Rules to the Scheme’s enabling legislation. For example, in March 2021 the Second Anniversary Review reported that almost half (47.8 per cent) of the applications received by the Scheme were received from survivors who identified that they are living with disability. This figure indicates that a disproportionate number of survivors live with disability, compared with the Australian Institute of Health and Wellbeing’s reported prevalence of disability in Australia of 18 per cent in 2018.

Conclusion

The Amending Rules are compatible with human rights because they promote the protection of human rights and do not introduce any limitations on human rights.

The Hon Amanda Rishworth MP, Minister for Social Services