

## **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 Assessment  
Framework Amendment (Combining impact and recognition of abuse payment)  
Declaration 2024*

### **Purpose**

The *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework Amendment (Combining impact and recognition of abuse payment) Declaration 2024* ('the instrument') is made under section 32 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 Assessment Framework 2018* ('the Framework'), to combine the recognition of sexual abuse and recognition of impact of sexual abuse columns at Part 2, section 5 of the Framework.

### **Background**

Section 32 of the Act provides the Minister with the power to declare, in writing a method, or matters to take into account, for the purposes of working out:

- (a) the amount of redress payment for a person; and
- (b) the amount of counselling and psychological component of redress for a person.

The declaration is the Framework and is a legislative instrument, but section 32 (disallowance) of the *Legislation Act 2003* does not apply to it.

### **Amendments to combine the impact of abuse and recognition of abuse payments**

Part 2, section 5 of the Framework prescribes the amount of a redress payment for a person is worked out using the table at subsection 5(1) as described in subsection 5(2).

Currently, the table at subsection 5(1) of the Framework has 6 columns. Column 2 sets out amounts of redress payment for recognition of sexual abuse, and Column 3 sets out amounts of redress payment for recognition of impact of sexual abuse.

The instrument combines Columns 2 and 3 into a new Column 2 'Recognition of sexual abuse and its impact'.

To date, redress recipients have ordinarily received both the impact of abuse and recognition of abuse payments; however, this change will provide certainty to an applicant as to the minimum redress amount of redress they may receive should

they choose to access redress through the Scheme and be found eligible and entitled.

## **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 former Office of Best Practice Regulation (OBPR) was consulted and advised that a Regulation Impact Statement is not required (OBPR 22-02549).

## **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 Assessment Framework Amendment (Combining impact and recognition of abuse payment) Declaration 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 32 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 omits the table at subsection 5(1) of the Framework and substitutes a new table which contains 5 columns total to work out the amount of redress payment.

The amendments made by Schedule 1, Item 1 combine the amount of redress payment for recognition of sexual abuse and recognition of impact of sexual abuse.

## Item 2

Schedule 1, Item 2 of the Framework omits subsection 5(2) and substitutes:

(2) Total:

- (a) the amount in column 2 of the item of the table relevant to the sexual abuse of the person; and
- (c) if there was non sexual abuse of the person that was related to the sexual abuse—the amount in column 3 of that item; and
- (d) if the person was institutionally vulnerable—the amount in column 4 of that item; and
- (e) if the sexual abuse occurred in extreme circumstances—the amount (if any) in column 5 of the item.

The amendments made by Schedule 1, Item 2 ensure the methodology for arriving at the total redress payment for a person is consistent with the columns specified in the new table at subsection 5(1) as amended by Schedule 1, Item 1 of this instrument.

## **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 Assessment Framework Amendment (Combining impact and recognition of abuse payment) Declaration 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 Assessment Framework 2018* (the Assessment Framework).

The *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework Amendment (Combining impact and recognition of abuse payment) Declaration 2024* ('the instrument') is made under section 32 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) and is made in response to the Final Report of the Second Year Review of the National Redress Scheme for Institutional Child Sexual Abuse (the Review), undertaken by Ms Robyn Kruk AO.

#### **Context**

The Assessment Framework is used by the Operator and Independent Decision Makers to determine the monetary component of a survivor's redress payment.

#### ***Evidence supporting the amendment***

Recommendation 3.11 (b) of the Review recommended amendments to the Assessment Framework to combine the separate recognition of abuse and impact of abuse payments. This instrument has been made to further align the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) to the guiding principles per section 10 of the Act, particularly that Redress should be assessed with appropriate regard to what is known about the nature and impact of child sexual abuse and institutional child sexual abuse in particular.

#### ***Benefit to amendment***

This amendment will simplify the assessment process. It will also provide certainty to survivors about the minimum amount of redress they will receive based on the type of abuse they experienced. Importantly, this amendment recognises the occurrence and impact of abuse on all eligible redress recipients.

## Human rights implications

The amendments made by the instrument do not introduce any limitations on any human rights conventions. The instrument contributes to the rights and freedoms of the following Convention on the Rights of the Child (CRC) article:

- Article 39 - the right to state-supported recovery for child victims of neglect, exploitation and abuse.

### *The current state of the Assessment Framework*

The National Redress Scheme for Institutional Child Sexual Abuse ('the Scheme') supports the recovery of people who have experienced institutional child sexual abuse by facilitating recognition of past abuse and providing access to redress, including:

- a monetary redress payment;
- a personal response from the responsible institution acknowledging responsibility for past abuse; and
- access to counselling and psychological care services.

The Scheme currently treats the impact and recognition of abuse payments as separate payments, which could result in someone receiving recognition that their abuse has occurred, but no recognition that this abuse has impacted their life depending on the information that is submitted by the person when applying to the Scheme for redress.

Under the current Assessment Framework, this could also result in a lower monetary payment of redress and an insufficient recognition that the abuse experienced has caused harm and impacted that person's life.

### *Objective and benefit of the amending instrument*

By combining the recognition and impact of abuse payments in the instrument, the Scheme acknowledges that all child sexual abuse has an inherent and enduring impact on survivors. The instrument further aligns the Scheme with the Royal Commission into Institutional Child Sexual Abuse ('The Royal Commission'; volume 3 – impacts) findings that many survivors experience a profound and lasting impact on their life in varying degrees.

The Royal Commission (Final Report – Beyond the Royal Commission) found that many survivors spoke of the importance of an institution acknowledging the abuse and impact of abuse for their sense of achieving justice and healing.

The instrument further supports the right to state-supported recovery for child victims of neglect, exploitation and abuse by providing access to reparation which explicitly acknowledges that all survivors eligible to receive redress have recognition that their abuse has occurred and has had an associated impact on their life. The instrument

seeks to contribute to the psychological and physical recovery of those survivors impacted by institutional wrong doings by providing certainty on the minimum amount of Redress an eligible survivor may receive based on the type of abuse they have experienced. The instrument also acts as an acknowledgement by the Commonwealth Government that their abuse has had a varied and personal impact on their life.

## **Conclusion**

This Instrument is compatible with human rights because it promotes the protection of human rights and does not introduce any limitations on human rights.

**The Hon Amanda Rishworth MP, Minister for Social Services**