National Redress Scheme for Institutional Child Sexual Abuse Act 2018

No. 45, 2018

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About this compilation

This compilation

This is a compilation of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* that shows the text of the law as amended and in force on 3 December 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to establish the National Redress Scheme for Institutional Child Sexual Abuse, and for related purposes

Chapter 1—Introduction

Part 1-1—Introduction

Division 1—Preliminary

1 Short title

This Act is the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

2 Commencement

(1) Each provision of this Act 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**
1. The whole of this Act	As follows: (a) if this Act receives the Royal Assent before 1 July 2018—1 July 2018; (b) if this Act receives the Royal Assent on or after 1 July 2018—a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on	1 July 2018 (paragraph (a) applies)

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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

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

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Division 2—Objects of this Act

3 Objects of this Act

(1) The main objects of this Act are:
  (a) to recognise and alleviate the impact of past institutional child sexual abuse and related abuse; and
  (b) to provide justice for the survivors of that abuse.

(2) For the purposes of achieving those objects, the objects of this Act are also:
  (a) to establish the National Redress Scheme for Institutional Child Sexual Abuse; and
  (b) to provide redress under the scheme which consists of:
    (i) a monetary payment to survivors as a tangible means of recognising the wrong survivors have suffered; and
    (ii) a counselling and psychological component which, depending on where the survivor lives, consists of access to counselling and psychological services or a monetary payment; and
    (iii) a direct personal response to survivors from the participating institutions and partly-participating institutions responsible; and
  (c) to enable institutions responsible for abuse of survivors to participate in the scheme to provide that redress to those survivors; and
  (d) to implement the joint response of:
    (i) the Commonwealth Government; and
    (ii) the government of each participating State; and
    (iii) the government of each participating Territory;
    to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in relation to redress.

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Division 3—Simplified outline of this Act

4 Simplified outline of this Act

This Act establishes the National Redress Scheme for Institutional Child Sexual Abuse to provide redress to survivors of past institutional child sexual abuse.

Redress under the scheme is for abuse that is within the scope of the scheme. Abuse of a person is within the scope of the scheme if:

(a) it occurred when the person was a child; and
(b) it occurred before the scheme start day; and
(c) it occurred inside a participating State, inside a Territory, or outside Australia (that is, it did not occur inside a State that is not participating in the scheme).

Redress consists of 3 components:

(a) a redress payment (of up to $150,000); and
(b) a counselling and psychological component which, depending on where the person lives, consists of access to counselling and psychological services or a counselling and psychological services payment (of up to $5,000); and
(c) a direct personal response from each participating institution (and, in certain circumstances, partly-participating institutions) responsible for the abuse.

To be entitled to redress, a number of conditions need to be met. First, the person must make an application for redress. Then the person must meet the eligibility criteria. These are that:

(a) the person was sexually abused; and
(b) the abuse is within the scope of the scheme; and

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(c) the abuse is of a kind for which the maximum amount of redress payment worked out under the assessment framework would be more than nil; and
(d) one or more participating institutions (or certain other institutions) are responsible for the abuse; and
(e) at the time of the application, the person is an Australian citizen or a permanent resident.

An institution is responsible for abuse of a person if the abuse occurred in circumstances where the institution is primarily or equally responsible for the abuser having contact with the person. Various circumstances are relevant to determining that question (e.g. whether the abuser was an official of the institution).

The participating institutions are:
(a) all Commonwealth institutions; and
(b) any State institution that is declared to be a participating institution; and
(c) any Territory institution that is declared to be a participating institution; and
(d) any non-government institution that is declared to be a participating institution.

If the Operator considers that there is a reasonable likelihood that the person is eligible for redress, the Operator must approve the application and make an offer of redress to the person. The person may accept or decline the offer.

If the person accepts the offer, then the person becomes entitled to redress under the scheme. The person is required to release particular institutions and officials from all civil liability for the abuse. Those institutions and officials are the participating institutions determined by the Operator to be responsible for the abuse, their officials, their associates and the officials of their associates. The abuser is not released from liability.

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Once entitled, the person will be provided with redress under the scheme.

If the person declines the offer, then the person is not entitled to redress under the scheme. The person is not required to release any institution or official from liability for the abuse.

In certain circumstances, the Operator may make an advance payment for a person who has applied for redress.

The Operator is responsible for the administration of the scheme. To ensure that the scheme is survivor-focussed, the Operator (and other officers of the scheme) must take into account general guiding principles when taking action under the scheme. For example, one of the principles is that redress must be assessed and provided so as to avoid further harming or traumatising the person.

Participating institutions that are determined by the Operator to be responsible for the abuse of a person are liable for the costs of providing redress to the person. Those institutions are also liable for contributing to the costs of the administration of the scheme. The Operator is responsible for recovering those costs from those institutions through funding contributions, which those institutions are required to pay on a quarterly basis.

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Part 1-2—Definitions

Division 1—Simplified outline of this Part

5 Simplified outline of this Part

Many terms used in this Act are defined to have a particular meaning for this Act. For this reason, this Act has a Dictionary (in section 6).

The Dictionary is a list of every term that is defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to the provision that has that definition.

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Division 2—The Dictionary

6 The Dictionary

In this Act:

abuse means sexual abuse or non-sexual abuse.

abuser: a person is the ***abuser*** of another person if the person has abused the other person.

acceptance document: see subsection 42(2).

acceptance period: see section 40.

administrator: see subsection 48(1A).

adoption Act: see subsection 144(9).

advance payment: see subsection 56B(1).

amendment reference: see subsection 144(3).

approved form means a form approved under section 188.

assessment framework: see subsection 32(2).

assessment framework policy guidelines: see subsection 33(3).

assistance nominee means a person who is appointed as an assistance nominee under paragraph 81(1)(a).

associate: for when a participating institution is an ***associate*** of another participating institution, see subsections 133(3) and 135(5).

child means a person under the age of 18.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Commonwealth institution: see section 109.

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component of redress means any of the 3 components of redress referred to in subsection 16(1).

counselling and psychological component of redress means:

(a) the counselling and psychological services payment; or

(b) access to counselling and psychological services under the scheme.

counselling and psychological services contribution: see section 160.

counselling and psychological services payment means a payment payable under subsections 51(3) to (3D).

declared provider: see subsection 146(2).

defunct: an institution is ***defunct*** if it is no longer in existence.

direct personal response: see subsection 54(2).

direct personal response framework: see subsection 55(2).

eligible: see section 13.

eligible funding jurisdiction for an institution in relation to abuse: see section 164D.

entitled: see subsections 12(2), (3) and (4).

equally responsible: for when an institution is ***equally responsible*** for abuse of a person, see subsections 15(3), (5) and (6).

express amendment: see subsection 144(9).

financial institution means a body corporate that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

Foreign Affairs Minister means the Minister administering the *Australian Passports Act 2005*.

funder of last resort: see section 163.

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funding contribution: see section 150.

government institution means a Commonwealth institution, State institution or Territory institution.

Home Affairs Minister means the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

Human Services Department means Services Australia.

incorporated lone institution: see paragraph 124(3)(b).

independent decision-maker: see subsection 185(3).

initial referred provisions: see subsection 144(9).

institution means any body, entity, group of persons or organisation (whether or not incorporated), but does not include a family or an individual.

institutions' total share: see subsection 30(3).

legal nominee means a person who is appointed as a legal nominee under paragraph 81(1)(b).

listed: see subsections 164(1), 164A(1), 164B(1) and 164C(1).

lone institution: see subsection 124(2).

maximum amount: see step 1 of the method statement in subsection 30(2).

National Redress Scheme Agreement means the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, as in force from time to time.

National Redress Scheme Operator: see the definition of ***Operator***.

National Service Standards means the National Service Standards set out in the National Redress Scheme Agreement.

nominee means an assistance nominee or a legal nominee.

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non-government institution: see subsections 114(2) and (3).

non-participating State means a State that is not a participating State.

non-sexual abuse includes physical abuse, psychological abuse and neglect.

officer of the scheme means:

(a) a person in the Department or the Human Services Department performing duties, or exercising powers or functions, under or in relation to this Act (including the Operator); or

(b) an independent decision-maker; or

(c) a person prescribed by the rules.

official of an institution means a person who is or has been an officer, employee, volunteer or agent of the institution.

Operator (short for National Redress Scheme Operator) means the person who is the Secretary of the Department, in the person's capacity as Operator of the scheme (as referred to in section 9).

original determination: see paragraph 73(1)(b).

original version of this Act: see subsection 144(9).

participating defunct institution: see section 117.

participating government institution means:

(a) a Commonwealth institution; or

(b) a participating State institution; or

(c) a participating Territory institution.

participating group: see subsection 133(2).

participating incorporated lone institution: see subsection 124(5).

participating institution: see section 108 and subsection 116(7).

participating jurisdiction: see section 143.

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participating lone institution: see subsection 124(1).

participating non-government institution: see subsection 114(1).

participating State: see section 144.

participating State institution: see section 110.

participating Territory means the Australian Capital Territory or the Northern Territory.

participating Territory institution: see section 112.

participating unincorporated lone institution: see subsection 124(4).

partly-participating institution means an institution that is listed under section 164B.

permitted purpose: see paragraph 97(1)(e).

primarily responsible: for when an institution is ***primarily responsible*** for abuse of a person, see subsections 15(2), (5) and (6).

production period: see paragraphs 24(3)(c) and 25(4)(c).

protected information: see subsection 92(2).

quarter: see subsection 149(2).

reasonable likelihood, in relation to a person being eligible for redress, means the chance of the person being eligible is real, is not fanciful or remote and is more than merely plausible.

redress: see subsection 16(1).

redress element: see section 151.

redress payment means a payment payable under section 48 or 60.

referral Act: see subsection 144(9).

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referred national redress scheme matters: see subsections 145(1) and (2).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

related: non-sexual abuse of a person is ***related*** to sexual abuse of the person if an institution is responsible for both the sexual abuse and the non-sexual abuse of the person.

released institution or official: see paragraph 42(2)(c).

relevant prior payment: see step 3 of the method statement in subsection 30(2).

relevant version of this Act: see subsection 144(9).

representative:

(a) for a participating defunct institution: see subsections 118(2), (3), (4) and (5) and 120(4); or
(b) for a participating lone institution: see subsections 125(2) and (3) and 128(4); or
(c) for a participating group: see subsections 136(2), (3), (4) and (5) and 138(4).

responsible: for when an institution is ***responsible*** for abuse of a person, see subsections 15(1), (5) and (6).

responsible institution: a participating institution is a ***responsible institution*** in relation to abuse of a person if the Operator has determined under paragraph 29(2)(b) that the institution is responsible for that abuse.

review determination: see paragraph 75(2)(b).

review period for a determination under section 29: see subsections 34(4) to (10).

rules means the rules made by the Minister under section 179.

saved amount:

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(a) for a redress payment: see subsection 50(2); or
(b) for a counselling and psychological services payment: see subsection 53(2); or
(c) for an advance payment: see subsection 56D(2).

scheme means the National Redress Scheme for Institutional Child Sexual Abuse established under section 8.

scheme administration element: see subsection 152(1).

scheme start day means the day this Act commences.

scheme sunset day: see subsection 193(1).

security notice: see subsection 65(1).

sexual abuse of a person who is a child includes any act which exposes the person to, or involves the person in, sexual processes beyond the person's understanding or contrary to accepted community standards.

State institution: see section 111.

State redress mechanism: see subsection 145(4).

survivor means a person who has suffered sexual abuse that is within the scope of the scheme.

Territory means a Territory referred to in section 122 of the Constitution.

Note: A participating Territory is a type of Territory, but there are other Territories that are covered by this definition (e.g. the Jervis Bay Territory).

Territory institution: see section 113.

text reference: see subsection 144(2).

this Act includes:
(a) the rules; and
(b) any other instrument made under this Act.

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unincorporated lone institution: see paragraph 124(3)(a).

wholly-owned Commonwealth company has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

within the scope: for when abuse is ***within the scope*** of the scheme, see section 14.

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Chapter 2—The National Redress Scheme for Institutional Child Sexual Abuse

Part 2-1—Establishment of the scheme

Division 1—Simplified outline of this Part

7 Simplified outline of this Part

This Part formally establishes the National Redress Scheme for Institutional Child Sexual Abuse. It provides that the Operator is responsible for operating the scheme. It also sets out general principles that the Operator and other officers of the scheme must take into account, for the benefit and protection of survivors, when taking action under the scheme.

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Division 2—Establishment of the scheme

8 Establishment of the scheme

The National Redress Scheme for Institutional Child Sexual Abuse is established by this Act.

9 The National Redress Scheme Operator

(1) The Secretary of the Department is the National Redress Scheme Operator.

(2) The Operator is responsible for operating the scheme.

(3) The Operator may arrange for support and assistance (including legal assistance) to be provided to a person (including a person who is an applicant, or prospective applicant, for redress) in relation to the doing of things under, or for the purposes of, the scheme.

Note: For example, the Operator might arrange for support and assistance to be provided to help prepare a person's application for redress.

(4) The Operator may, on behalf of the Commonwealth:
  (a) enter into a contract, agreement, deed or understanding relating to the provision of support or assistance provided under the scheme; and
  (b) vary and administer that contract, agreement, deed or understanding.

10 General principles guiding actions of officers under the scheme

(1) This section sets out the principles that must be taken into account by the Operator and other officers of the scheme when taking action under, or for the purposes of, the scheme.

(2) Redress under the scheme should be survivor-focussed.

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(3) Redress should be assessed, offered and provided with appropriate regard to:
   (a) what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular; and
   (b) the cultural needs of survivors; and
   (c) the needs of particularly vulnerable survivors.

(4) Redress should be assessed, offered and provided so as to avoid, as far as possible, further harming or traumatising the survivor.

(5) Redress should be assessed, offered and provided in a way that protects the integrity of the scheme.

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Part 2-2—Entitlement to redress under the scheme

Division 1—Simplified outline of this Part

11 Simplified outline of this Part

For a person to be entitled to redress under the scheme, a number of conditions need to be met.

First, the person must make an application for redress under the scheme.

Then the person must meet the eligibility criteria for redress. These are that the person was sexually abused, the abuse is within the scope of the scheme, the abuse is of a kind for which the amount of redress payment worked out under the assessment framework would be more than nil, one or more participating institutions (or, in certain circumstances, one or more institutions that are listed for a participating jurisdiction under section 164A, 164B or 164C) are responsible for the abuse, and, at the time of the application, the person is an Australian citizen or a permanent resident.

If the Operator considers that there is a reasonable likelihood that the person is eligible for redress, the Operator must approve the application and make an offer of redress to the person. The person may accept or decline the offer. (Offers and acceptance of redress are dealt with in Part 2-4.)

If the person accepts the offer, then the person becomes entitled to redress under the scheme. The person is required to release particular institutions and officials from all civil liability for the abuse. Those institutions are the participating institutions determined by the Operator to be responsible for the abuse, their officials, their associates and the officials of their associates. The abuser is not released from liability.

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Section 11

Once entitled, the person will be provided with redress under the scheme. (Provision of redress is dealt with in Part 2-5.)

If the person declines the offer, then the person is not entitled to redress under the scheme. The person is not required to release any institution or official from civil liability for the abuse.

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Division 2—Entitlement to redress under the scheme

12 When is a person entitled to be provided with redress?

(1) A person can only be provided with redress under the scheme if the person is entitled to it.

(2) A person is ***entitled*** to redress under the scheme if:
  (a) the person applies for redress under section 19; and
  (b) the Operator considers that there is a reasonable likelihood that the person is eligible for redress under the scheme (see section 13 for eligibility); and
  (c) the Operator approves the application under section 29; and
  (d) the Operator makes an offer of redress to the person under section 39; and
  (e) the person accepts the offer in accordance with section 42.

(3) A person is also ***entitled*** to redress, or a component of redress, under the scheme if this Act or the rules prescribe that the person is entitled to it.

Note: For cases where this Act prescribes that a person is entitled to redress, or a component of redress, under the scheme, see Part 3-1.

(4) Despite subsections (2) and (3), a person is not ***entitled*** to redress, or a component of redress, under the scheme if this Act or the rules prescribe that the person is not entitled to it.

Note: For cases where this Act prescribes that a person is not entitled to redress, or a component of redress, under the scheme, see Part 3-2.

13 When is a person eligible for redress?

(1) A person is ***eligible*** for redress under the scheme if:
  (a) the person was sexually abused; and
  (b) the sexual abuse is within the scope of the scheme (see section 14); and

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(c) the sexual abuse is of a kind for which the maximum amount of redress payment that could be payable to the person (as worked out under the assessment framework) would be more than nil; and

(d) one or more of the following are responsible for the abuse (see section 15):

(i) a participating institution;

(ii) an institution that is listed for a participating jurisdiction under section 164A, 164B or 164C (if a participating jurisdiction is an eligible funding jurisdiction for the institution in relation to the abuse); and

(e) the person is an Australian citizen or a permanent resident (within the meaning of the *Australian Citizenship Act 2007*) at the time the person applies for redress.

Note 1: To be eligible for redress, a person must have been sexually abused. However, redress is for the sexual abuse, and related non-sexual abuse, of the person that is within the scope of the scheme.

Note 2: For which institutions are participating institutions, see section 108.

(2) A person is also ***eligible*** for redress under the scheme if this Act or the rules prescribe that the person is eligible for it.

(3) Despite subsections (1) and (2), a person is not ***eligible*** for redress under the scheme if this Act or the rules prescribe that the person is not eligible for it.

14 When is abuse within the scope of the scheme?

(1) Abuse of a person is ***within the scope*** of the scheme if:

(a) it occurred when the person was a child; and

(b) it occurred:

(i) inside a participating State; or

(ii) inside a Territory; or

(iii) outside Australia; and

(c) it occurred before the scheme start day.

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(2) Abuse of a person is ***within the scope*** of the scheme if this Act or the rules prescribe that it is.

(3) Despite subsections (1) and (2), abuse of a person is not ***within the scope*** of the scheme if this Act or the rules prescribe that it is not.

15 When is an institution responsible for abuse?

When is an institution responsible for abuse?

(1) An institution (whether or not a participating institution) is ***responsible*** for abuse of a person if the institution is primarily responsible or equally responsible for the abuse.

When an institution is primarily responsible for abuse

(2) An institution is ***primarily responsible*** for abuse of a person if the institution is solely or primarily responsible for the abuser having contact with the person.

When an institution is equally responsible for abuse

(3) An institution is ***equally responsible*** for abuse of a person if:
   (a) the institution and one or more other institutions are approximately equally responsible for the abuser having contact with the person; and
   (b) no institution is primarily responsible for the abuse of the person.

Relevant circumstances for determining responsibility

(4) Without limiting the circumstances that might be relevant for determining under subsection (2) or (3) whether an institution is primarily responsible or equally responsible for the abuser having contact with the person, the following circumstances are relevant:
   (a) whether the institution was responsible for the day-to-day care or custody of the person when the abuse occurred;
   (b) whether the institution was the legal guardian of the person when the abuse occurred;

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(c) whether the institution was responsible for placing the person into the institution in which the abuse occurred;
(d) whether the abuser was an official of the institution when the abuse occurred;
(e) whether the abuse occurred:
(i) on the premises of the institution; or
(ii) where activities of the institution took place; or
(iii) in connection with the activities of the institution;
(f) any other circumstances that are prescribed by the rules.

Note: When determining the question whether an institution is responsible for abuse of a person, the circumstances listed in this subsection are relevant to that question, but none of them on its own is determinative of that question.

(5) Despite subsections (1), (2) and (3), an institution is ***responsible***, ***primarily responsible*** or ***equally responsible*** for abuse of a person in the circumstances (if any) prescribed by the rules.

(6) Despite subsections (1), (2) and (3), an institution is not ***responsible***, ***primarily responsible*** or ***equally responsible*** for abuse of a person in the circumstances (if any) prescribed by the rules.

16 What redress is provided to a person?

(1) ***Redress*** for a person consists of 3 components:
(a) a redress payment (of up to $150,000); and
(b) a counselling and psychological component which, depending on where the person lives (as stated in the person's application for redress), consists of:
(i) access to counselling and psychological services provided under the scheme; or
(ii) a payment (of up to $5,000) to enable the person to access counselling and psychological services provided outside of the scheme; and
(c) a direct personal response from:

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(i) each of the participating institutions that are determined by the Operator under paragraph 29(2)(b) to be responsible for the abuse of the person; and

(ii) each of the partly-participating institutions that are determined by the Operator under paragraph 29(2)(j) to be responsible for the abuse of the person and for which the Operator determines under paragraph 29(2)(k) that a participating jurisdiction is a funder of last resort in relation to the abuse.

Note: For what a direct personal response consists of, see subsection 54(2).

(2) A person who is entitled to redress under the scheme may choose to accept 1, 2 or all 3 of those components of redress.

(3) If 2 or more participating institutions or partly-participating institutions are determined to be responsible for the person's abuse and the person chooses to be given a direct personal response, then the person may choose to be given a direct personal response from each of those institutions, or from only some or one of them.

17 What is redress for?

Redress for a person is for the sexual abuse, and related non-sexual abuse, of the person that is within the scope of the scheme.

Note: While redress is for both the sexual and related non-sexual abuse of a person that is within the scope of the scheme, to be eligible for redress in the first place, there must have been sexual abuse within the scope of the scheme (see paragraph 13(1)(b)).

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Part 2-3—How to obtain redress under the scheme

Division 1—Simplified outline of this Part

18 Simplified outline of this Part

To be entitled to redress under the scheme, a person must make an application for it. To be valid, the application must comply with the requirements set out in section 19 (e.g. it must include any information required by the Operator).

Once the application is made, the Operator can request the person and participating institutions to provide further information to the Operator for the purposes of determining the application (see sections 24 and 25).

A person can make only one application for redress under the scheme. Whether the application is successful or unsuccessful, the person will not be able to make another application for redress under the scheme (unless the person withdraws the application before the Operator makes a determination about whether or not to approve it). There are certain circumstances where a person cannot make an application for redress. These circumstances are set out in section 20.

The Operator must make a determination to approve, or not approve, the application as soon as practicable. If the Operator considers there is a reasonable likelihood that the person is eligible for redress, then the Operator must approve the application and make a number of other important determinations under subsection 29(2). For example, the Operator must make a determination about which participating institutions are responsible for the abuse and therefore liable for providing redress to the person. The Operator must also make a determination about the amount of the redress payment that is payable to the person, as

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well as the amount of the counselling and psychological component of redress for the person.

The Operator must give the person written notice of the Operator's determination on the application. The notice must state whether or not the application has been approved, the reasons for the determination and that the person may apply for review of the determination. The Operator must also give written notice of the determination to the participating institutions that are specified in the determination (such as the responsible institutions). If the application is approved, the Operator must also give written notice to any funders of last resort that are specified in the determination.

If the Operator has approved the application, the Operator must also give the person an offer of redress with the notice. (Offers and acceptance of redress are dealt with in Part 2-4.)

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Division 2—Application for redress under the scheme

19 Application for redress

(1) To obtain redress under the scheme, a person must make an application to the Operator.

(2) To be valid, the application must:
  (a) be in the approved form; and
  (b) specify where the person lives; and
  (c) include any information, and be accompanied by any documents, required by the Operator.

(3) The Operator is not required to make a determination on an application that is not valid.

20 When an application cannot be made

(1) A person cannot make an application for redress under the scheme if:
  (a) the person has already made an application for redress under the scheme; or
  (b) a security notice is in force in relation to the person; or
  (c) the person is a child who will not turn 18 before the scheme sunset day; or
  (d) the person is in gaol (within the meaning of subsection 23(5) of the *Social Security Act 1991*); or
  (e) the application is being made in the period of 12 months before the scheme sunset day.

(2) Paragraphs (1)(d) and (e) do not apply if the Operator determines there are exceptional circumstances justifying the application being made.

(3) Before making a determination under subsection (2), the Operator must comply with any requirements prescribed by the rules.

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21 Special process for child applicants

(1) If:
  (a) a person makes an application for redress under the scheme; and
  (b) the person is a child who will turn 18 before the scheme sunset day;

then the Operator must deal with the application in accordance with any requirements prescribed by the rules.

(2) Rules made for the purposes of subsection (1) apply despite subsection 29(1) (which requires the Operator to make a determination on the application as soon as practicable).

22 Withdrawal of an application

(1) A person may withdraw an application for redress at any time before the Operator makes a determination on the application under section 29.

(2) If the person withdraws the application under subsection (1), then for the purposes of this Act (other than subsection 167(4A)) it is treated as not having been made.

23 Notice of a withdrawal to participating institutions

(1) If:
  (a) a person withdraws an application under subsection 22(1); and
  (b) before the withdrawal, the Operator had requested a participating institution under section 25 to provide information that may be relevant to the application;

then the Operator must give the institution written notice that the person has withdrawn the application.

(2) The notice must also comply with any requirements prescribed by the rules.

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Division 3—Obtaining information for the purposes of determining the application

24 Power to request information from the applicant

(1) If the Operator has reasonable grounds to believe that a person who has applied for redress has information that may be relevant to determining the application, then the Operator may request the person to give the information to the Operator.

Note: The request for information may be accompanied by information that has been disclosed by an institution in relation to the application.

(2) The request must be made by written notice given to the person.

(3) The notice must specify:
  (a) the nature of the information that is requested to be given; and
  (b) how the person is to give the information to the Operator; and
  (c) the period (the ***production period***) within which the person is requested to give the information to the Operator; and
  (d) that the notice is given under this section.

(4) The production period must be at least:
  (a) if the Operator considers the application is urgent—4 weeks; and
  (b) otherwise—8 weeks;

beginning on the date of the notice.

(5) The Operator may, by written notice to the person, extend the production period if the Operator considers it appropriate to do so.

(6) An extension under subsection (5) may be given:
  (a) on the Operator's own initiative; or
  (b) on a request made by the person under subsection (7).

(7) The person may request the Operator to extend the production period. The request must:

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(a) be made before the end of the production period; and
(b) comply with any requirements prescribed by the rules.

25 Power to request information from institutions

(1) If a person has applied for redress and either:
(a) the application identifies a particular participating institution or partly-participating institution as being involved in the abuse of the person; or
(b) the Operator has reasonable grounds to believe that a participating institution or partly-participating institution may be responsible for the abuse of the person;

then the Operator must request the institution to give any information that may be relevant to the application to the Operator.

Note: The request for information may be accompanied by information that has been disclosed by the applicant or another institution in relation to the application.

(2) If a person has applied for redress and the Operator has reasonable grounds to believe that a participating institution or partly-participating institution has information that may be relevant to determining the application, then the Operator may request the institution to give the information to the Operator.

Note: The request for information may be accompanied by information that has been disclosed by the applicant or another institution in relation to the application.

(3) The request under subsection (1) or (2) must be made by written notice given to the institution.

(4) The notice must specify:
(a) the nature of the information that is requested to be given; and
(b) how the institution is to give the information to the Operator; and
(c) the period (the ***production period***) within which the institution is requested to give the information to the Operator; and

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(d) that the notice is given under this section.

(5) The production period must be at least:
(a) if the Operator considers the application is urgent—4 weeks; and
(b) otherwise—8 weeks;
beginning on the date of the notice.

(6) The Operator may, by notice to the institution, extend the production period if the Operator considers it appropriate to do so.

(7) An extension under subsection (6) may be given:
(a) on the Operator's own initiative; or
(b) on a request made by the institution under subsection (8).

(8) The institution may request the Operator to extend the production period. The request must:
(a) be made before the end of the production period; and
(b) comply with any requirements prescribed by the rules.

26 Failure of the applicant or institutions to comply with a request

(1) If:
(a) under section 24, the Operator requests a person who has made an application for redress to provide further information; and
(b) the information requested is not provided in the production period referred to in that section;
then the Operator is not required to make a determination on the application until the information is provided.

(2) If:
(a) under section 25, the Operator requests a participating institution or partly-participating institution to provide information in relation to an application for redress; and
(b) the information requested is not provided in the production period referred to in that section;

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then the Operator may progress the application and make a determination on it on the basis of the information that has been obtained by, or provided to, the Operator.

27 State or Territory laws do not prevent complying with request

Nothing in a law of a State or a Territory prevents a person from giving information that the person is requested to give to the Operator for the purposes of the scheme unless that law is prescribed by the rules.

28 False or misleading information, documents or statements

A person must not give information, produce a document or make a statement to an officer of the scheme if the person knows, or is reckless as to whether, the information, document or statement is false or misleading in a material particular.

Note: This section is a civil penalty provision. Conduct prohibited by this section may also be an offence against the *Criminal Code* (see sections 136.1, 137.1 and 137.2 of the Code).

Civil penalty: 60 penalty units.

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Division 4—The Operator must determine whether to approve the application

29 The Operator must make a determination on the application

Requirement for the Operator to make a determination

(1) If a person makes an application for redress, the Operator must make a determination to approve, or not approve, the application as soon as practicable.

Determination to approve application

(2) If the Operator considers that there is a reasonable likelihood that the person is eligible for redress, then the Operator must:
  (a) approve the application; and
  (b) determine each participating institution that is responsible for the abuse (see section 15) and therefore liable for providing redress to the person under the scheme; and
  (c) determine, in accordance with section 30:
    (i) the amount of the redress payment for the person; and
    (ii) the amount of each responsible institution's share of the costs of the redress payment; and
    (iii) the amount of the Commonwealth's share of the costs of the redress payment; and
  (d) determine, in accordance with section 31:
    (i) the amount of the counselling and psychological component of redress for the person; and
    (ii) the amount of each responsible institution's share of the costs of that component; and
  (e) determine whether the counselling and psychological component of redress for the person consists of:
    (i) access to the counselling and psychological services that are provided under the scheme; or
    (ii) a counselling and psychological services payment; and

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(f) if the counselling and psychological component of redress for the person consists of a counselling and psychological services payment—determine that the amount of the payment equals the amount of the counselling and psychological component of redress for the person; and

(g) for each responsible institution—determine the participating group (if any) of which the responsible institution is a member at that time; and

(h) for a participating institution that was identified in the application and is not covered by a determination under paragraph (b)—determine that the participating institution is not responsible for the abuse and therefore not liable for providing redress to the person under the scheme; and

(i) if:

(i) the Operator determines, in accordance with section 15, that a participating government institution is equally responsible with a defunct institution for the abuse; and

(ii) the defunct institution is listed for the participating jurisdiction that the participating government institution belongs to under section 164;

determine that the participating government institution is a funder of last resort for the defunct institution in relation to the abuse; and

(j) determine each of the following institutions that is responsible for the abuse (see section 15):

(i) a defunct institution that is listed for a participating jurisdiction under section 164A and that the Operator does not determine is equally responsible with a participating government institution for the abuse;

(ii) a partly-participating institution (see section 164B);

(iii) an institution that is listed for a participating jurisdiction under section 164C;

(k) for each institution that is covered by a determination under paragraph (j)—determine:

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(i) each participating jurisdiction that is an eligible funding jurisdiction for the institution in relation to the abuse (see section 164D); and

(ii) that each of those eligible funding jurisdictions is a funder of last resort for the institution in relation to the abuse and therefore liable for providing redress to the person under the scheme; and

(l) if the Operator determines under paragraph (k) that one or more funders of last resort are liable for providing redress to the person under the scheme—determine, in accordance with section 165A:

(i) the amount of each of those funders of last resort's (other than the Commonwealth's) share of the costs of the redress payment for the person; and

(ii) the amount of each of those funders of last resort's (other than the Commonwealth's) share of the costs of the counselling and psychological component of redress for the person; and

(iii) the amount of the Commonwealth's share of the costs of the counselling and psychological component of redress for the person (whether or not the Commonwealth is determined to be a funder of last resort under paragraph (k)); and

(m) for each institution:

(i) that was identified in the application; and

(ii) to which subparagraph (j)(i), (ii) or (iii) applies; and

(iii) that is not covered by a determination under paragraph (j) of this section;

determine that the institution is not responsible for the abuse.

Note 1: Subparagraph (c)(iii)—if the Operator determines under paragraph (k) that one or more funders of last resort are liable for providing redress to the person under the scheme, the amount of the Commonwealth's share of the costs of the redress payment for the person will be affected by section 165A.

Note 2: Paragraph (g)—if the Operator determines that a responsible institution is a member of a participating group, then all other members of the participating group at that time will be associates of

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the responsible institution, see subsection 133(3). To find the membership of a participating group at a particular time, see the declaration of the participating group under subsection 134(1) that is in force at that time.

Note 3: Paragraph (i)—only defunct institutions that are both non-government institutions and not participating institutions can be listed under section 164 (see subsection 164(1)).

Note 4: Paragraph (i)—if the Operator determines that one or more participating government institutions are a funder of last resort for a defunct institution under paragraph (i), then those participating government institutions will be liable to pay the defunct institution's (hypothetical) share of the costs of providing redress to the person (see section 165). Those costs are in addition to the participating government institution's own share of the costs for providing redress to the person.

Note 5: Paragraph (j)—only institutions that are both non-government institutions and not participating institutions can be listed under section 164A, 164B or 164C (see subsections 164A(1), 164B(1) and 164C(1)).

Note 6: Paragraphs (k) and (l)—if the Operator determines that one or more participating jurisdictions are a funder of last resort for an institution under paragraph (k), then those participating jurisdictions (and the Commonwealth) will be liable to pay the institution's (hypothetical) share of the costs of providing redress to the person (see section 165A).

Note 7: Paragraph (l)—the amount of the Commonwealth's share of the costs of the redress payment for the person is determined under subparagraph (c)(iii).

Note 8: For the funder of last resort provisions, see Part 6-2.

Determination not to approve application

(3) Otherwise, the Operator must make a determination not to approve the application.

Revoking a determination

(4) The rules may require or permit the Operator to revoke, under this subsection, a determination made under subsection (2) or (3).

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(5) However, the Operator cannot revoke a determination made under subsection (2) if:
  (a) the person has been given an offer of redress; and
  (b) the person has accepted the offer in accordance with section 42.

(6) If the Operator revokes a determination made under subsection (2) or (3), then:
  (a) every determination made under subsection (2) or (3) is taken never to have been made; and
  (b) if the person has been given an offer of redress but has not accepted or declined the offer—the offer is taken to be withdrawn; and
  (c) if the person has made an application for review of the determination—the review application is taken to be withdrawn; and
  (d) the Operator may make further requests under section 24 or 25 for information relating to the person's application.

(7) The Operator must give a written notice to:
  (a) the person; and
  (b) each participating institution, participating jurisdiction or representative for a participating group that was notified under section 35 or 35A of the determination;

  notifying them of the following:
  (c) that the determination has been revoked;
  (d) that the determination is taken never to have been made;
  (e) if an offer of redress has been withdrawn under paragraph (6)(b)—that fact;
  (f) if an application for review of the determination has been withdrawn under paragraph (6)(c)—that fact;
  (g) any other matter prescribed by the rules.

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30 Working out the amount of redress payment and sharing of costs

Working out amounts

(1) This section sets out how the Operator must make a determination under paragraph 29(2)(c) about:
  (a) the amount of the redress payment for a person; and
  (b) the amount of each responsible institution's share of the costs of the redress payment; and
  (c) the amount of the Commonwealth's share of the costs of the redress payment.

Note: This section only applies if the Operator approves the person's application for redress.

Working out institution's share of the costs of redress payment

(2) The Operator must first work out, for each responsible institution, the amount that is the institution's share of the costs of the redress payment by using the following method statement:

Method statement

Step 1. Apply the assessment framework to work out the maximum amount of redress payment that could be payable to the person. The maximum amount must not be more than $150,000, regardless of the number of responsible institutions. In applying the assessment framework to work out the maximum amount, disregard any advance payment or relevant prior payment. The amount worked out is the ***maximum amount*** of the redress payment that could be payable to the person.

Step 2. Work out, in accordance with any requirements prescribed by the rules, the amount that is the responsible institution's share of the maximum amount. This amount is the ***gross liability amount*** for the responsible institution.

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Step 3. Work out the amount of any payment (a ***relevant prior payment***) that was paid to the person by, or on behalf of, the responsible institution in relation to abuse for which the institution is responsible (but do not include any payment to the extent that it is prescribed by the rules as not being a relevant prior payment). This amount is the ***original amount*** of the relevant prior payment.

Step 4. Multiply the original amount by the following:

$$(1.019)^n$$

where:

n is the number of whole years since the relevant prior payment was paid to the person.

The resulting amount is the ***adjusted amount*** of the relevant prior payment of the institution.

Note: The adjustment under this step is broadly to account for inflation.

Step 5. Add together the adjusted amount of each relevant prior payment of the institution. If the resulting amount is not a whole number of cents, round the amount up to the next whole number of cents. This amount is the ***reduction amount*** for the institution.

Step 6. The amount of the institution's share of the costs of the redress payment is the gross liability amount for the institution (in step 2) less the reduction amount for the institution (in step 5). The amount may be nil but not less than nil.

(3) The Operator must then work out the amount that is the ***institutions' total share*** by adding together the amount of each responsible institution's share of the costs of the redress payment (worked out under subsection (2)).

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Working out Commonwealth's share of the costs of redress payment

(4) The Operator must then work out the amount that is the Commonwealth's share of the costs of the redress payment using the following method statement:

Method statement

Step 1. Work out what would be the institutions' total share (i.e. what would be the total worked out under subsection (3)) if the definition of ***n*** in step 4 of the method statement in subsection (2) were omitted and the following definition were substituted:

n is the number of whole years occurring during the period:

(a) starting when the relevant prior payment was paid to the person; and

(b) ending when the person made the relevant application for redress under section 19.

Step 2. The amount of the Commonwealth's share of the costs of the redress payment is the difference between:

(a) the institutions' total share (worked out under subsection (3)); and

(b) the amount worked out under step 1 of this method statement.

Note 1: The effect of this subsection is broadly to reverse the adjustment made under step 4 of the method statement in subsection (2) to the extent that adjustment relates to inflation that occurs while the application is being processed. The Commonwealth bears the cost of this reversal.

Note 2: The Commonwealth's share will be nil if:
(a) there are no relevant prior payments; or

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(b) for each relevant prior payment, the substitution mentioned in step 1 of the method statement in this subsection does not affect the adjusted amount of the relevant prior payment.

Working out amount of redress payment

(5) The Operator must then work out the amount of redress payment for the person by:
  (a) adding together:
    (i) the institutions' total share (worked out under subsection (3)); and
    (ii) the Commonwealth's share of the costs of the redress payment (worked out under subsection (4)); and
  (b) subtracting the amount of any advance payment for the person.

The amount of redress payment for the person may be nil but not less than nil.

Note 1: The amount may be nil because of relevant prior payments or an advance payment. However, even though the person may not be paid any redress payment in that case, the person will still be entitled to the other components of redress under the scheme (i.e. the counselling and psychological component and a direct personal response).

Note 2: For funder of last resort cases, section 165 or 165A affects how the amount of the redress payment and the shares of the costs of the payment are worked out.

31 Working out the amount of the counselling and psychological component and sharing of costs

(1) This section sets out how the Operator must make a determination under paragraph 29(2)(d) about:
  (a) the amount of the counselling and psychological component of redress for a person; and
  (b) the amount of each responsible institution's share of the costs of that component.

Note: This section only applies if the Operator approves the person's application for redress.

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(2) The Operator must apply the assessment framework to work out the amount of the component. The amount must not be more than $5,000, regardless of the number of responsible institutions.

(3) The Operator must work out, in accordance with the rules, the amount that is each responsible institution's share of the costs of the component.

Note: For funder of last resort cases, section 165 or 165A affects how the amount of the counselling and psychological component and the share of the costs of the component is worked out.

32 The assessment framework

(1) The Minister may 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 the counselling and psychological component of redress for a person.

Note: For variation or revocation of the declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The declaration is the ***assessment framework***.

(3) The declaration is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to it.

33 The assessment framework policy guidelines

(1) The Operator may take into account the assessment framework policy guidelines when applying the assessment framework for the purposes of sections 30 and 31.

(2) The Minister may, in writing, make guidelines for the purposes of applying the assessment framework.

(3) The guidelines are the ***assessment framework policy guidelines***.

(4) The guidelines are not a legislative instrument.

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Division 5—Notice of determination to applicant, participating institutions and funders of last resort

34 Notice of determination to applicant

(1) If the Operator makes a determination under section 29 on an application for redress for a person, the Operator must give the person written notice of the determination stating:
  (a) whether or not the application has been approved; and
  (b) the reasons for the determination; and
  (c) that the person may apply under section 73 for review of the determination during the review period for the determination.

(2) If the application has been approved, the notice must include the offer of redress to the person under section 39.

(3) The notice must also:
  (a) if subsection (2) applies—state that the review period for the determination is the same as the acceptance period for the offer included in the notice; and
  (aa) if subsection (2) does not apply—specify the review period for the determination; and
  (b) comply with any matters prescribed by the rules.

Review period

(4) If the application has been approved, the ***review period*** for the determination is the same as the acceptance period for the offer of redress included in the notice.

(5) To avoid doubt, any extension of the acceptance period under subsection 40(2) also has the effect of extending the review period.

(6) If the application has not been approved, the ***review period*** for the determination is the period determined by the Operator, which must:

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(a) start on the date of the notice; and
(b) be at least 28 days, but not longer than 6 months.

(7) If subsection (6) applies, the Operator may, by written notice given to the person, extend the review period if the Operator considers there are exceptional circumstances that justify the extension.

(8) An extension under subsection (7) may be given:
(a) on the Operator's own initiative; or
(b) on a request made by the person under subsection (9).

(9) If subsection (6) applies, the person may request the Operator to extend the review period. The request must comply with any requirements prescribed by the rules.

(10) An extension under subsection (7) may be given, or a request under subsection (9) may be made, before, at or after the end of the review period.

35 Notice of determination to participating institutions

(1) If:
(a) the Operator makes a determination under section 29 in relation to a person; and
(b) a participating institution is specified in the determination;
then the Operator must give the institution written notice of the determination in accordance with subsection (2).

(1A) If the Operator determined under paragraph 29(2)(g) that the institution is a member of a participating group, the Operator must also give the notice to the representative for the participating group.

(2) The notice must state:
(a) whether or not the application has been approved; and
(b) if the Operator determined under paragraph 29(2)(b) that the institution is responsible for the abuse and therefore liable for providing redress to the person under the scheme:

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(i) that fact; and
(ii) the amount of the redress payment for the person; and
(iii) the amount of the institution's share of the costs of that payment; and
(iiia) the amount of the Commonwealth's share of the costs of that payment; and
(iiib) if an advance payment for the person has been paid—the amount of the advance payment; and
(iv) the amount of the counselling and psychological component of redress for the person; and
(v) the amount of the institution's share of the costs of that component; and

(c) if the Operator determined under paragraph 29(2)(g) that the institution is a member of a participating group—the participating group; and
(d) if the Operator determined under paragraph 29(2)(h) that the institution is not responsible for the abuse and therefore not liable for providing redress to the person under the scheme—that fact; and
(e) if the Operator determined under paragraph 29(2)(i) that the institution is a funder of last resort for a defunct institution—that fact and the number of other institutions that are a funder of last resort for the defunct institution; and
(f) the reasons for the determination, as they relate to the institution or participating group; and
(g) the period within which the person may apply under section 73 for review of the determination.

(3) The notice must also comply with any requirements prescribed by the rules.

35A Notice of determination to funders of last resort

(1) If:
(a) the Operator makes a determination under section 29 in relation to a person; and

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(b) the determination is that the application has been approved; and

(c) a participating jurisdiction (other than the Commonwealth) is specified in the determination under paragraph 29(2)(k);

then the Operator must give the participating jurisdiction written notice of the determination in accordance with subsection (2).

(2) The notice must state:

(a) that the application has been approved; and

(b) that the Operator determined:

(i) under paragraph 29(2)(j) that one or more institutions are responsible for the abuse; and

(ii) under paragraph 29(2)(k) that the participating jurisdiction is an eligible funding jurisdiction and funder of last resort for one or more of those institutions in relation to the abuse and therefore liable for providing redress to the person under the scheme; and

(c) the amount of the redress payment for the person; and

(d) the amount of the participating jurisdiction's share of the costs of the redress payment for the person; and

(e) the amount of the Commonwealth's share of the costs of the redress payment for the person; and

(f) if an advance payment for the person has been paid—the amount of the advance payment; and

(g) the amount of the counselling and psychological component of redress for the person; and

(h) the amount of the participating jurisdiction's share of the costs of the counselling and psychological component of redress for the person; and

(i) the amount of the Commonwealth's share of the costs of the counselling and psychological component of redress for the person; and

(j) the number of other participating jurisdictions that are funders of last resort in relation to the abuse for the institution or institutions to which subparagraph (b)(ii) of this subsection applies; and

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(k) the reasons for the determination under section 29, as they relate to the participating jurisdiction; and

(l) the period within which the person may apply under section 73 for review of the determination.

(3) The notice must also comply with any requirements prescribed by the rules.

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Division 6—Effect of determination and admissibility of evidence in civil proceedings

36 Effect of determination

(1) A determination by the Operator under section 29 has effect only for the purposes of the scheme.

(2) In particular, a determination under section 29 that:
   (a) an institution is, or is not, responsible for the abuse of a person; or
   (b) an institution or funder of last resort is, or is not, liable to provide redress to a person;

   is not a finding of law or fact made by a court in civil or criminal proceedings.

   Note: The determination is an administrative decision that is made by the Operator on the basis of whether the Operator considers there to be a reasonable likelihood that the person is eligible for redress. It is not a judicial decision made by a court in civil or criminal proceedings on the basis of a higher standard of proof.

(3) However, a determination under section 29 that:
   (a) an institution is responsible for abuse of a person; or
   (b) an institution or funder of last resort is liable to provide redress;

   may result in the imposition of a civil liability on the institution or funder of last resort to make payments under the scheme in relation to that redress.

37 Admissibility of documents in evidence in civil proceedings

(1) The following documents are not admissible in evidence in civil proceedings in a court or tribunal:
   (a) a person's application for redress;
   (b) a document created solely for the purposes of accompanying a person's application for redress;

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(c) a document created solely for the purposes of complying with a request for information made by the Operator under section 24 or 25 in relation to a person's application for redress.

(2) Subsection (1) does not apply if the admission of the document in evidence in civil proceedings is for the purposes of giving effect to this Act.

(3) For the purposes of subsection (2) (and without limiting that subsection), if the admission of the document in evidence is in civil proceedings for judicial review of a decision made under this Act, then the admission is for the purposes of giving effect to this Act.

(4) Subsection (1) does not apply if the admission of the document in evidence is in civil proceedings under, or arising out of, section 28 (which is about providing false or misleading documents or information to an officer of the scheme).

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Part 2-4—Offers and acceptance of redress

Division 1—Simplified outline of this Part

38 Simplified outline of this Part

If the Operator approves a person's application for redress, the Operator must give the person a written offer of redress. The offer must include the information set out in section 39. The person may accept or decline the offer.

If the person wishes to accept the offer, he or she must do so by giving the Operator, within the acceptance period, an acceptance document that complies with section 42. If the person accepts the offer, then the person will be provided with redress under the scheme. The person also releases all the participating institutions determined by the Operator to be responsible for the abuse (as well as the officials of those institutions, the associates of those institutions and the officials of the associates of those institutions) from all civil liability for the abuse of the person. However, the abuser is not released from liability for the abuse.

If the person accepts the offer, the Operator must notify the participating institutions determined by the Operator to be responsible for the abuse of the person's acceptance of the offer (including the components of redress that the person wishes to receive). If the Operator has determined that one or more funders of last resort for one or more institutions are liable for providing redress, the Operator must also notify:

(a) those funders of last resort; and

(b) if any of those institutions are partly-participating institutions—those partly-participating institutions.

If the person declines the offer (either by formally declining, or by doing nothing, in the acceptance period), the person is not required

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to release any institution or official from civil liability for the abuse of the person, but the person will not be provided with redress under the scheme.

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Division 2—Offers of redress

39 Offer of redress

If the Operator approves a person's application for redress, the Operator must give the person a written offer of redress that:

(a) explains the 3 components of redress (i.e. redress payment, access to the counselling and psychological component of redress for the person, and direct personal response); and

(b) specifies the amount of the redress payment; and

(ba) if an advance payment for the person has been paid—specifies the amount of the advance payment; and

(c) specifies whether the counselling and psychological component of redress for the person consists of:

(i) access to the counselling and psychological services that are provided under the scheme; or

(ii) the counselling and psychological services payment; and

(d) if the counselling and psychological component of redress for the person consists of the counselling and psychological services payment—specifies the amount of that payment; and

(e) specifies the participating institutions determined by the Operator under paragraph 29(2)(b) to be responsible for the abuse and therefore liable for providing redress to the person under the scheme; and

(f) if any of those responsible institutions is a defunct institution that has a representative:

(i) specifies the person who is the representative; and

(ii) explains that the representative is liable for providing redress to the person under the scheme; and

(g) if the Operator determined under paragraph 29(2)(g) that any of those responsible institutions is a member of a participating group—identifies the other participating institutions, or classes of participating institutions, that are associates of the responsible institution because they are also

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members of that participating group at the time of the determination; and

(h) specifies the participating institutions that were identified in the person's application but determined by the Operator under paragraph 29(2)(h) not to be responsible for the person's abuse and therefore not liable for providing redress to the person under the scheme; and

(i) if one or more of those responsible institutions are a participating government institution that is determined by the Operator under paragraph 29(2)(i) to be a funder of last resort for a defunct institution:

(i) specifies the defunct institution; and

(ii) explains that those government institutions are liable for the defunct institution's (hypothetical) share of the costs of providing redress to the person; and

(iii) explains that a direct personal response is not available to the person in relation to the abuse for which the defunct institution is responsible; and

(ia) all of the following:

(i) specifies the institutions determined by the Operator under paragraph 29(2)(j) to be responsible for the abuse;

(ii) specifies the participating jurisdictions that the Operator has determined under paragraph 29(2)(k) to be funders of last resort for those institutions;

(iii) explains that those funders of last resort and the Commonwealth are liable for the institutions' (hypothetical) shares of the costs of providing redress to the person;

(iv) if any of the institutions is defunct—explains that a direct personal response is not available to the person in relation to the abuse for which that institution is responsible;

(v) for each institution determined by the Operator to be responsible for the person's abuse under paragraph 29(2)(j), but for which the Operator did not determine any participating jurisdiction to be a funder of

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last resort in relation to the abuse under paragraph 29(2)(k)—explain that the institution is not a participating institution and that there is no funder of last resort for the institution in relation to the abuse; and

(ib) specifies the institutions that were identified in the person's application but determined by the Operator under paragraph 29(2)(m) not to be responsible for the person's abuse; and

(j) states the date of the offer; and

(k) specifies the acceptance period for the offer (see section 40); and

(l) gives information about the opportunity for the person to access legal services under the scheme for the purposes of obtaining legal advice about whether to accept the offer; and

(m) gives information about other services available to the person under the scheme to help the person to decide whether to accept the offer; and

(n) explains how to accept or decline the offer, should the person decide to do so; and

(o) informs the person that the offer expires at the end of the acceptance period; and

(p) explains the effect of section 43 (which is about the release from civil liability of the responsible institutions (if any), their officials, their associates and the officials of their associates) should the person accept the offer; and

(q) informs the person that the person does not have to accept the offer and that, by doing nothing, the offer is taken to be declined at the end of the acceptance period; and

(r) informs the person that the person will not be able to make another application for redress under the scheme, whether or not the offer is accepted; and

(ra) if an advance payment for the person has been paid—informs the person that, if the offer is declined, the amount of the advance payment will become a debt due to the Commonwealth; and

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(s) informs the person that the person may request an extension of the acceptance period and explains how to make that request; and

(t) complies with any requirements prescribed by the rules.

40 Acceptance period for offers of redress

(1) The ***acceptance period*** for an offer of redress to a person is the period determined by the Operator, which must be at least 6 months, starting on the date of the offer.

(2) The Operator may, by written notice to the person, extend the acceptance period if the Operator considers there are exceptional circumstances that justify the extension.

(3) An extension under subsection (2) may be given:

(a) on the Operator's own initiative; or

(b) on a request made by the person under subsection (4).

(4) The person may request the Operator to extend the acceptance period. The request must comply with any requirements prescribed by the rules.

(4A) An extension under subsection (2) may be given, or a request under subsection (4) may be made:

(a) before the end of the acceptance period; or

(b) at or after the end of the acceptance period if the person has neither accepted nor declined the offer of redress (disregarding subsection 45(2)).

(5) If the Operator extends the period, the ***acceptance period*** is the original period as extended by the Operator.

(6) To avoid doubt, if:

(a) under subsection 45(2), a person is taken to have declined an offer of redress because the person did not accept the offer before the end of the acceptance period; and

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(b) at or after the end of the acceptance period, the Operator extends the acceptance period under subsection (2) of this section;

then subsection 45(2) does not apply, and is taken never to have applied, to the person at any time occurring during the acceptance period as extended (but may apply to the person at or after the end of the acceptance period as extended).

41 Notice of offer to participating institutions

(1) If:
  (a) the Operator gives an offer of redress under section 39; and
  (b) a participating institution or person referred to in paragraph 39(e), (f) or (g) is specified in the offer;

then the Operator must give the institution or person written notice of the offer.

(2) The notice must:
  (a) state the acceptance period for the offer; and
  (b) comply with any requirements prescribed by the rules.

41A Notice of offer to funders of last resort

(1) If:
  (a) the Operator gives an offer of redress under section 39; and
  (b) a participating jurisdiction referred to in subparagraph 39(ia)(ii) (other than the Commonwealth) is specified in the offer;

then the Operator must give the participating jurisdiction written notice of the offer.

(2) The notice must:
  (a) state the acceptance period for the offer; and
  (b) comply with any requirements prescribed by the rules.

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Division 3—Accepting or declining offers of redress

42 Accepting the offer of redress

(1) A person may accept an offer of redress by complying with this section.

(2) The person must give the Operator a document (the ***acceptance document***) that:
  (a) is in the approved form; and
  (b) states that the person accepts the offer; and
  (c) states that the person releases and forever discharges each of the following institutions and officials (a ***released institution or official***) from all civil liability for abuse of the person that is within the scope of the scheme:
    (i) all participating institutions that are determined by the Operator under paragraph 29(2)(b) to be responsible for the abuse of the person;
    (ii) all participating institutions that are identified in the offer under paragraph 39(g) as being associates of those responsible institutions;
    (iii) all officials of those responsible institutions and associates (other than an official who is an abuser of the person); and
  (d) states that the person forgoes any entitlement to be paid damages by a released institution or official if the released institution or official were joined as a party to civil proceedings brought or continued by the person against another party in relation to abuse of the person that is within the scope of the scheme; and
  (e) states that the person will not, whether as an individual, a representative party or a member of a group, bring or continue any civil claim against a released institution or official in relation to abuse of the person that is within the scope of the scheme; and

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(f) states the components of redress that the person wishes to receive; and
(g) if the person wishes to receive a direct personal response—specifies the participating institutions and partly-participating institutions that the person wishes to receive a direct personal response from; and
(h) acknowledges that the person understands the effect of accepting the offer; and
(i) is signed by the person; and
(j) complies with any requirements prescribed by the rules.

(3) The person must give the Operator the acceptance document:
(a) before the end of the acceptance period; and
(b) in the manner (if any) prescribed by the rules.

(4) Rules made for the purposes of paragraph (2)(j) must not require the person to enter into a confidentiality agreement.

43 Effect of acceptance on civil liability

If a person accepts an offer of redress in accordance with section 42, then, at the time the person gives the acceptance and by force of this section:
(a) the person releases and forever discharges every released institution or official from civil liability for abuse of the person that is within the scope of the scheme; and
(b) the person cannot (whether as an individual, a representative party or a member of a group) bring or continue civil proceedings against a released institution or official in relation to that abuse; and
(c) the release and discharge of civil liability of a released institution or official for that abuse does not:
(i) release or discharge another institution or person from civil liability for that abuse; and
(ii) prevent the person (whether as an individual, a representative party or a member of a group) from

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bringing or continuing civil proceedings against another institution or person in relation to that abuse; and

(d) if a released institution or official would, apart from this section, be liable to make a contribution to another institution or person in relation to damages payable to the person in civil proceedings brought or continued by the person (whether as an individual, a representative party or a member of a group) against the other institution or person in relation to that abuse, then:

(i) the released institution or official is released and forever discharged from liability to make that contribution; and

(ii) the amount of damages payable to the person in those proceedings is reduced by the amount of that contribution.

44 Notice to participating institutions that the offer is accepted

(1) If a person accepts an offer of redress in accordance with section 42, then the Operator must give each institution that was notified under section 41 about the offer written notice of:

(a) the person's acceptance of the offer; and

(b) the components of redress that the person wishes to receive (including whether the person wishes to receive a direct personal response from the institution); and

(c) any matters prescribed by the rules.

(2) The notice must be accompanied by a copy of the person's acceptance document.

44A Notice to funders of last resort that the offer is accepted

If a person accepts an offer of redress in accordance with section 42, then the Operator must give each participating jurisdiction (if any) that was notified under section 41A about the offer written notice of:

(a) the person's acceptance of the offer; and

(b) any matters prescribed by the rules.

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45 Declining the offer of redress

Declining by taking positive action

(1) A person may decline an offer of redress by giving the Operator, before the end of the acceptance period, a document that:
  (a) is in the approved form; and
  (b) states that the person declines the offer; and
  (c) acknowledges that the person understands the effect of declining the offer (including that the person will not be able to make another application for redress under the scheme); and
  (d) is signed by the person; and
  (e) complies with any requirements prescribed by the rules.

Declining by not accepting in the acceptance period

(2) A person is taken to have declined an offer of redress if the person does not accept the offer in accordance with section 42 before the end of the acceptance period.

(3) Subsection (2) does not apply if:
  (a) the person has applied for review under section 73 of the Operator's determination on the person's application for redress; and
  (b) the review has not been completed at the end of the acceptance period.

46 Notice to participating institutions that the offer is declined

(1) If a person declines an offer of redress in accordance with section 45, then the Operator must give each institution that was notified under section 41 of the offer written notice that the person has declined the offer.

(2) The notice must comply with any requirements prescribed by the rules.

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46A Notice to funders of last resort that the offer is declined

(1) If a person declines an offer of redress in accordance with section 45, then the Operator must give each participating jurisdiction (if any) that was notified under section 41A of the offer written notice that the person has declined the offer.

(2) The notice must comply with any requirements prescribed by the rules.

46B Notice to partly-participating institutions

(1) If:
  (a) a person accepts or declines an offer of redress in accordance with section 42 or 45; and
  (b) the offer specified an institution under subparagraph 39(ia)(i), and a funder of last resort for the institution under subparagraph 39(ia)(ii); and
  (c) the institution is a partly-participating institution;

then the Operator must give the institution a written notice in accordance with subsection (2) of this section.

(2) The notice must state:
  (a) that the Operator determined under paragraph 29(2)(j) that the institution was responsible for the abuse; and
  (b) the reasons for the determination under section 29, as they relate to the institution; and
  (c) whether the person accepted or declined the offer; and
  (d) if the person accepted the offer—whether the person wishes to receive a direct personal response from the institution.

(3) The notice must also comply with any requirements prescribed by the rules.

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Part 2-5—Provision of redress under the scheme

Division 1—Simplified outline of this Part

47 Simplified outline of this Part

If a person accepts an offer of redress under the scheme, then:

(a) the Operator must pay the redress payment to the person or to an administrator in some circumstances; and

(b) the Operator must provide the person with the counselling and psychological component of redress which, depending on where the person lives, consists of access to counselling and psychological services or a counselling and psychological services payment; and

(c) the participating institutions, and certain partly-participating institutions, that are responsible for the abuse must take reasonable steps to provide the person with a direct personal response.

However, this does not apply if the person stated in the acceptance document that he or she does not wish to receive a particular component of redress (e.g. the person stated that he or she does not wish to receive a direct personal response from a particular institution).

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Division 2—The redress payment

48 The Operator must pay the redress payment

(1) If:

(a) a person is entitled to redress under the scheme (see section 12); and

(b) the person stated in the acceptance document that the person wishes to be paid the redress payment;

then the Operator must pay the redress payment to the person as soon as practicable.

(1A) However, if:

(a) another person (an ***administrator***) has been appointed by a court, tribunal or board, or other entity prescribed by the rules, under a law of the Commonwealth, a State or a Territory to make decisions on behalf of the person in relation to all or part of the person's property or financial affairs or matters; and

(b) the Operator considers that it is appropriate in the circumstances;

then the Operator must pay the redress payment to the administrator as soon as practicable.

Note: Another person appointed by the person, for example, under a power of attorney, is not covered by paragraph (a).

(1B) Despite the requirement in subsection (1) or (1A) that the redress payment be paid as soon as practicable, the Operator may pay the redress payment in such instalments, and at such times, (if any) as are agreed to by written agreement between the person or administrator (whichever is applicable) and the Operator.

(1C) Subsection (1B) does not apply if the person dies before the first instalment is paid.

(1D) If:

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(a) the Operator pays part of the redress payment in one or more instalments; and

(b) the person dies before the Operator pays the last instalment;

the Operator must pay the unpaid amount of the payment, in accordance with subsection (1) or (1A), as soon as practicable.

(2) The rules may prescribe matters relating to the payment of redress payments (including matters relating to payment by instalments).

49 Protection of the redress payment—general

(1) A redress payment is a payment of compensation under the scheme. However, for the purposes of:

(a) the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*; and

(b) any other legislation of the Commonwealth, a State or a Territory;

the payment is not to be treated as being a payment of compensation or damages.

Note: This subsection prevents a redress payment affecting other payments that may be payable to the person under legislation. For example, when determining whether a social security payment is payable, or the amount of such a payment, a redress payment is not to be taken into account.

(2) For the purposes of the application of any law of the Commonwealth, a State or a Territory in relation to a redress payment:

(a) the payment and the entitlement to the payment are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise; and

(b) no amount may be deducted from the payment.

(2A) Subsections (1) and (2) have effect subject to section 48.

(3) Nothing in this Act prevents a liability insurance contract from treating a redress payment as being a payment of compensation or damages.

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50 Additional protection of the redress payment—garnishee orders

(1) If:

(a) a redress payment is being paid, or has been paid, to the credit of an account; and

(b) a court order in the nature of a garnishee order comes into force in relation to the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The ***saved amount*** is worked out as follows:

Method statement	
Step 1.	Work out the amount of the redress payment that has been paid to the credit of the account in the year immediately before the court order came into force.
Step 2.	Subtract from the amount of that payment the total amount withdrawn from the account during that year: the result is the ***saved amount***.

(3) To avoid doubt, if the redress payment is being, or has been paid, in instalments, a reference in subsection (2) to the amount of the redress payment that has been paid to the credit of the account in the year is a reference to the total amount of those instalments that have been paid to the credit of the account in the year.

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Division 3—Counselling and psychological component of redress

51 The Operator must enable access to the counselling and psychological component of redress

(1) This section applies if:
  (a) a person is entitled to redress under the scheme (see section 12); and
  (b) the person stated in the acceptance document under section 42 that the person wishes to access the counselling and psychological component of redress.

(2) If the place where the person lives (as stated in the person's application) is in a participating jurisdiction that is a declared provider of counselling and psychological services under the scheme, then:
  (a) the Operator must, as soon as practicable after the person becomes entitled to redress, refer the person to the participating jurisdiction; and
  (b) the participating jurisdiction must, as soon as practicable after receiving the referral, provide for the delivery of counselling and psychological services under the scheme in accordance with the National Service Standards.

(3) If subsection (2) does not apply, then the Operator must, as soon as practicable, pay the counselling and psychological services payment to the person.

(3A) However, if:
  (a) another person is an administrator of the person (as referred to in subsection 48(1A)); and
  (b) the Operator considers that it is appropriate in the circumstances;

then the Operator must pay the counselling and psychological services payment to the administrator.

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(3B) Despite the requirement in subsection (3) or (3A) that the counselling and psychological services payment be paid as soon as practicable, the Operator may pay the counselling and psychological services payment in such instalments, and at such times, (if any) as are agreed to by written agreement between the person or administrator (whichever is applicable) and the Operator.

(3C) Subsection (3B) does not apply if the person dies before the first instalment is paid.

(3D) If:

(a) the Operator pays part of the counselling and psychological services payment in one or more instalments; and

(b) the person dies before the Operator pays the last instalment;

the Operator must pay the unpaid amount of the payment, in accordance with subsection (3) or (3A), as soon as practicable.

(4) The rules may prescribe matters relating to the payment of counselling and psychological services payments (including matters relating to payment by instalments).

52 Protection of the counselling and psychological services payment—general

(1) A counselling and psychological services payment is a payment of compensation under the scheme. However, for the purposes of:

(a) the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*; and

(b) any other legislation of the Commonwealth, a State or a Territory;

the payment is not to be treated as being a payment of compensation or damages.

Note: This subsection prevents a counselling and psychological services payment affecting other payments that may be payable to the person under legislation. For example, when determining whether a social security payment is payable, or the amount of such a payment, a counselling and psychological services payment is not to be taken into account.

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(2) For the purposes of the application of any law of the Commonwealth, a State or a Territory in relation to a counselling and psychological services payment:
  (a) the payment and the entitlement to the payment are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise; and
  (b) no amount may be deducted from the payment.

(2A) Subsections (1) and (2) have effect subject to section 51.

(3) Nothing in this Act prevents a liability insurance contract from treating a counselling and psychological services payment as being a payment of compensation or damages.

53 Additional protection of the counselling and psychological services payment—garnishee orders

(1) If:
  (a) a counselling and psychological services payment is being paid, or has been paid, to the credit of an account; and
  (b) a court order in the nature of a garnishee order comes into force in relation to the account;

the court order does not apply to the saved amount (if any) in the account.

(2) The ***saved amount*** is worked out as follows:

Method statement

Step 1. Work out the amount of the counselling and psychological services payment that has been paid to the credit of the account in the year immediately before the court order came into force.

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Step 2.	Subtract from the amount of that payment the total amount withdrawn from the account during that year: the result is the ***saved amount***.

(3) To avoid doubt, if the counselling and psychological services payment is being, or has been paid, in instalments, a reference in subsection (2) to the amount of the counselling and psychological services payment that has been paid to the credit of the account in the year is a reference to the total amount of those instalments that have been paid to the credit of the account in the year.

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Division 4—Direct personal responses

54 Direct personal response from responsible institutions and partly-participating institutions

(1) If a participating institution or partly-participating institution is given a notice under section 44 or 46B that notifies the institution that a person wishes to be given a direct personal response from the institution, then the institution must take reasonable steps to provide the person with a direct personal response.

(2) A ***direct personal response*** from an institution to a person is any one or more of the following:

(a) an apology or a statement of acknowledgement or regret;

(b) an acknowledgement of the impact of the abuse on the person;

(c) an assurance as to the steps the institution has taken, or will take, to prevent abuse occurring again;

(d) an opportunity for the person to meet with a senior official of the institution.

(3) When providing a direct personal response, the institution must take into account the direct personal response framework.

55 The direct personal response framework

(1) The Minister may declare, in writing, guidelines about how direct personal responses are to be provided under the scheme.

Note: For variation or revocation of the declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The declaration is the ***direct personal response framework***.

(3) When making the declaration, the Minister must have regard to the principles in section 56.

(4) The declaration is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to it.

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56 General principles guiding provision of direct personal responses

(1) All participating institutions and partly-participating institutions should offer and provide on request by a survivor:
   (a) meaningful recognition of the institution's responsibility by way of a statement of apology, acknowledgement or regret; and
   (b) an assurance as to steps taken to protect against further abuse.

(2) Engagement between a survivor and a participating institution or partly-participating institution should occur only if, and to the extent that, a survivor wishes it.

(3) Participating institutions and partly-participating institutions should make clear what they are willing to offer and provide by way of a direct personal response to survivors. Institutions should ensure that they are able to provide the direct personal response that they offer to survivors.

(4) In offering direct personal responses, participating institutions and partly-participating institutions should be responsive to survivors' needs.

(5) Participating institutions and partly-participating institutions that already offer a broader range of direct personal responses to survivors and others should consider continuing to offer those forms of direct personal response.

(6) Direct personal responses should be delivered by people who have received training about the nature and impact of child sexual abuse and the needs of survivors, including cultural awareness and sensitivity training where relevant.

(7) Participating institutions and partly-participating institutions should welcome feedback from survivors about the direct personal responses the institutions offer and provide.

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Part 2-6—Advance payments

Division 1—Simplified outline of this Part

56A Simplified outline of this Part

If a person has made an application for redress under the scheme, the Operator may, in certain circumstances, make an advance payment for the person in the amount of $10,000.

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Division 2—Advance payments

56B The Operator may make an advance payment

(1) The Operator may, on behalf of the Commonwealth, pay an amount under this section (an ***advance payment***) for a person if:
  (a) the person has made an application for redress under the scheme; and
  (b) the application includes a statement by the person to the effect that the person has suffered institutional child sexual abuse that occurred:
    (i) inside a participating State; or
    (ii) inside a Territory; or
    (iii) outside Australia; and
  (c) the person was not prevented under section 20 from making the application; and
  (d) the Operator has not made a determination under section 29 to approve, or not approve, the application; and
  (e) the Operator is satisfied that one or more of the following apply:
    (i) the person is aged 70 or over;
    (ii) the person is aged 55 or over and is an Aboriginal person or Torres Strait Islander (both within the meaning of the *Aboriginal and Torres Strait Islander Act 2005*);
    (iii) the person is terminally ill;
    (iv) there are exceptional circumstances justifying the advance payment being made;
    (v) any other circumstances prescribed by the rules; and
  (f) the person has not died; and
  (g) the Operator considers it appropriate to do so; and
  (h) any requirements prescribed by the rules are satisfied.

(2) The amount of the advance payment is $10,000.

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(3) The advance payment is payable to:
  (a) the person; or
  (b) if another person is an administrator of the person and the Operator considers it appropriate in the circumstances—the administrator.

(4) The Operator must give the person written notice of the advance payment.

(5) The rules may prescribe matters relating to the payment of advance payments.

56C Protection of the advance payment—general

(1) An advance payment is a payment of compensation under the scheme. However, for the purposes of:
  (a) the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*; and
  (b) any other legislation of the Commonwealth, a State or a Territory;

  the payment is not to be treated as being a payment of compensation or damages.

  Note: This subsection prevents an advance payment affecting other payments that may be payable to the person under legislation. For example, when determining whether a social security payment is payable, or the amount of such a payment, an advance payment is not to be taken into account.

(2) For the purposes of the application of any law of the Commonwealth, a State or a Territory in relation to an advance payment:
  (a) the payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise; and
  (b) no amount may be deducted from the payment.

(3) Subsections (1) and (2) have effect subject to subsection 56B(3).

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(4) Nothing in this Act prevents a liability insurance contract from treating an advance payment as being a payment of compensation or damages.

56D Additional protection of advance payment—garnishee orders

(1) If:
  (a) an advance payment is being paid, or has been paid, to the credit of an account; and
  (b) a court order in the nature of a garnishee order comes into force in relation to the account;

  the court order does not apply to the saved amount (if any) in the account.

(2) The ***saved amount*** is worked out as follows:

Method statement	
Step 1.	Work out the amount of the advance payment that has been paid to the credit of the account in the year immediately before the court order came into force.
Step 2.	Subtract from the amount of that payment the total amount withdrawn from the account during that year: the result is the ***saved amount***.

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Chapter 3—Special rules to deal with exceptional cases

Part 3-1—Special rules allowing entitlement to redress

Division 1—Simplified outline of this Part

57 Simplified outline of this Part

This Part deals with a number of special cases to provide exemptions to the general rules of entitlement to redress in Chapter 2 (particularly section 12). Under this Part, a person who would not be entitled to redress under the general rules may nevertheless be entitled to redress because of the application of the exemptions in this Part.

If a person makes an application for redress, but dies before accepting an offer of redress, the person (or the person's estate) will not be entitled to redress. Division 2 deals with that case and allows for a redress payment to be paid to other persons in certain circumstances.

If abuse of a person occurred inside a non-participating State, the person would not be eligible (and therefore not entitled) to redress because the abuse is not within the scope of the scheme (see sections 13 and 14). However, if a Commonwealth institution or a participating Territory institution is primarily responsible for the abuse, the person may be entitled to redress. Division 3 deals with that case.

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Division 2—Death of person before acceptance of redress offer

58 Person dies before determination is made on application for redress

(1) This section applies if:
  (a) a person makes an application for redress under section 19; and
  (b) the person dies before a determination on the application is made under section 29.

(2) The Operator must continue to deal with the application as if the person had not died.

(3) If the Operator approves the application under paragraph 29(2)(a), then the Operator must:
  (a) determine, under paragraph 29(2)(b), each participating institution that is responsible for the abuse; and
  (b) determine, under paragraph 29(2)(c):
    (i) the amount of the redress payment for the person; and
    (ii) the amount of each responsible institution's share of the costs of the redress payment; and
    (iii) the amount of the Commonwealth's share of the costs of the redress payment; and
  (c) if paragraph 29(2)(i) applies to a participating government institution and a defunct institution—determine, under that paragraph, that the participating government institution is a funder of last resort for the defunct institution; and
  (d) if paragraph 29(2)(j) applies to an institution—determine, under that paragraph, that the institution is responsible for the abuse; and
  (e) if paragraph 29(2)(k) applies to a participating jurisdiction in relation to one or more institutions—determine:

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(i) under that paragraph, that the participating jurisdiction is a funder of last resort for each of those institutions in relation to the abuse; and

(ii) under paragraph 29(2)(l), the amount of the jurisdiction's share of the costs of the redress payment for the person.

(4) The redress payment for the person is payable in accordance with section 60.

(5) The rules may prescribe matters relating to the giving of notices to a person, a participating institution, a partly-participating institution or a funder of last resort in relation to the operation of this section.

59 Person dies before offer of redress is accepted, declined or withdrawn

(1) This section applies if:

(a) a person makes an application for redress under section 19; and

(b) the Operator makes a determination under section 29 approving the application; and

(c) the Operator gives the person an offer of redress under section 39; and

(d) the person dies before the offer is accepted, declined or withdrawn.

(2) The offer is taken to be withdrawn immediately after the person dies.

(3) If, before the person died:

(a) the person had not made an application under section 73 for review of the determination; or

(b) the person had made such an application but the review had been completed;

then the redress payment for the person is payable in accordance with section 60.

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(4) If, before the person died:
  (a) the person had made an application under section 73 for review of the determination; and
  (b) the review had not been completed;

then:
  (c) the application for review continues as if the person had not died; and
  (d) if the review determination approves the person's application for redress—the redress payment for the person specified in the review determination is payable in accordance with section 60.

(5) The rules may prescribe matters relating to the giving of notices to a person, a participating institution, a partly-participating institution or a funder of last resort in relation to the operation of this section.

60 Entitlement to redress payment

(1) This section applies if under subsection 58(4) or 59(3) or paragraph 59(4)(d) a redress payment for a deceased person is payable in accordance with this section.

(2) The Operator must:
  (a) determine who should be paid the redress payment; and
  (b) pay the redress payment to that person or those persons as soon as practicable.

(3) In determining who should be paid the redress payment, the Operator may consider the people who are entitled to the property of the deceased person under:
  (a) the deceased person's will; and
  (b) the law relating to the disposition of the property of deceased persons.

(4) The Operator may pay the redress payment without requiring:
  (a) production of probate of the will of the deceased person; or
  (b) letters of administration of the estate of the deceased person.

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(5) The rules may prescribe matters relating to the payment of redress payments under this section.

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Division 3—Abuse for which a Commonwealth institution or participating Territory institution is responsible

61 Abuse occurring inside a non-participating State

(1) For the purposes of subsection 13(2), a person is eligible for redress under the scheme if:

(a) the person would be eligible under subsection 13(1) apart from the fact that the person does not meet the condition in paragraph 13(1)(b) because the sexual abuse of the person occurred inside a non-participating State (disregarding subsection (2) of this section); and

(b) a Commonwealth institution or a participating Territory institution is primarily responsible for the abuse of the person.

(2) For the purposes of subsection 14(2), if a person is eligible for redress under the scheme because of subsection (1) of this section, then the abuse of the person is within the scope of the scheme.

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Part 3-2—Special rules excluding entitlement to redress

Division 1—Simplified outline of this Part

62 Simplified outline of this Part

This Part deals with a number of special cases to provide exclusions to the general rules of entitlement to redress in Chapter 2. Under this Part, a person who would otherwise be entitled to redress under the general rules may nevertheless not be entitled to redress because of the application of the exclusions in this Part.

If a person is sentenced to imprisonment for 5 years or longer for an offence against the law of the Commonwealth, a State, a Territory or a foreign country, the person will not be entitled to redress unless the Operator makes a determination under subsection 63(5). Division 2 deals with that case.

A person is also not entitled to redress under the scheme while a security notice is in force in relation to the person. Division 3 deals with that case.

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Division 2—Special assessment of applicants with serious criminal convictions

63 Special assessment of applicants with serious criminal convictions

(1) This section applies if:
  (a) a person makes an application under section 19 for redress for abuse of the person; and
  (b) before or after making the application, the person is sentenced to imprisonment for 5 years or longer for an offence against a law of the Commonwealth, a State, a Territory or a foreign country.

(2) For the purposes of subsection 12(4), the person is not entitled to redress under the scheme unless there is a determination in force under subsection (5) of this section that the person is not prevented from being entitled to redress.

(3) As soon as practicable after becoming aware of the person's sentence, the Operator must:
  (a) consider whether to make a determination under subsection (5); and
  (b) give a written notice under subsection (4) to each of the following (a ***specified advisor***):
    (i) if the abuse of the person occurred inside a participating State or a participating Territory—the Attorney-General of the State or Territory, or another person nominated by that Attorney-General in writing;
    (ii) if the abuse of the person occurred outside a participating State or a participating Territory—the Commonwealth Attorney-General;
    (iii) if the offence was against a law of a participating State or a participating Territory—the Attorney-General of the State or Territory, or another person nominated by that Attorney-General in writing;

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(iv) if the offence was against a law not covered by subparagraph (iii)—the Commonwealth Attorney-General.

(4) The notice must:
  (a) request the specified advisor to provide advice about whether the Operator should make a determination under subsection (5); and
  (b) include sufficient information to enable the specified advisor to provide that advice; and
  (c) specify the period (which must be at least 28 days starting on the date of the notice) in which the specified advisor may provide that advice.

(5) The Operator may determine that the person is not prevented from being entitled to redress under the scheme if the Operator is satisfied that providing redress to the person under the scheme would not:
  (a) bring the scheme into disrepute; or
  (b) adversely affect public confidence in, or support for, the scheme.

(6) When making a determination under subsection (5), the Operator must take into account:
  (a) any advice given by a specified advisor in the period referred to in the notice; and
  (b) the nature of the offence; and
  (c) the length of the sentence of imprisonment; and
  (d) the length of time since the person committed the offence; and
  (e) any rehabilitation of the person; and
  (f) any other matter that the Operator considers is relevant.

(7) When taking into account the matters set out in subsection (6), the Operator must give greater weight to any advice that:
  (a) is given by a specified advisor from the jurisdiction in which the abuse of the person occurred; and

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(b) is given in the period referred to in the notice;

than to any other matter.

(8) The rules may prescribe matters relating to the giving of notices to a person or a participating institution in relation to a determination under subsection (5).

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Division 3—Security notices

Subdivision A—No entitlement to redress while security notice in force

64 Person not entitled to redress while security notice in force

For the purposes of subsection 12(4), a person is not entitled to redress under the scheme while a security notice is in force in relation to the person.

Subdivision B—Security notice

65 Security notice from the Home Affairs Minister

(1) The Home Affairs Minister may give the Minister a written notice (a ***security notice***) requiring that this Division apply in relation to a specified person if:

(a) the Foreign Affairs Minister gives the Home Affairs Minister a notice under subsection 66(1) in relation to the person; or

(b) the person's visa is cancelled under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

(c) the person's visa is cancelled under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and the cancellation has not been revoked because of subsection 134C(3) of that Act; or

(d) the person's visa is cancelled under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*).

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(2) Before giving a security notice, the Home Affairs Minister must have regard to the extent (if any) that any payments to the person under the scheme have been or may be used for a purpose that might prejudice the security of Australia or a foreign country, if the Home Affairs Minister is aware of that extent.

(3) Subsection (2) does not limit the matters to which regard may be had when giving a security notice.

(4) A security notice is not a legislative instrument.

66 Notice from the Foreign Affairs Minister

(1) If:
  (a) either:
    (i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue a person an Australian travel document; or
    (ii) under section 22 of that Act, the Foreign Affairs Minister cancels a person's Australian travel document; and
  (b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the person under subsection 14(1) of that Act; and
  (c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;

the Foreign Affairs Minister may give the Home Affairs Minister a written notice setting out those matters.

(2) A notice under subsection (1) is not a legislative instrument.

67 Copy of a security notice to be given to the Operator

The Minister must give a copy of a security notice to the Operator.

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68 Period a security notice is in force

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

69 Annual review of a security notice

Before the end of the following periods, the Home Affairs Minister must consider whether to revoke a security notice (if it has not already been revoked):

(a) 12 months after it came into force;

(b) 12 months after the Home Affairs Minister last considered whether to revoke it.

70 Revoking a security notice

(1) The Home Affairs Minister may, by written notice given to the Minister, revoke a security notice.

(2) The revocation takes effect on the day it is made.

(3) The Minister must give a copy of a notice under subsection (1) to the Operator.

Subdivision C—Other matters affected by a security notice

71 Other matters affected by a security notice

(1) If at the time a security notice comes into force in relation to a person:

(a) the person has made an application for redress under section 19; and

(b) either:

(i) a determination has not been made in relation to the application under section 29; or

(ii) an offer of redress has not been given to the person under section 39;

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then, at that time, the application is taken to have been withdrawn by the person under subsection 22(1).

(2) If at the time a security notice comes into force in relation to a person:

(a) the person has made an application for redress under section 19; and

(b) an offer of redress has been given to the person under section 39; and

(c) the offer has not been accepted, declined or withdrawn;

then, at that time:

(d) the offer is taken to be withdrawn; and

(e) the determination made under subsection 29(2) on the application is taken to be revoked by the Operator under subsection 29(4); and

(f) the application is taken to have been withdrawn by the person under subsection 22(1).

(3) The rules may prescribe matters relating to the giving of notices to a person or a participating institution in relation to the operation of this Division in relation to the person's entitlement to redress.

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Chapter 4—Administrative matters

Part 4-1—Review of determinations

Division 1—Simplified outline of this Part

72 Simplified outline of this Part

A person may apply for review of a determination of the Operator under section 29 in relation to the person's application for redress under the scheme.

There are a number of determinations under section 29 that the person may seek to be reviewed. For example, if the Operator approved the application, the person may seek review of the amount of the redress payment. If the Operator did not approve the application, the person may seek review of that determination.

An application for review must be made within the period specified in the notice of determination given by the Operator to the person under section 34.

If, on review, a determination under subsection 29(2) is varied or substituted, the Operator must withdraw the offer of redress and give the person a new offer in accordance with section 39. If the determination is affirmed, the Operator must extend the acceptance period for the original offer for an additional 2 months.

The Operator must notify the person who applied for review, and certain institutions and funders of last resort, about the outcome of the review.

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Division 2—Review of determinations

73 Application for review of determination

(1) If:
  (a) a person has made an application for redress; and
  (b) the Operator has made a determination (the ***original determination***) on the application under section 29;

then the person may apply to the Operator for review of the original determination.

(2) The application for review must:
  (a) be made before the day specified in the notice of the determination given under section 34; and
  (b) be in the approved form.

74 Withdrawal of application for review

(1) The person may withdraw an application for review, by giving oral or written notice to the Operator, at any time before the review has been completed.

(2) An application for review that is withdrawn under subsection (1) is taken never to have been made.

75 The review

(1) If an application is made under section 73, the Operator must review the original determination or cause the original determination to be reviewed by an independent decision-maker:
  (a) to whom the Operator's power under this section is delegated; and
  (b) who was not involved in the making of the determination.

(2) The person reviewing the original determination must:
  (a) reconsider the determination; and

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(b) make a determination (the ***review determination***) doing one of the following:
  (i) affirming the original determination;
  (ii) varying the original determination;
  (iii) setting the original determination aside and substituting a new determination.

(3) When reviewing the original determination, the person may have regard only to the information and documents that were available to the person who made the original determination.

76 Date of effect of review determination

(1) This section applies if the review determination:
  (a) varies the original determination; or
  (b) sets aside the original determination and substitutes a new determination.

(2) The review determination takes effect on the day specified in the review determination.

(3) From the day the review determination takes effect, the original determination as varied or substituted is taken to be the determination made by the Operator under section 29.

77 Notice of review determination to applicant

The Operator must give the applicant written notice of the review determination, stating the reasons for it.

78 Interaction between review and offer of redress

(1) This section applies if:
  (a) a person is given an offer of redress under section 39; and
  (b) the person applies for review of the original determination.

(2) If the person accepts or declines the offer in the acceptance period for the offer but before the review has been completed, then the

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application for review is taken to have been withdrawn immediately before the person accepted or declined the offer.

(3) If, on review, the original determination is varied or substituted, then the Operator must:
   (a) withdraw the offer and notify the person in writing of that withdrawal; and
   (b) if the determination as varied or substituted approves the application for redress—give the person a new written offer of redress in accordance with section 39.

(4) If:
   (a) on review, the original determination is affirmed; and
   (b) the determination as affirmed approves the application for redress; and
   (c) the person has been given an offer of redress under section 39;

   then the Operator must extend the acceptance period under subsection 40(2) for an additional 2 months.

79 Notices to institutions and funders of last resort about review

(1) If:
   (a) a person makes an application for review under section 73; or
   (b) a person withdraws an application for review under subsection 74(1); or
   (c) a review determination is made under subsection 75(2);

   then the Operator must give each participating institution, partly-participating institution, funder of last resort (other than the Commonwealth) or representative for a participating group that was notified under section 35, 35A or 46B written notice of that fact.

(2) The notice must comply with any requirements prescribed by the rules.

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Part 4-2—Nominees

Division 1—Simplified outline of this Part

80 Simplified outline of this Part

If a person makes an application, or proposes to make an application, for redress under the scheme, the Operator may appoint someone else to be the person's nominee. If a nominee is appointed, then the nominee can act on behalf of the person for the purposes of the scheme.

There are 2 types of nominees:

(a) assistance nominees; and

(b) legal nominees.

While both types of nominees may act on behalf of the person for the purposes of the scheme (for example, communicate with the Operator), there are some matters for which only the legal nominee (and not the assistance nominee) may act on behalf of the person. Those matters are set out in sections 84 and 85. Importantly, the assistance nominee may not make the application for redress, or accept or decline an offer of redress, on behalf of the person (but the legal nominee may do that on behalf of the person).

This Part deals with the appointment of nominees, their functions, duties and responsibilities, and other consequences of being a nominee for the purposes of the scheme.

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Division 2—Appointment of nominees

81 Appointment of nominees

(1) If a person (the ***applicant***) makes an application for redress under the scheme, or proposes to make such an application, the Operator may, in writing, appoint another person to be:
  (a) the assistance nominee of the applicant; or
  (b) the legal nominee of the applicant.

Note: The assistance nominee and legal nominee may be a body corporate.

(2) The Operator must not appoint a person to be the assistance nominee of the applicant unless both the person and the applicant give written consent to the appointment.

(3) The Operator must not appoint a person to be the legal nominee of the applicant unless:
  (a) under a law of the Commonwealth, a State or a Territory the person has power to make decisions for the applicant in all matters that are relevant to the duties of a legal nominee; and
  (b) the person gives written consent to the appointment; and
  (c) the Operator has taken into account any wishes of the applicant regarding the making of such an appointment.

Note: A person who may be eligible to be the legal nominee of the applicant is a person who, under a guardianship order or power of attorney, has power to make decisions for the applicant in all relevant matters.

(4) The Operator must give a copy of an appointment under this section to:
  (a) the nominee; and
  (b) the applicant.

82 Suspension and revocation of nominee appointments

(1) If:

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(a) an assistance nominee or a legal nominee appointed under section 81 requests the Operator, in writing, to revoke the appointment; or
(b) the applicant requests the Operator, in writing, to revoke the appointment of the applicant's assistance nominee;

then the Operator must revoke the appointment as soon as practicable.

(2) If:
(a) the Operator gives a nominee a notice under section 87; and
(b) the nominee informs the Operator that:
(i) an event or change of circumstances has happened or is likely to happen; and
(ii) the event or change of circumstances is likely to have an effect referred to in paragraph 87(1)(b);

then the Operator may suspend or revoke the nominee's appointment.

(3) If:
(a) the Operator gives a nominee a notice under section 87; and
(b) the nominee does not comply with a requirement of the notice;

then the Operator may suspend or revoke the nominee's appointment.

(4) While an appointment is suspended, the appointment has no effect for the purposes of this Act.

(5) The Operator may, at any time, revoke the suspension of an appointment under subsection (2) or (3).

(6) The suspension or revocation of an appointment, and the revocation of such a suspension, must be in writing.

(7) The revocation of an appointment has effect on and from such day, being later than the day of the revocation, as is specified in the revocation.

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(8) The Operator must give the nominee and the applicant a copy of:
  (a) a suspension of the nominee's appointment; or
  (b) a revocation of the nominee's appointment; or
  (c) a revocation of a suspension of the nominee's appointment.

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Division 3—Duties, functions and responsibilities of nominees

83 Duty of nominee

(1) It is the duty of an assistance nominee or a legal nominee of a person to act in the best interests of the person at all times.

(2) A nominee does not commit a breach of the duty imposed by subsection (1) by doing an act if, when the act is done, the nominee reasonably believes that it is in the best interests of the person that the act be done.

(3) A nominee does not commit a breach of the duty imposed by subsection (1) by refraining from doing an act if, at the relevant time, the nominee reasonably believes that it is in the best interests of the person that the act not be done.

84 Actions of assistance nominee

(1) If a person has an assistance nominee, then any act that may be done by the person under, or for the purposes of, this Act may be done by that assistance nominee.

(2) However, subsection (1) does not authorise a person's assistance nominee to do any of the following on behalf of the person:
  (a) make an application for redress under section 19;
  (b) accept an offer of redress under section 42;
  (c) decline an offer of redress under section 45;
  (d) do an act for the purposes of Division 2;
  (e) do an act prescribed by the rules.

(3) If under a provision of this Act the Operator gives a notice to a person who has an assistance nominee, subsection (1) does not extend to an act that is required by the notice to be done by the person.

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(4) Any act done by a person's assistance nominee under this section has effect, for the purposes of this Act (other than this Part), as if it had been done by the person.

85 Actions of legal nominee

(1) If a person has a legal nominee, then any act that may be done by the person under, or for the purposes of, this Act may be done by that legal nominee.

(2) Without limiting subsection (1):
  (a) an application that may be made by the person under this Act may be made by that legal nominee on behalf of the person; and
  (b) an application so made is taken to be made by the person; and
  (c) an offer of redress that may be accepted under section 42 or declined under section 45 by the person may be accepted or declined in accordance with the relevant provision by that legal nominee on behalf of the person; and
  (d) an offer so accepted or declined is taken to have been done so by the person.

(3) Any act done by a person's legal nominee under this section has effect, for the purposes of this Act (other than this Part), as if it had been done by the person.

86 Giving notices to assistance nominee or legal nominee

(1) If a person has an assistance nominee or a legal nominee, then any notice that the Operator is required or authorised by this Act to give to the person may be given by the Operator to that nominee.

(2) A notice given under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the person.

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87 Nominee to inform the Operator of matters affecting ability to act as nominee

(1) The Operator may give a nominee of a person a notice that requires the nominee to inform the Operator if:
  (a) either:
    (i) an event or change of circumstances happens; or
    (ii) the nominee becomes aware that an event or change of circumstances is likely to happen; and
  (b) the event or change of circumstances is likely to affect:
    (i) the ability of the nominee to act as the assistance nominee or legal nominee of the person; or
    (ii) the ability of the Operator to give notices to the nominee under this Act; or
    (iii) the ability of the nominee to comply with notices given to the nominee by the Operator under this Act.

(2) A notice under subsection (1):
  (a) must be in writing; and
  (b) must specify how, and the period within which, the nominee is to inform the Operator.

(3) A notice under subsection (1) is not ineffective just because it does not comply with paragraph (2)(b).

(4) The period specified under paragraph (2)(b) must not end earlier than 14 days after:
  (a) the day on which the event or change of circumstances happens; or
  (b) the day on which the nominee becomes aware that the event or change of circumstances is likely to happen.

(5) Subsection (4) does not apply to a requirement in a notice for a nominee to inform the Operator of any proposal by the nominee to leave Australia.

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Division 4—Other matters relating to nominees

88 Protection of person against liability for actions of nominee

A person is not to be taken, because of the operation of this Part, to have committed an offence against this Act in relation to any act or omission of the person's nominee.

89 Protection of nominee against criminal liability

A nominee of a person is not subject to any criminal liability under this Act in relation to:

(a) any act or omission of the person; or

(b) anything done, in good faith, by the nominee in his or her capacity as nominee.

90 Informing nominee if notice given to person

If, under a provision of this Act (other than a provision of this Part), the Operator gives a notice to a person who has a nominee, the Operator may inform the nominee of the giving of the notice and of the terms of the notice.

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Part 4-3—Protecting information under the scheme

Division 1—Simplified outline of this Part

91 Simplified outline of this Part

Certain information about a person or an institution is protected information and can only be obtained, recorded, disclosed or used if this Act authorises that to happen. Broadly, protected information is information about a person or an institution that was obtained by an officer of the scheme for the purposes of the scheme and is held in the records of the Department or the Human Services Department. An example of protected information about a person is information that the person gives in his or her application for redress. An example of protected information about an institution is information that the institution provides in compliance with a request for information made by the Operator under section 25.

This Part sets out when a person is authorised to obtain, record, disclose or use protected information. It also has offences for when a person obtains, records, discloses or uses protected information without authorisation under this Act.

This Part also protects information contained in the assessment framework policy guidelines and sets out when a person is authorised to obtain, record, disclose or use that information.

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Division 2—Use and disclosure of protected information

92 Protected information

(1) This Division deals with how protected information may be obtained, recorded, disclosed or used under this Act.

(2) ***Protected information*** is:

(a) information about a person or an institution that:

(i) was provided to, or obtained by, an officer of the scheme for the purposes of the scheme; and

(ii) is or was held in the records of the Department; or

(aa) information about a person or an institution that:

(i) was provided to, or obtained by, an officer of the scheme for the purposes of the scheme; and

(ii) is or was held in the records of the Human Services Department (within the meaning of this Act as in force at any time); or

(b) information to the effect that there is no information about a person or an institution held in the records of a Department referred to in subparagraph (a)(ii) or (aa)(ii).

93 Main authorisation—obtaining, recording, disclosing or using protected information

(1) A person may:

(a) obtain protected information; or

(b) make a record of protected information; or

(c) disclose protected information to another person; or

(d) use protected information;

if:

(e) the obtaining, recording, disclosure or use of the information by the person is done:

(i) for the purposes of the scheme; or

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(ii) with the express or implied consent of the person or institution to which the information relates; or

(f) the person believes on reasonable grounds that the obtaining, recording, disclosure or use of the information by the person is necessary to prevent or lessen a serious threat to an individual's life, health or safety.

(2) A person may use protected information to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular person or institution.

94 Additional authorisation—Operator disclosing to nominee

The Operator may disclose protected information provided by a person who has applied for redress to the nominee of the person.

95 Additional authorisation—Operator disclosing in public interest or for another specified purpose

(1) The Operator may disclose protected information that was provided to, or obtained by, an officer of the scheme for the purposes of the scheme if:

(a) the Operator certifies that the disclosure is necessary in the public interest in a particular case or class of cases and the disclosure is to such persons and for such purposes as the Operator determines; or

(b) the disclosure:

(i) is to a person who is expressly or impliedly authorised by the person or institution to which the information relates to obtain it; or

(ii) is to the Chief Executive Centrelink for the purposes of a centrelink program (within the meaning of the *Human Services (Centrelink) Act 1997*); or

(iii) is to the Chief Executive Medicare for the purposes of a medicare program (within the meaning of the *Human Services (Medicare) Act 1973*); or

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(iv) is to the head (however described) of a government institution, for the purposes of that institution.

(1A) The Operator may disclose protected information to a person for the purpose of encouraging an institution that is not a participating institution to agree to participate in the scheme if, the protected information:

(a) is about that institution; and

(b) was provided to, or obtained by, an officer of the scheme for the purposes of the scheme.

(2) A person to whom protected information is disclosed under subsection (1) or (1A) may:

(a) obtain the information; or

(b) make a record of the information; or

(c) disclose the information to another person; or

(d) use the information;

if the person does so for the purpose for which the information was disclosed to the person under subsection (1) or (1A).

(3) In certifying for the purposes of paragraph (1)(a) or disclosing information for the purposes of subparagraph (1)(b)(iv), the Operator must act in accordance with any rules made for the purposes of subsection (4).

(4) The rules may make provision for and in relation to the exercise of either or both of the following:

(a) the Operator's power to certify for the purposes of paragraph (1)(a);

(b) the Operator's power under subparagraph (1)(b)(iv) to disclose information to the head of a government institution.

(5) If a certificate or determination under paragraph (1)(a) is given or made in writing, the certificate or determination is not a legislative instrument.

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95A Additional authorisation—Operator publicly disclosing that institution is not participating in the scheme

(1) The Operator may publicly disclose that a non-government institution is not a participating institution if:

(a) either or both of the following apply:

(i) a person has applied for redress under the scheme and the application identifies the institution as being involved in the abuse of the person;

(ii) the Operator has reasonable grounds to believe that the institution may be connected with abuse of a person that is within the scope of the scheme; and

(b) the institution is not a participating institution or a partly-participating institution.

(2) If the Operator does so, the Operator may also publicly disclose any of the following that are applicable:

(a) that an application for redress under the scheme identifies the institution as being involved in abuse;

(b) that the Operator has reasonable grounds to believe that the institution may be connected with abuse;

(c) that the Operator has contacted the institution about participating in the scheme and the institution has not responded to the Operator despite having had a reasonable time to do so;

(d) that the institution has informed the Operator that the institution intends to agree to participate in the scheme;

(e) that the institution has informed the Operator that the institution does not intend to agree to participate in the scheme;

(f) that the institution has informed the Operator that the institution intends to agree to being listed under section 164B (partly-participating institutions);

(g) that the institution has informed the Operator that the institution does not intend to agree to being listed under section 164B (partly-participating institutions);

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(h) that there are not reasonable grounds for expecting that, if the institution were declared to be a participating institution under section 115, its liabilities under this Act would be discharged;

(i) any other matter prescribed by the rules.

(3) To avoid doubt, the Operator may disclose information under this section even if the information is protected information.

(4) In making a disclosure under this section, the Operator must not disclose the identity of a person who:

(a) has applied for redress under the scheme; or

(b) the Operator has reasonable grounds to believe may have been abused.

96 Additional authorisation—Operator disclosing for law enforcement or child safety or wellbeing

When this section applies

(1) This section applies if the Operator is satisfied that disclosure of protected information is reasonably necessary for either of the following purposes (a ***relevant purpose***):

(a) the enforcement of the criminal law;

(b) the safety or wellbeing of children.

Disclosure by Operator

(2) The Operator may disclose the information to a government institution that has functions that relate to the relevant purpose.

(3) However, before disclosing protected information that relates to a person who has applied for redress, the Operator must have regard to the impact the disclosure might have on the person.

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Disclosure, use etc. by government official

(4) If information is disclosed to a government institution under subsection (2), then an employee or officer of the institution (the ***government official***) may:
  (a) obtain the information; or
  (b) make a record of the information; or
  (c) disclose the information to a person; or
  (d) use the information;

but only if the government official does so for a relevant purpose in the official's capacity as an employee or officer of the government institution.

Conditions

(5) The Operator may, in writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2).

(6) A person commits an offence if:
  (a) the person is subject to a condition under subsection (5); and
  (b) the person engages in conduct (within the meaning of the *Criminal Code*); and
  (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(7) An instrument under subsection (5) is not a legislative instrument.

97 Additional authorisation—disclosing etc. for a permitted purpose

Disclosure, use etc. by a government official

(1) If protected information is disclosed to a government institution, then an employee or officer of the institution (the ***government official***) may:
  (a) obtain the information; or
  (b) make a record of the information; or

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(c) disclose the information to a person; or
(d) use the information;

if:

(e) the government official does so for any of the following purposes (a ***permitted purpose***):
  (i) the enforcement of the criminal law;
  (ii) the safety or wellbeing of children;
  (iii) investigatory, disciplinary or employment processes related to the safety or wellbeing of children;
  (iv) a purpose prescribed by the rules; and
(f) the government official does so in the official's capacity as an employee or officer of the government institution; and
(g) a law of the Commonwealth (other than this Part), or of a State or a Territory, does not prohibit the government official from doing so.

Disclosure by a person to a government institution

(2) If:
  (a) a person is satisfied that disclosure of protected information is reasonably necessary for a permitted purpose; and
  (b) a law of the Commonwealth, a State or a Territory requires or permits the person to disclose the information to a government institution that has functions that relate to the permitted purpose;

then the person may disclose the information to the government institution for that purpose.

(3) Subsection (2) does not apply if the person is:
  (a) an officer of the scheme; or
  (b) an employee or officer of a government institution.

Officers of government institutions

(4) The rules may prescribe that specified persons are officers of a government institution for the purposes of subsection (1) or paragraph (3)(b).

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98 Additional authorisation—person engaged by institution disclosing etc. for a specified purpose

(1) A person engaged (whether as an employee or otherwise) by a participating institution or partly-participating institution may:
  (a) obtain protected information; or
  (b) make a record of protected information; or
  (c) disclose protected information to another person; or
  (d) use protected information;

  if the person believes, on reasonable grounds, that the obtaining, recording, disclosure or use that is proposed to be made of the information by the person is reasonably necessary for one or more of the purposes specified in subsection (2).

(2) The purposes for which the person may obtain, record, disclose or use protected information are as follows:
  (a) the purpose of the institution complying with a request under section 25 to provide information;
  (b) the purpose of the institution providing a direct personal response to a person under section 54;
  (c) in the case of a participating institution—the purpose of the participating institution facilitating a claim under an insurance policy;
  (d) in any case—the purpose of the institution undertaking internal investigation and disciplinary procedures.

(3) However, before the person discloses information that relates to another person who has applied for redress, the person must have regard to the impact the disclosure might have on the other person.

99 Offence—unauthorised access, recording, disclosure or use of protected information

(1) A person commits an offence if:
  (a) the person:
    (i) obtains information; or
    (ii) makes a record of information; or

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(iii) discloses information to another person; or
(iv) uses information; and

(b) the person is not authorised or required by or under this Act:
(i) to obtain the information; or
(ii) to make the record of the information; or
(iii) to disclose the information; or
(iv) to use the information; and

(c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) Subsection (1) does not apply if:
(a) the person did not obtain the information under, for the purposes of, or in connection with, the scheme; or
(b) the person had already obtained the information before the person obtained the information under, for the purposes of, or in connection with, the scheme.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

100 Offence—soliciting disclosure of protected information

(1) A person commits an offence if:
(a) the person solicits the disclosure of information from an officer of the scheme or another person; and
(b) the disclosure would be in contravention of this Division; and
(c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) A person may commit an offence under subsection (1) whether or not any protected information is actually disclosed.

101 Offence—offering to disclose protected information

(1) A person commits an offence if:

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(a) the person offers to disclose (whether to a particular person or otherwise) information about another person or an institution; and
(b) the disclosure would be in contravention of this Division; and
(c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) A person commits an offence if:
(a) the person holds himself or herself out as being able to disclose (whether to a particular person or otherwise) information about another person or an institution; and
(b) the disclosure would be in contravention of this Division; and
(c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Division 3—Use and disclosure of the assessment framework policy guidelines

102 Main authorisation for obtaining, recording, disclosing or using the assessment framework policy guidelines

An officer of the scheme may obtain, make a record of, disclose to another officer of the scheme or use information that is contained in the assessment framework policy guidelines if the officer does so for the purposes of the scheme.

103 Additional authorisation—disclosure and use in accordance with the National Redress Scheme Agreement

(1) The Minister or the Operator may disclose information contained in the assessment framework policy guidelines to a person in accordance with the requirements set out in the National Redress Scheme Agreement.

(2) A person to whom information is disclosed under subsection (1) may obtain, make a record of, disclose to another person or use that information in accordance with the requirements set out in the National Redress Scheme Agreement.

104 Offence—unauthorised recording, disclosure or use of assessment framework policy guidelines

A person commits an offence if:

(a) the person:
  (i) obtains information; or
  (ii) makes a record of information; or
  (iii) discloses information to another person; or
  (iv) uses information; and

(b) the person is not authorised or required by or under this Act:
  (i) to obtain the information; or
  (ii) to make the record of the information; or

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(iii) to disclose the information; or

(iv) to use the information; and

(c) the information is contained in the assessment framework policy guidelines.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Division 4—Other matters

105 Disclosures to a court or tribunal

(1) A person must not be required to disclose to a court or tribunal in any civil proceedings:
  (a) protected information; or
  (b) information that is contained in the assessment framework policy guidelines.

(2) Subsection (1) does not apply if the disclosure of the information is for the purposes of giving effect to this Act.

(3) For the purposes of subsection (2) (and without limiting that subsection), if the disclosure of the information is in civil proceedings for judicial review of a decision made under this Act, then the disclosure is for the purposes of giving effect to this Act.

(4) Subsection (1) does not apply if the disclosure of the information is in civil proceedings under, or arising out of, section 28 (which is about giving false or misleading information, documents or statements to an officer of the scheme).

(5) Subsection (1) does not apply if:
  (a) the person did not obtain the information under, for the purposes of, or in connection with, the scheme; or
  (b) the person had already obtained the information before the person obtained the information under, for the purposes of, or in connection with, the scheme.

(6) Protected information and information that is contained in the assessment framework policy guidelines are not to be published by any person, court or tribunal.

106 Disclosing information in good faith

(1) This section applies if a person, acting in good faith, discloses information for the purposes of the scheme.

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(2) The person is not liable to any civil or criminal proceedings, or any disciplinary action, for disclosing the information.

(3) In disclosing the information, the person cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

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Chapter 5—Participating institutions, participating groups and participating jurisdictions

Part 5-1—Participating institutions

Division 1—Simplified outline of this Part

107 Simplified outline of this Part

For a person to be eligible for redress, at least one participating institution, or at least one institution listed for a participating jurisdiction under section 164A, 164B or 164C, must be responsible for the abuse of the person.

There are 4 types of institutions that are participating institutions. These are:

(a) Commonwealth institutions (such as Commonwealth Departments and bodies established under Commonwealth law); and

(b) State institutions (such as State Departments and certain bodies established under State law); and

(c) Territory institutions (such as Territory Departments and certain bodies established under Territory law); and

(d) non-government institutions (such as churches or sporting clubs).

While all Commonwealth institutions are participating institutions, State institutions, Territory institutions and non-government institutions are only participating institutions if they agree to participate in the scheme and the Minister makes a declaration under section 115 that they are participating institutions.

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A defunct institution (which is a government or non-government institution that no longer exists) can become a participating institution. However, it must have a representative in order to do so. The representative acts on the institution's behalf and assumes its obligations and liabilities under the scheme (such as the obligation to provide a direct personal response to a person and the liability to pay funding contribution).

A lone institution (which is a non-government institution that is not defunct and is not a member of a participating group) can also become a participating institution.

A lone institution that is not a legal person (called an unincorporated lone institution) must also have a representative to become a participating institution. Its representative may act on its behalf and will assume its liability to pay funding contribution, but will not assume any of its obligations under the scheme.

A lone institution that is a legal person (called an incorporated lone institution) may have a representative, but is not required to have one to become a participating institution. Its representative may act on its behalf, but will not assume any of its obligations or liabilities under the scheme.

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Division 2—Institutions participating in the scheme

Subdivision A—Participating institutions

108 What is a participating institution?

An institution is a ***participating institution*** under the scheme if it is:

(a) a Commonwealth institution; or
(b) a participating State institution; or
(c) a participating Territory institution; or
(d) a participating non-government institution.

Note: A partly-participating institution is not a participating institution (see paragraph 164B(1)(b)).

Subdivision B—Commonwealth institutions

109 What is a Commonwealth institution?

(1) An institution is a ***Commonwealth institution*** if:
  (a) it is or was part of the Commonwealth; or
  (b) it is or was a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
  (c) it is or was a wholly-owned Commonwealth company; or
  (d) it is or was a body (whether or not incorporated) established by or under a law of the Commonwealth; or
  (e) the rules prescribe that it is a Commonwealth institution.

(2) However, an institution is not a ***Commonwealth institution*** if:
  (a) it is a body politic that is a participating Territory, or is or was part of a body politic that is a participating Territory; or
  (b) it is or was a body corporate (other than a wholly-owned Commonwealth company) that is or was registered under the *Corporations Act 2001* (including a body corporate taken to

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be registered under that Act because of the operation of Chapter 10 of that Act (which is about transitional provisions)); or

(c) the rules prescribe that it is not a Commonwealth institution.

(3) Rules made for the purposes of paragraph (1)(e) or (2)(c) may prescribe that an institution is, or is not, a Commonwealth institution in relation to a period specified by the rules.

Subdivision C—Participating State institutions

110 What is a participating State institution?

An institution is a ***participating State institution*** if:

(a) it is a State institution; and

(b) a declaration is in force under subsection 115(2) that the institution is a participating institution.

111 What is a State institution?

(1) An institution is a ***State institution*** if:

(a) it is or was part of a State; or

(b) it is or was a body (whether or not incorporated) established for a public purpose by or under a law of a State; or

(c) the rules prescribe that it is a State institution.

(2) However, an institution is not a ***State institution*** if the rules prescribe that it is not a State institution.

(3) Rules made for the purposes of paragraph (1)(c) or subsection (2) may prescribe that an institution is, or is not, a State institution in relation to a period specified by the rules.

Subdivision D—Participating Territory institutions

112 What is a participating Territory institution?

An institution is a ***participating Territory institution*** if:

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(a) the institution is a Territory institution; and
(b) a declaration is in force under subsection 115(2) that the institution is a participating institution.

113 What is a Territory institution?

(1) An institution is a ***Territory institution*** if:
(a) it is or was part of a participating Territory; or
(b) it is or was a body (whether or not incorporated) established for a public purpose by or under a law of a participating Territory; or
(c) the rules prescribe that it is a Territory institution.

(2) However, an institution is not a ***Territory institution*** if the rules prescribe that it is not a Territory institution.

(3) Rules made for the purposes of paragraph (1)(c) or subsection (2) may prescribe that an institution is, or is not, a Territory institution in relation to a period specified by the rules.

Subdivision E—Participating non-government institutions

114 What is a participating non-government institution?

(1) An institution is a ***participating non-government institution*** if:
(a) the institution is or was a non-government institution; and
(b) a declaration is in force under subsection 115(2) that the institution is a participating institution.

(2) An institution is a ***non-government institution*** if it is not a Commonwealth institution, a State institution or a Territory institution.

(3) However, an institution is not a ***non-government institution*** if the rules prescribe that the institution is not a non-government institution.

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(4) Rules made for the purposes of subsection (3) may prescribe that an institution is not a non-government institution in relation to a period specified by the rules.

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Division 3—Ministerial declarations about participating institutions

115 Institutions becoming participating institutions

(1) An institution becomes a participating institution if the Minister makes a declaration under subsection (2) in relation to the institution.

(2) The Minister may, by notifiable instrument, declare that an institution is a participating institution.

Note 1: An institution may be identified by name, by inclusion in a particular class, or in any other way.

Note 2: The Minister need not make a declaration under this subsection for a Commonwealth institution because all Commonwealth institutions are participating institutions automatically (see section 108).

(3) The Minister must not make a declaration under subsection (2) unless the Minister is satisfied that:

(a) for a State institution—the participating State has agreed, in a way provided for in the State's referral Act or adoption Act, to the institution participating in the scheme; and

(b) for a Territory institution—the participating Territory has agreed to the institution participating in the scheme; and

(c) for a non-government institution (other than a defunct institution or an unincorporated lone institution)—the institution has agreed to participate in the scheme; and

(d) for a non-government institution that is a defunct institution—a person has agreed:

(i) to the defunct institution participating in the scheme; and

(ii) to be the representative for the defunct institution; and

(e) for a non-government institution that is an unincorporated lone institution:

(i) the institution has agreed to participate in the scheme; and

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(ii) the institution has agreed to a person being the representative for the institution; and

(iii) the person has agreed to being the representative for the institution; and

(f) in all cases—any requirements prescribed by the rules are satisfied.

Note 1: For how the agreement of a participating Territory, an institution or a person is given, see section 186.

Note 2: For representatives for defunct institutions and lone institutions, see Divisions 4 and 5.

(4) The Minister must not make a declaration under subsection (2) in relation to an institution after:

(a) the second anniversary of the scheme start day; or

(b) a later day prescribed by the rules;

unless the institution is a defunct institution.

(5) If:

(a) a State or Territory has agreed to a State institution or Territory institution participating in the scheme; and

(b) the institution is a body corporate;

then the institution is taken to have also agreed to participate in the scheme.

116 Institutions ceasing to be participating institutions

Revoking the declaration

(1) An institution ceases to be a participating institution if the declaration made under subsection 115(2) in relation to the institution is revoked under subsection (2), (3), (4) or (5) of this section.

(2) The Minister may, by notifiable instrument, revoke a declaration made under subsection 115(2) in relation to an institution.

Note: If the declaration is revoked, the institution will cease to be a participating institution. However, it will still be a participating

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institution in relation to a person who made an application for redress before the declaration is revoked (see subsection (7)).

Minister must revoke on request

(3) If:

(a) a participating State requests the Minister in writing to revoke a declaration made under subsection 115(2) in relation to a State institution; or

(b) a participating Territory requests the Minister in writing to revoke a declaration made under subsection 115(2) in relation to a Territory institution; or

(c) a participating non-government institution (other than a defunct institution) requests the Minister in writing to revoke a declaration made under subsection 115(2) in relation to the institution;

then the Minister must, by notifiable instrument, revoke the declaration as soon as practicable.

Minister must revoke if no representative

(4) If a defunct participating non-government institution ceases to have a representative, then the Minister must revoke the declaration made under subsection 115(2) in relation to the institution as soon as practicable.

(5) If a participating unincorporated lone institution ceases to have a representative, then the Minister must revoke the declaration made under subsection 115(2) in relation to the institution as soon as practicable.

No revocation unless requirements in rules satisfied

(6) Despite subsections (2), (3), (4) and (5), the Minister must not revoke a declaration made under subsection 115(2) in relation to an institution unless any requirements prescribed by the rules in relation to the revocation are satisfied.

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Institution continues to be participating institution for limited time

(7) If the Minister revokes a declaration made under subsection 115(2) in relation to an institution, then, despite the revocation, the institution continues to be a ***participating institution*** in relation to a person who made an application for redress before the revocation, as if the declaration were still in force.

Example: If the Operator determines that the institution is responsible for the abuse of the person, the institution will still be required to provide a direct personal response to the person (if the person chooses that component of redress) and pay funding contribution in relation to the person.

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Division 4—Participating defunct institutions

Subdivision A—Participating defunct institutions

117 What is a participating defunct institution?

A ***participating defunct institution*** is a participating institution that is defunct.

Note: The institution may be a government institution or a non-government institution.

Subdivision B—Representatives for participating defunct institutions

118 Representatives for participating defunct institutions

(1) A participating defunct institution must have a representative for the institution.

Note: This Act applies to the representative for a participating defunct institution as if it were the defunct institution (see sections 121, 122 and 123).

(2) The ***representative*** for a defunct Commonwealth institution is the Commonwealth.

(3) The ***representative*** for a defunct participating State institution is the participating State.

(4) The ***representative*** for a defunct participating Territory institution is the participating Territory.

(5) The ***representative*** for a defunct participating non-government institution is the person in relation to whom a declaration is force under section 119.

(6) A participating defunct institution may have only one representative for the institution.

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(7) However, a person may be the representative for more than one participating defunct institution.

119 Becoming the representative for a defunct non-government institution

If a defunct non-government institution is declared to be a participating institution under subsection 115(2), then the Minister must, by notifiable instrument, make a declaration that the person who agreed to be the representative for the institution (as referred to in paragraph 115(3)(d)) is the representative for the institution.

120 Ceasing to be the representative for a defunct non-government institution

(1) The Minister may, by notifiable instrument, vary or revoke a declaration made under section 119 in relation to a representative for a defunct non-government institution.

(2) If:

(a) the representative for a defunct institution requests the Minister in writing to revoke the declaration made under section 119 in relation to the representative; and

(b) any requirements prescribed by the rules in relation to the person ceasing to be the representative are satisfied;

then the Minister must, by notifiable instrument, revoke the declaration made under section 119 as soon as practicable.

Note: If a participating defunct non-government institution does not have a representative, then the Minister must revoke the declaration made under subsection 115(2) that the defunct institution is a participating institution (see subsection 116(4)).

(3) Despite subsections (1) and (2), the Minister must not vary or revoke a declaration made under section 119 in relation to an institution unless any requirements prescribed by the rules in relation to the variation or revocation are satisfied.

(4) If:

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(a) the Minister revokes a declaration made under subsection 115(2) in relation to a defunct institution; but

(b) because of subsection 116(7), the institution continues to be a participating institution in relation to a person who made an application for redress before the revocation;

then the representative for the institution continues to be the ***representative*** for the institution in relation to the person (even if the declaration made under section 119 for the representative has been revoked under this section).

121 Actions of the representative for a defunct institution

(1) Any act that may be done by a participating defunct institution under, or for the purposes of, this Act must be done by the representative for the institution on behalf of the institution.

(2) Any act that is done by the representative for a participating defunct institution on behalf of the institution has effect, for the purposes of this Act, as if it had been done by the institution.

122 Giving notices to the representative for a defunct institution

Any notice that the Operator is required or authorised by this Act to give to a participating defunct institution must be given by the Operator to the representative for the institution.

123 Obligations and liabilities of the representative for a defunct institution

Any obligation or liability imposed by this Act on a participating defunct institution is taken to be imposed instead on the representative for the institution.

Note 1: An example of an obligation that may be imposed on the defunct institution is the obligation under section 54 to provide a direct personal response to a person. That obligation will be imposed instead on the representative.

Note 2: An example of a liability that may be imposed on the defunct institution is the liability under section 149 to pay funding

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contribution. That liability will be imposed instead on the representative.

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Division 5—Participating lone institutions

Subdivision A—Participating lone institutions

124 What is a participating lone institution?

(1) A ***participating lone institution*** is a participating institution that is a lone institution.

(2) An institution is a ***lone institution*** if it:
  (a) is a non-government institution; and
  (b) is not a member of a participating group; and
  (c) is not defunct.

(3) There are 2 types of lone institutions:
  (a) a lone institution that is not a legal person (which is an ***unincorporated lone institution***); and
  (b) a lone institution that is a legal person (which is an ***incorporated lone institution***).

(4) A ***participating unincorporated lone institution*** is a participating institution that is an unincorporated lone institution.

(5) A ***participating incorporated lone institution*** is a participating institution that is an incorporated lone institution.

Subdivision B—Representatives for participating lone institutions

125 Representatives for participating lone institutions

(1) A participating incorporated lone institution may have a representative for the institution. However, a participating unincorporated lone institution must have a representative for the institution.

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(2) The ***representative*** for a participating unincorporated lone institution is the person in relation to whom a declaration is in force under section 126.

(3) The ***representative*** for a participating incorporated lone institution is the person in relation to whom a declaration is in force under subsection 127(1).

(4) A participating lone institution may have only one representative for the institution.

(5) However, a person may be the representative for more than one participating lone institution.

126 Becoming the representative for an unincorporated lone institution

If an unincorporated lone institution is declared to be a participating institution under subsection 115(2), then the Minister must, by notifiable instrument, make a declaration that the person who agreed to be the representative for the institution (as referred to in paragraph 115(3)(e)) is the representative for the institution.

127 Becoming the representative for an incorporated lone institution

(1) The Minister may, by notifiable instrument, make a declaration that a person is the representative for a participating incorporated lone institution.

(2) The Minister must not make a declaration under subsection (1) unless the Minister is satisfied that:
   (a) the institution has agreed to the person being the representative for the institution; and
   (b) the person has agreed to being the representative for the institution.

Note: For how the agreement of the institution or person is given, see section 186.

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128 Ceasing to be the representative for a lone institution

(1) The Minister may, by notifiable instrument, vary or revoke a declaration made under section 126 or 127 in relation to a representative for a lone institution.

(2) If:
  (a) the institution or the representative requests the Minister in writing to revoke a declaration made under section 126 or 127; and
  (b) any requirements prescribed by the rules in relation to the person ceasing to be the representative are satisfied;

then the Minister must, by notifiable instrument, revoke the declaration made under section 126 or 127 as soon as practicable.

Note: If a participating unincorporated lone institution does not have a representative, then the Minister must revoke the declaration made under subsection 115(2) that the lone institution is a participating institution (see subsection 116(5)).

(3) Despite subsections (1) and (2), the Minister must not revoke a declaration made under section 126 or 127 in relation to an institution unless any requirements prescribed by the rules in relation to the variation or revocation are satisfied.

(4) If:
  (a) the Minister revokes a declaration made under subsection 115(2) in relation to an unincorporated lone institution; but
  (b) because of subsection 116(7), the institution continues to be a participating institution in relation to a person who made an application for redress before the revocation;

then the representative for the institution continues to be the ***representative*** for the institution in relation to the person (even if the declaration made under section 126 for the representative has been revoked under this section).

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129 Actions of the representative for a lone institution

(1) Any act that may be done by a participating lone institution under, or for the purposes of, this Act may be done by the representative for the institution on behalf of the institution.

(2) Any act that is done by the representative for a participating lone institution on behalf of the institution has effect, for the purposes of this Act, as if it had been done by the institution.

130 Giving notices to the representative for a lone institution

(1) Any notice that the Operator is required or authorised by this Act to give to a participating lone institution must be given by the Operator to the representative for the institution.

(2) A notice given under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the institution.

131 Joint and several liability of the representative for an unincorporated lone institution for funding contribution

If a participating unincorporated lone institution is liable to pay funding contribution for a quarter, then the institution and the representative for the institution are jointly and severally liable to pay the funding contribution for the quarter.

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Part 5-2—Groups of institutions participating in the scheme

Division 1—Simplified outline of this Part

132 Simplified outline of this Part

Two or more participating institutions may form a participating group for the purposes of the scheme. There are 2 main features of an institution being a member of a participating group.

The first is that the members of the group will be associates of each other. Some provisions of this Act apply in a special way for associates. For example, if a person accepts an offer of redress, then the person releases the participating institutions determined by the Operator to be responsible for the abuse (and their officials), as well as all of the associates of that institution (and their officials).

The second is that all participating groups must have a representative for the group. The representative may act on behalf of each member of the group (for example, communicate with the Operator). However, the representative will not assume any obligations or liabilities of the members, except for the liability of a member to pay funding contribution.

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Division 2—Participating groups

133 Participating groups

(1) Two or more participating institutions may form a participating group for the purposes of the scheme.

(2) A ***participating group*** is a group of participating institutions for which a declaration is force under subsection 134(1).

(3) A participating institution that is a member of a participating group is an ***associate*** of each other participating institution in the group.

Note: Particular provisions of this Act apply in a special way for associates (see sections 42 and 43, which are about releasing institutions and officials from civil liability for abuse).

134 Institutions becoming members of a participating group

(1) The Minister may, by notifiable instrument, declare that 2 or more participating institutions form a participating group.

(2) The Minister must not make a declaration under subsection (1) unless the Minister is satisfied that:

(a) for a group of Commonwealth institutions—the Commonwealth has agreed to each Commonwealth institution being a member of the group; and

(b) for a group of State institutions—the participating State has agreed, in a way provided for in the State's referral Act or adoption Act, to each State institution being a member of the group; and

(c) for a group of Territory institutions—the participating Territory has agreed to each Territory institution being a member of the group; and

(d) for a group of non-government institutions:

(i) each institution has agreed to be a member of the group and to each other institution being a member of the group; and

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(ii) there is a sufficient connection between each institution in the group; and

(e) in all cases:

(i) each institution is not a member of another participating group; and

(ii) there is a representative for the group (see subsection 136(1)); and

(iii) any other requirements prescribed by the rules are satisfied.

Note: For how the agreement of the Commonwealth, a participating Territory, an institution or a person is given, see section 186.

(3) If:

(a) a State or Territory has agreed to a State institution or Territory institution being a member of a participating group; and

(b) the institution is a body corporate;

then the institution is taken to have also agreed to be a member of the participating group.

135 Institutions ceasing to be members of a participating group

(1) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection 134(1).

(2) If:

(a) a State requests the Minister in writing to vary or revoke a declaration made under subsection 134(1) in relation to a group of State institutions so that:

(i) the group ceases to be a participating group; or

(ii) a State institution ceases to be a member of the group; or

(b) a participating Territory requests the Minister in writing to vary or revoke a declaration made under subsection 134(1) in relation to a group of Territory institutions so that:

(i) the group ceases to be a participating group; or

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(ii) a Territory institution ceases to be a member of the group; or

(c) all of the non-government institutions that are members of a participating group request the Minister in writing to revoke a declaration made under subsection 134(1) in relation to the group so that it ceases to be a participating group; or

(d) a participating non-government institution that is a member of a participating group requests the Minister in writing to vary a declaration made under subsection 134(1) in relation to the institution so that it ceases to be a member of the group;

then the Minister must, by notifiable instrument, vary or revoke the declaration as requested as soon as practicable.

(3) If a participating group of non-government institutions ceases to have a representative for the group, then the Minister must revoke the declaration made under subsection 134(1) as soon as practicable.

(4) Despite subsections (1), (2) and (3), the Minister must not vary or revoke a declaration made under subsection 134(1) in relation to a participating group unless any requirements prescribed by the rules relating to the variation or revocation are satisfied.

(5) If:

(a) the Minister revokes a declaration made under subsection 115(2) in relation to a participating institution that is a member of a participating group immediately before the revocation; but

(b) because of subsection 116(7), the institution continues to be a participating institution in relation to a person who made an application for redress before the revocation;

then each of the associates of the institution continues to be an ***associate*** of the institution in relation to the person, as if the institution were still a member of the group.

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Division 3—Representatives for participating groups

136 Representatives for participating groups

(1) A participating group must have a representative for the group.

(2) The ***representative*** for a participating group of Commonwealth institutions is the Commonwealth.

(3) The ***representative*** for a participating group of State institutions is the participating State.

(4) The ***representative*** for a participating group of Territory institutions is the participating Territory.

(5) The ***representative*** for a participating group of non-government institutions is the person in relation to whom a declaration is force under subsection 137(1).

(6) A participating group may have only one representative for the group.

(7) However, a person may be the representative for more than one participating group.

137 Becoming the representative for a participating group of non-government institutions

(1) The Minister may, by notifiable instrument, declare that a person is the representative for a participating group of non-government institutions.

(2) The Minister must not make a declaration under subsection (1) unless the Minister is satisfied that:
   (a) the person has agreed to be the representative for the group; and
   (b) each participating institution that is a member of the group has agreed to the person being the representative for the group; and

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(c) there is not a declaration in force under subsection (1) declaring another person to be the representative for the group; and

(d) any other requirements prescribed by the rules are satisfied.

Note: For how the agreement of an institution or a person is given, see section 186.

138 Ceasing to be the representative for a participating group of non-government institutions

(1) The Minister may, by notifiable instrument, revoke a declaration made under subsection 137(1) in relation to a representative for a participating group.

(2) The Minister must, by notifiable instrument, revoke a declaration made under subsection 137(1) if:

(a) the representative; or

(b) each of the members of the group (other than the representative, if the representative is a member);

requests the Minister in writing to revoke the declaration.

Note: If a participating group of non-government institutions does not have a representative, then the Minister must revoke the declaration made under subsection 134(1) that the group is a participating group (see subsection 135(3)).

(3) Despite subsections (1) and (2), the Minister must not revoke a declaration made under subsection 137(1) unless any requirements prescribed by the rules in relation to the revocation are satisfied.

(4) If:

(a) the Minister revokes a declaration made under subsection 115(2) in relation to a participating institution that is a member of a participating group immediately before the revocation; but

(b) because of subsection 116(7), the institution continues to be a participating institution in relation to a person who made an application for redress before the revocation;

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then the representative for the participating group continues to be the ***representative*** for the group in relation to the person, as if the institution were still a member of the group.

139 Actions of the representative for a participating group

(1) Any act that a participating institution that is a member of a participating group may do under, or for the purposes of, this Act (other than this Division) may be done by the representative for the group on behalf of that institution.

(2) Any act that is done by the representative for a participating group on behalf of a participating institution that is a member of the group has effect, for the purposes of this Act (other than this Division) as if it had been done by that institution.

140 Giving notices to the representative for a participating group

(1) Any notice that the Operator is required or authorised by this Act to give to a participating institution that is a member of a participating group must be given by the Operator to the representative for the group.

(2) A notice given under subsection (1) must, in every respect, be in the same form, and in the same terms, as if it were being given to the participating institution concerned.

141 Joint and several liability of the representative for funding contribution

If:

(a) a participating institution is liable to pay funding contribution for a quarter; and

(b) that institution is a member of a participating group;

then that institution and the representative for the group are jointly and severally liable to pay the funding contribution for the quarter.

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Part 5-3—Jurisdictions participating in the scheme

Division 1—Simplified outline of this Part

142 Simplified outline of this Part

Only participating jurisdictions are part of the scheme. While the Commonwealth and participating Territories are automatically participating jurisdictions, a State is only a participating jurisdiction (and therefore part of the scheme) if it makes a law that gives certain legislative powers to the Commonwealth Parliament for the purposes of paragraph 51(xxxvii) of the Constitution. This is known as a State reference. Section 144 deals with this.

Broadly, if a State is not a participating State, then abuse of a person that occurred inside that State will not be within the scope of the scheme. This means that the person will not be eligible for redress for that abuse.

The Minister may declare that a participating jurisdiction is a declared provider of counselling and psychological services under the scheme if the jurisdiction requests the Minister to do so. If that happens, then that jurisdiction will provide for the delivery of those services to those who are entitled to redress and live in that jurisdiction.

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Division 2—Participating jurisdictions

143 What is a participating jurisdiction?

Each of the following jurisdictions is a ***participating jurisdiction***:

(a) the Commonwealth;

(b) a participating State;

(c) a participating Territory.

144 What is a participating State?

Participating State

(1) A State is a ***participating State*** if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:

(a) has, by its referral Act, referred to the Commonwealth Parliament:

(i) the text reference (see subsection (2)); and

(ii) the amendment reference (see subsection (3));

before the enactment of this Act; or

(b) has, by its adoption Act:

(i) adopted the relevant version of this Act; and

(ii) referred to the Commonwealth Parliament the amendment reference;

after the enactment of this Act.

Text reference

(2) ***Text reference*** means the matters to which the initial referred provisions relate, to the extent of making laws with respect to those matters by including the initial referred provisions in the original version of this Act.

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Amendment reference

(3) ***Amendment reference*** means the referred national redress scheme matters (as defined in section 145), to the extent of making laws with respect to those matters by making express amendments of this Act.

Certain things do not affect participating State's status

(4) A State is a ***participating State*** even if the State's referral Act or adoption Act provides that:
  (a) the reference to the Commonwealth Parliament of the text reference or the amendment reference is to terminate in particular circumstances; or
  (b) the adoption of the relevant version of this Act is to terminate in particular circumstances; or
  (c) the reference to the Commonwealth Parliament of the text reference or the amendment reference has effect only:
    (i) if and to the extent that the matter is not included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference for the purposes of paragraph 51(xxxvii) of the Constitution); or
    (ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

Timeframe for becoming a participating State

(5) A State is not a ***participating State*** if it has not become a participating State before the second anniversary of the scheme start day or a later day prescribed by the rules.

When a State ceases to be a participating State

(6) A State ceases to be a ***participating State*** if:
  (a) in the case where the Parliament of the State has referred to the Commonwealth Parliament the text reference—that reference terminates; or

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(b) in the case where the Parliament of the State has adopted the relevant version of this Act—that adoption terminates.

(7) A State ceases to be a ***participating State*** if:
(a) the State's amendment reference terminates; and
(b) subsection (8) does not apply to the termination.

(8) A State does not cease to be a ***participating State*** because of the termination of its amendment reference if:
(a) the termination is effected by the Governor of that State fixing a day by Proclamation as the day on which the reference terminates; and
(b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the Proclamation is published; and
(c) that State's amendment reference, and the amendment reference of every other participating State, terminates on the same day.

Definitions

(9) In this Act:

adoption Act, of a State, means the Act of the State that adopts the relevant version of this Act and refers the amendment reference to the Commonwealth Parliament.

express amendment of this Act means the direct amendment of the text of this Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act.

initial referred provisions means the original version of this Act, to the extent to which it deals with matters that are included in the legislative powers of the Parliament of the State.

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original version of this Act means this Act as originally enacted.

referral Act, of a State, means the Act of the State that refers the text reference and the amendment reference to the Commonwealth Parliament.

relevant version of this Act, in relation to a State's adoption Act, means the original version of this Act and as subsequently amended by amendments enacted at any time before the enactment of the State's adoption Act.

145 The referred national redress scheme matters

(1) The ***referred national redress scheme matters*** are the matters relating to a redress scheme for institutional child sexual abuse.

(2) However, the following matters are not ***referred national redress scheme matters***:
   (a) the matter of making a law to the extent that that law would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism, whether or not the mechanism deals with the same or similar subject matters as those dealt with in any aspect of the scheme;
   (b) the matter of making a law to the extent that that law would substantively remove or override a provision of this Act that requires the agreement of the State.

(3) Paragraph (2)(a) does not cover any of the following matters (if they would otherwise be covered by subsection (1)):
   (a) any matter to which the initial referred provisions relate;
   (b) the matter of the release or discharge, in connection with the operation of the scheme, of relevant civil liability of institutions or officials;
   (c) the matter of the disclosure or use of evidence or other information provided or obtained in connection with the operation of the scheme;

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(d) the matter of the making, enforcement or protection (for example, protection against the operation of orders in the nature of garnishee orders) of payments in connection with the operation of the scheme.

(4) A ***State redress mechanism*** is:

(a) a scheme, program or arrangement (temporary or otherwise) established (before or after the commencement of the State's referral Act or adoption Act) by:

(i) the Parliament or government of the State; or

(ii) an institution (whether governmental or non-governmental) or other entity;

for or in respect of persons who have suffered institutional child sexual abuse in the State (whether applying only to any such persons or applying to any class of victims of crime) and any associated matters; or

(b) the jurisdiction of a court or tribunal to grant compensation or support for or in respect of victims of crime (including crime relating to institutional child sexual abuse) and any associated matters.

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Division 3—Participating jurisdictions providing counselling and psychological services under the scheme

146 Participating jurisdictions that are declared providers

(1) A participating jurisdiction may notify the Minister, in writing, that:

(a) arrangements are in place in the jurisdiction for the delivery of counselling and psychological services in accordance with the National Service Standards; and

(b) the jurisdiction requests to become a declared provider of counselling and psychological services under the scheme.

(2) A participating jurisdiction is a ***declared provider*** of counselling and psychological services under the scheme if a declaration to that effect is in force under subsection 147(1).

147 Ministerial declarations about declared providers

(1) If the Minister receives a notice under subsection 146(1) from a participating jurisdiction, then the Minister must, by notifiable instrument, declare that the jurisdiction is a declared provider of counselling and psychological services under the scheme.

(2) If the participating jurisdiction requests the Minister, in writing, to revoke a declaration made under subsection (1), then the Minister must, by notifiable instrument, revoke the declaration as soon as practicable.

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Chapter 6—Financial matters

Part 6-1—Liability for funding

Division 1—Simplified outline of this Part

148 Simplified outline of this Part

The Commonwealth is liable to bear the initial costs of paying redress payments and the counselling and psychological component of redress under the scheme, as well as the administration of the scheme. However, participating institutions are liable to pay funding contribution to reimburse the Commonwealth for their share of those costs.

Funding contribution is worked out on a quarterly basis and consists of 2 elements:

(a) the redress element (which covers the total amount of the institution's share of the costs of redress payments and the counselling and psychological component of redress in the quarter); and

(b) the scheme administration element (which covers the total amount of the institution's contribution to the costs of the administration of the scheme in the quarter).

The Operator determines the amount of funding contribution that a participating institution is required to pay for the quarter, and notifies the institution of the amount and the due date for payment.

The Commonwealth is liable to pay counselling and psychological services contribution to a participating jurisdiction that is a declared provider of counselling and psychological services under the scheme. The Commonwealth must pay the contribution to the jurisdiction for a quarter if the jurisdiction became liable in that quarter to provide for the delivery of counselling and psychological services to a person.

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One or more participating government institutions or participating jurisdictions may be a funder of last resort for a non-government institution that is not fully participating in the scheme. In that case, those government institutions or jurisdictions will be liable to pay the non-government institution's (hypothetical) share of the costs of providing redress to the person, which will increase the amount of funding contribution the government institutions or jurisdictions will be liable to pay. (For the funder of last resort provisions, see Part 6-2.)

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Division 2—Liability of participating institutions for funding contribution

149 Liability for funding contribution

(1) If, in a quarter, a person becomes entitled to redress for abuse of the person, then:

(a) each participating institution that is determined by the Operator under paragraph 29(2)(b) to be responsible for the abuse; and

(b) each participating jurisdiction that is determined under paragraph 29(2)(k) to be a funder of last resort for an institution that is determined by the Operator under paragraph 29(2)(j) to be responsible for the abuse;

is liable to pay funding contribution for that quarter.

Note 1: If the responsible institution is a defunct institution, its representative will be liable to pay the funding contribution (see section 123).

Note 2: If the responsible institution is an unincorporated lone institution, its representative will be jointly and severally liable with the institution to pay the funding contribution (see section 131).

Note 3: If the responsible institution is a member of a participating group, the representative for the group will be jointly and severally liable with the institution to pay the funding contribution (see section 141).

(2) A ***quarter*** is a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

(3) Subsection (1) does not apply to a Commonwealth institution.

(4) The rules may provide for the application of this Part to a Commonwealth institution.

150 Funding contribution

Funding contribution for a participating institution or funder of last resort for a quarter consists of:

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(a) the redress element for the institution or funder of last resort for the quarter; and
(b) the scheme administration element for the institution or funder of last resort for the quarter.

151 Redress element

The ***redress element*** of funding contribution for a participating institution or funder of last resort for a quarter is the amount equal to the sum of the following amounts for each person who is entitled to redress:

(a) the amount of the institution's or funder of last resort's share of the costs of the redress payment to the person in the quarter;
(b) the amount of the institution's or funder of last resort's share of the costs of the counselling and psychological component of redress for the person in the quarter.

Note 1: The Operator determines the amount of an institution's share of the costs of the redress payment under paragraph 29(2)(c) and the amount of an institution's share of the costs of the counselling and psychological component of redress for the person under paragraph 29(2)(d).

Note 2: If the Operator determines under paragraph 29(2)(i) that one or more participating government institutions are a funder of last resort for a defunct institution in relation to abuse of a person, those government institutions will be liable for the defunct institution's (hypothetical) share of the costs of providing redress to the person (see section 165).

Note 3: If the Operator determines under paragraph 29(2)(j) that an institution is responsible for abuse of a person, the funders of last resort for the institution will be liable with the Commonwealth for the institution's (hypothetical) share of the costs of providing redress to the person (see section 165A).

The Operator determines:

(a) the amount of the funders of last resort's shares of the costs of the redress payment and of the counselling and psychological component of redress under subparagraphs 29(2)(l)(i) and (ii); and
(b) the Commonwealth's shares of those costs under subparagraphs 29(2)(c)(iii) and (l)(iii).

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152 Scheme administration element

(1) The ***scheme administration element*** of funding contribution for a participating institution or funder of last resort for a quarter is the amount equal to the institution's or funder of last resort's contribution to the costs of the administration of the scheme for the quarter.

(2) For the purposes of subsection (1), the Operator must, in accordance with any requirements prescribed by the rules, determine the institution's or funder of last resort's contribution to the costs of the administration of the scheme for the quarter.

153 When funding contribution is due for payment

(1) Funding contribution that is payable by a participating institution or funder of last resort is due and payable on a business day that is:
   (a) specified in a notice that the Operator gives to the participating institution or funder of last resort; and
   (b) not earlier than 30 days after the date of the notice.

(2) However, the Operator may, by written notice given to the participating institution or funder of last resort before, on or after the day on which the funding contribution would be due and payable apart from this subsection, specify a later day as the day on which the funding contribution is due and payable. The notice has effect, and is taken always to have had effect, according to its terms.

154 Late payment penalty

(1) If any funding contribution payable by a participating institution or funder of last resort remains unpaid at the start of a calendar month after the funding contribution became due for payment, the institution or funder of last resort is liable to pay, for that calendar month, a penalty worked out using the following formula:

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$$\text{Amount of funding contribution unpaid at the start of the calendar month} \times \frac{0.1}{12}$$

(2) Late payment penalty for a calendar month is due and payable at the end of the calendar month.

(3) However, the Operator may, by written notice given to the participating institution or funder of last resort before, on or after the day on which late payment penalty would be due and payable apart from this subsection, specify a later day as the day on which the late payment penalty is due and payable. The notice has effect, and is taken always to have had effect, according to its terms.

155 Payment of funding contribution and late payment penalty

Each of the following are payable to the Operator on behalf of the Commonwealth:

(a) funding contribution;

(b) late payment penalty.

156 Waiver of funding contribution and late payment penalty

(1) The Operator may, on behalf of the Commonwealth, waive the payment of all or part of funding contribution or late payment penalty payable by a participating institution or funder of last resort, if the Operator is satisfied that there are exceptional circumstances justifying the waiver.

(2) The Operator may do so on the Operator's own initiative or on written application by a person in the approved form.

157 Review of decision about waiving funding contribution or penalty

(1) A participating institution or funder of last resort that is affected by a decision of the Operator under section 156 about waiving the payment of all or part of funding contribution or late payment

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penalty may, if dissatisfied with the decision, request the Operator to reconsider the decision.

(2) The request must:
  (a) be made by notice given to the Operator in the approved form within:
    (i) the period of 21 days after the day of the notice of the decision; or
    (ii) any further period that the Operator allows; and
  (b) set out the reasons for making the request.

(3) After receiving the request, the Operator must review the decision or cause the decision to be reviewed by a person:
  (a) to whom the Operator's power under this section is delegated; and
  (b) who was not involved in the making of the decision.

(4) Within 30 business days after receiving the request or such longer period as the Operator determines in writing (the ***review period***), the person reviewing the decision must:
  (a) reconsider the decision; and
  (b) confirm, revoke or vary the decision, as the person thinks fit.

(5) If the person reviewing the decision does not confirm, revoke or vary the decision within the review period, he or she is taken to have confirmed the decision under subsection (4) immediately after the end of that period.

(6) The person reviewing the decision must give a notice in writing to the participating institution or funder of last resort that made the request that sets out the result of the reconsideration of the decision and gives the reasons for that result.

158 Liability of corporate State or Territory institutions for funding contribution

If:

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(a) a State institution or a Territory institution is a body corporate; and
(b) the institution is taken to have agreed to participate in the scheme (see subsection 115(5)); and
(c) the imposition of a liability on the institution to pay funding contribution under section 149 would impermissibly:
  (i) impose taxation on the institution; or
  (ii) acquire property of the institution otherwise than on just terms;

then section 149 is taken to impose the liability on the relevant State or Territory instead.

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Division 3—Liability of the Commonwealth for counselling and psychological services contribution

159 Liability for counselling and psychological services contribution

The Commonwealth is liable to pay counselling and psychological services contribution to a participating jurisdiction for a quarter if:

(a) the jurisdiction is a declared provider of counselling and psychological services under the scheme; and

(b) in that quarter the jurisdiction becomes required under paragraph 51(2)(b) to provide for the delivery of those services to a person.

160 Counselling and psychological services contribution

Counselling and psychological services contribution for a participating jurisdiction for a quarter is the amount equal to the sum of the amounts of the counselling and psychological component of redress for each person in relation to whom the jurisdiction becomes required under paragraph 51(2)(b) in the quarter to provide for the delivery of counselling and psychological services.

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Division 4—Appropriation

161 Appropriation

The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of the payment or discharge of the costs incurred by the Commonwealth in making the following payments:

(a) redress payments;

(b) counselling and psychological services payments;

(c) counselling and psychological services contribution;

(d) advance payments.

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Part 6-2—Funder of last resort

Division 1—Simplified outline of this Part

162 Simplified outline of this Part

In some cases, a participating government institution or participating jurisdiction will be a funder of last resort for an institution that is not fully participating in the scheme. In those cases, the government institution or jurisdiction will be liable to pay some or all of the non-government institution's share of the costs of providing redress to a person.

Before a government institution can become a funder of last resort for a non-government institution in relation to abuse of a person, the Operator must first make a determination to that effect (see paragraph 29(2)(i)). The Operator can only make that determination if:

(a) the non-government institution is defunct; and

(b) the Operator has determined that the government institution is equally responsible with the defunct institution for the abuse; and

(c) the defunct institution is listed for the jurisdiction that the government institution belongs to under section 164.

Before a participating jurisdiction can become a funder of last resort for a non-government institution in relation to abuse of a person, the Operator must first make a determination to that effect (see paragraph 29(2)(k)). The Operator can only make that determination if:

(a) the institution is listed for the jurisdiction under section 164A, 164B or 164C; and

(b) the jurisdiction is an eligible funding jurisdiction for the institution in relation to the abuse (see section 164D).

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Section 164A is used for listing defunct institutions. Section 164B is used for listing institutions (***partly-participating institutions***) that agree to provide a direct personal response if required. Section 164C is used for listing other institutions.

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Division 2—Funder of last resort

163 Meaning of *funder of last resort*

(1) A participating government institution is a ***funder of last resort*** for a defunct institution in relation to abuse of a person if a determination of the Operator to that effect is in force under paragraph 29(2)(i).

Note: The Operator can only make that determination if the participating government institution and the defunct institution are equally responsible for the abuse and the defunct institution is listed for the jurisdiction that the government institution belongs to under section 164.

(2) A participating jurisdiction is a ***funder of last resort*** for an institution in relation to abuse of a person if a determination of the Operator to that effect is in force under paragraph 29(2)(k).

Note: The Operator can only make that determination if the institution is listed for a participating jurisdiction under section 164A, 164B or 164C.

164 Listing defunct institutions—listing relating only to abuse for which participating government institution is equally responsible

(1) A defunct institution is ***listed*** for a participating jurisdiction under this section if:

(a) the defunct institution:

(i) is a non-government institution; and

(ii) is not a participating institution; and

(b) a declaration that the defunct institution is listed for the jurisdiction is in force under subsection (2).

Note: Listing under this section is relevant to paragraph 29(2)(i), which provides for the Operator to determine that, if a participating government institution is equally responsible with a listed defunct institution for abuse, the government institution is a funder of last resort for the defunct institution in relation to the abuse.

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(2) The Minister may, by notifiable instrument, declare that a defunct institution is listed for one or more participating jurisdictions under this section.

Note: A defunct institution may be identified by name, by inclusion in a particular class, or in any other way.

(3) The Minister must not make a declaration under subsection (2) listing a defunct institution for the Commonwealth or a participating Territory unless the Minister is satisfied that the relevant jurisdiction has agreed, in the way (if any) prescribed by the rules, to the institution being listed for the jurisdiction under this section.

(4) The Minister must not make a declaration under subsection (2) listing a defunct institution for a participating State unless the Minister is satisfied that the State has agreed, in a way provided for in the State's referral Act or adoption Act, to the institution being listed for the State under this section.

(5) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (2).

(6) If:

(a) a declaration is made under subsection (2) that a defunct institution is listed for the Commonwealth or a participating Territory; and

(b) the jurisdiction withdraws its agreement, in the way (if any) prescribed by the rules, to the defunct institution being listed for the jurisdiction under this section;

then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the defunct institution is no longer listed for the jurisdiction under this section.

(7) If:

(a) a declaration is made under subsection (2) that a defunct institution is listed for a participating State; and

(b) the State withdraws its agreement, in a way provided for in the State's referral Act or adoption Act, to the defunct institution being listed for the State under this section;

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then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the defunct institution is no longer listed for the State under this section.

164A Listing defunct institutions—listing relating to abuse for which participating government institution is not equally responsible

(1) A defunct institution is ***listed*** for a participating jurisdiction under this section if:

(a) the institution is a non-government institution; and

(b) the institution is not a participating institution; and

(c) a declaration that the institution is listed for the participating jurisdiction is in force under subsection (2).

Note: Listing under this section is relevant to paragraphs 29(2)(j) to (m), which provide for the Operator to determine that a participating jurisdiction is a funder of last resort for a defunct institution that is responsible for abuse. Those paragraphs do not apply if a participating government institution is equally responsible for the abuse (unlike paragraph 29(2)(i)).

(2) The Minister may, by notifiable instrument, declare that a defunct institution is listed for one or more participating jurisdictions under this section.

Note: An institution may be identified by name, by inclusion in a particular class, or in any other way.

(3) The Minister must not make a declaration under subsection (2) listing a defunct institution for the Commonwealth or a participating Territory unless the Minister is satisfied that the relevant jurisdiction has agreed, in the way (if any) prescribed by the rules, to the institution being listed for the jurisdiction under this section.

(4) The Minister must not make a declaration under subsection (2) listing a defunct institution for a participating State unless the Minister is satisfied that the State has agreed, in a way provided for in the State's referral Act or adoption Act, to the institution being listed for the State under this section.

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(5) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (2).

(6) If:
  (a) a declaration is made under subsection (2) that a defunct institution is listed for the Commonwealth or a participating Territory; and
  (b) the jurisdiction withdraws its agreement, in the way (if any) prescribed by the rules, to the defunct institution being listed for the jurisdiction under this section;

then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the defunct institution is no longer listed for the jurisdiction under this section.

(7) If:
  (a) a declaration is made under subsection (2) that a defunct institution is listed for a participating State; and
  (b) the State withdraws its agreement, in a way provided for in the State's referral Act or adoption Act, to the defunct institution being listed for the State under this section;

then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the defunct institution is no longer listed for the State under this section.

164B Listing partly-participating institutions

(1) An institution is ***listed*** for a participating jurisdiction under this section if:
  (a) the institution is a non-government institution; and
  (b) the institution is not a participating institution; and
  (c) the institution is not a defunct institution; and
  (d) a declaration that the institution is listed for the participating jurisdiction is in force under subsection (2).

Note 1: Listing under this section is relevant to paragraphs 29(2)(j) to (m), which provide for the Operator to determine that a participating jurisdiction is a funder of last resort for an institution that is responsible for abuse.

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Note 2: An institution listed under this section is a ***partly-participating institution***. A partly-participating institution can (unlike an institution listed under section 164C):

(a) be requested to give information to the Operator under section 25; or

(b) be required to provide a person with a direct personal response.

(2) The Minister may, by notifiable instrument, declare that an institution (other than a defunct institution) is listed for one or more participating jurisdictions under this section.

Note: An institution may be identified by name, by inclusion in a particular class, or in any other way.

(3) The Minister must not make a declaration under subsection (2) listing an institution for the Commonwealth or a participating Territory unless the Minister is satisfied that:

(a) the relevant jurisdiction has agreed, in the way (if any) prescribed by the rules, to the institution being listed for the jurisdiction under this section; and

(b) the institution has agreed to being listed under this section; and

(c) if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act would not be discharged; and

(d) if the institution were listed under this section, its obligations under section 54 (relating to providing direct personal responses) would be discharged.

(4) The Minister must not make a declaration under subsection (2) listing an institution for a participating State unless the Minister is satisfied that:

(a) the State has agreed, in a way provided for in the State's referral Act or adoption Act, to the institution being listed for the State under this section; and

(b) the institution has agreed to being listed under this section; and

(c) if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act would not be discharged; and

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(d) if the institution were listed under this section, its obligations under section 54 (relating to providing direct personal responses) would be discharged.

(5) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (2).

(6) If:

(a) a declaration is made under subsection (2) that an institution is listed for the Commonwealth or a participating Territory; and

(b) any of the following apply:

(i) the jurisdiction withdraws its agreement, in the way (if any) prescribed by the rules, to the institution being listed for the jurisdiction under this section;

(ii) the institution requests the Minister in writing to vary or revoke the declaration so that the institution is no longer listed for the jurisdiction under this section;

(iii) the Minister becomes satisfied that, if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would be discharged;

(iv) the Minister becomes satisfied that, if the institution were to remain listed under this section, its obligations under section 54 (relating to providing direct personal responses), would not be discharged;

then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the institution is no longer listed for the jurisdiction under this section.

(7) If:

(a) a declaration is made under subsection (2) that an institution is listed for a participating State; and

(b) any of the following apply:

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(i) the State withdraws its agreement, in a way provided for in the State's referral Act or adoption Act, to the institution being listed for the State under this section;

(ii) the institution requests the Minister in writing to vary or revoke the declaration so that the institution is no longer listed for the jurisdiction under this section;

(iii) the Minister becomes satisfied that, if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would be discharged;

(iv) the Minister becomes satisfied that, if the institution were to remain listed under this section, its obligations under section 54 (relating to providing direct personal responses), would not be discharged;

then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the institution is no longer listed for the State under this section.

(8) If a declaration under subsection (2) that an institution is listed for a participating jurisdiction is in force, the Minister must, at least every 12 months, consider whether, if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act would be discharged.

164C Listing non-defunct institutions other than partly-participating institutions

(1) An institution is ***listed*** for a participating jurisdiction under this section if:

(a) the institution is a non-government institution; and

(b) the institution is not a participating institution; and

(c) the institution is not a defunct institution; and

(d) a declaration that the institution is listed for the participating jurisdiction is in force under subsection (2).

Note 1: Listing under this section is relevant to paragraphs 29(2)(j) to (m), which provide for the Operator to determine that a participating

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jurisdiction is a funder of last resort for an institution that is responsible for abuse.

Note 2: Listing under this section does not make an institution a partly-participating institution (unlike listing under section 164B). An institution that is not a participating institution and not a partly-participating institution cannot be required to provide a person with a direct personal response.

(2) The Minister may, by notifiable instrument, declare that an institution (other than a defunct institution) is listed for one or more participating jurisdictions under this section.

Note: An institution may be identified by name, by inclusion in a particular class, or in any other way.

(3) The Minister must not make a declaration under subsection (2) listing an institution for the Commonwealth or a participating Territory unless the Minister is satisfied that:

(a) the relevant jurisdiction has agreed, in the way (if any) prescribed by the rules, to the institution being listed for the jurisdiction under this section; and

(b) if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would not be discharged; and

(c) either:

(i) the institution has not agreed to be listed for the participating jurisdiction under section 164B; or

(ii) the institution cannot be so listed because of paragraph 164B(3)(d); and

(d) exceptional circumstances justify the institution being listed for the jurisdiction under this section.

(4) The Minister must not make a declaration under subsection (2) listing an institution for a participating State unless the Minister is satisfied that:

(a) the State has agreed, in a way provided for in the State's referral Act or adoption Act, to the institution being listed for the State under this section; and

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(b) if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would not be discharged; and

(c) either:

(i) the institution has not agreed to be listed for the participating jurisdiction under section 164B; or

(ii) the institution cannot be so listed because of paragraph 164B(4)(d); and

(d) exceptional circumstances justify the institution being listed for the jurisdiction under this section.

(5) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (2).

(6) If:

(a) a declaration is made under subsection (2) that an institution is listed for the Commonwealth or a participating Territory; and

(b) any of the following apply:

(i) the jurisdiction withdraws its agreement, in the way (if any) prescribed by the rules, to the institution being listed for the jurisdiction under this section;

(ii) the Minister becomes satisfied that, if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would be discharged;

(iii) the Minister becomes satisfied that the institution has agreed to be listed for the participating jurisdiction under section 164B and paragraph 164B(3)(d) does not prevent that listing;

(iv) the Minister becomes satisfied that exceptional circumstances no longer justify the institution being listed for the jurisdiction under this section;

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then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the institution is no longer listed for the jurisdiction under this section.

(7) If:

(a) a declaration is made under subsection (2) that an institution is listed for a participating State; and

(b) any of the following apply:

(i) the State withdraws its agreement, in a way provided for in the State's referral Act or adoption Act, to the institution being listed for the State under this section;

(ii) the Minister becomes satisfied that, if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would be discharged;

(iii) the Minister becomes satisfied that the institution has agreed to be listed for the participating jurisdiction under section 164B and paragraph 164B(4)(d) does not prevent that listing;

(iv) the Minister becomes satisfied that exceptional circumstances no longer justify the institution being listed for the jurisdiction under this section;

then, as soon as is practicable, the Minister must, by notifiable instrument, vary or revoke the declaration so that the institution is no longer listed for the State under this section.

(8) If a declaration under subsection (2) that an institution is listed for a participating jurisdiction is in force, the Minister must, at least every 12 months, consider whether, if the institution were declared to be a participating institution under subsection 115(2), its liabilities under this Act, and its obligations under section 54 (relating to providing direct personal responses), would be discharged.

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164D What is an eligible funding jurisdiction?

When Commonwealth is an eligible funding jurisdiction

(1) The Commonwealth is an ***eligible funding jurisdiction*** for an institution in relation to abuse if:
  (a) the institution is listed for the Commonwealth under section 164A, 164B or 164C; and
  (b) subsection (2) or (3) of this section applies.

(2) This subsection applies if the institution operated solely in a place mentioned in subsection (4) when the abuse occurred.

(3) This subsection applies if:
  (a) when the abuse occurred, the institution did not operate:
    (i) solely in a single State; or
    (ii) solely in the Australian Capital Territory; or
    (iii) solely in the Northern Territory; and
  (b) the Operator considers that it is appropriate for the Commonwealth to be a funder of last resort in relation to the abuse given the connection between:
    (i) operations of the institution carried out in a place mentioned in subsection (4); and
    (ii) the institution's responsibility for the abuse.

(4) For the purposes of subsections (2) and (3), the places are any place:
  (a) inside a Territory other than the Australian Capital Territory or the Northern Territory; or
  (b) if the abuse occurred before 11 May 1989—inside the Australian Capital Territory; or
  (c) if the abuse occurred before 1 July 1978—inside the Northern Territory; or
  (d) outside Australia.

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When a participating State or Territory is an eligible funding jurisdiction

(5) A participating State or participating Territory is an ***eligible funding jurisdiction*** for an institution in relation to abuse if:
  (a) the institution is listed for the State or Territory under section 164A, 164B or 164C; and
  (b) subsection (6) or (7) of this section applies.

(6) This subsection applies if the institution operated solely in that State or Territory when the abuse occurred.

(7) This subsection applies if:
  (a) when the abuse occurred, the institution did not operate:
    (i) solely in a single State; or
    (ii) solely in the Australian Capital Territory; or
    (iii) solely in the Northern Territory; and
  (b) the Operator considers that it is appropriate for the participating State or participating Territory to be a funder of last resort in relation to the abuse given the connection between:
    (i) operations of the institution carried out in that State or Territory; and
    (ii) the institution's responsibility for the abuse.

(8) Despite subsections (5) to (7):
  (a) the Australian Capital Territory is not an ***eligible funding jurisdiction*** for an institution in relation to abuse if the abuse occurred before 11 May 1989; and
  (b) the Northern Territory is not an ***eligible funding jurisdiction*** for an institution in relation to abuse if the abuse occurred before 1 July 1978.

Rules

(9) Despite subsections (1) to (8), a participating jurisdiction is an ***eligible funding jurisdiction*** for an institution in relation to abuse in the circumstances (if any) prescribed by the rules.

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(10) Despite subsections (1) to (8), a participating jurisdiction is not an ***eligible funding jurisdiction*** for an institution in relation to abuse in the circumstances (if any) prescribed by the rules.

Note: The Operator can determine under paragraph 29(2)(k) that a participating jurisdiction is a funder of last resort for an institution that is responsible for abuse if the jurisdiction is an eligible funding jurisdiction for the institution in relation to the abuse.

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Division 3—Special rules for funder of last resort cases

165 Special rules for funder of last resort cases

Effect of government institution being funder of last resort

(1) If the Operator determines under paragraph 29(2)(i) that:
  (a) one or more participating government institutions are equally responsible with a defunct institution for abuse of a person; and
  (b) one or more of those government institutions (the ***funding institutions***) are a funder of last resort for the defunct institution in relation to the abuse;

then each of those funding institutions are proportionally liable, in accordance with this section, for what the defunct institution would have been liable to pay in relation to providing redress to the person, had the defunct institution been a participating institution.

Redress payment

(2) When determining under paragraph 29(2)(c) the amount of the redress payment for the person, the amount of a funding institution's share of the costs of that payment and the amount of the Commonwealth's share of the costs of that payment, the Operator must:
  (a) apply subsections 30(2) to (4) as if the defunct institution were also a responsible institution in relation to the abuse; and
  (b) divide the amount worked out under subsection 30(2) (as applying because of paragraph (a) of this subsection) as the amount of the defunct institution's share of the costs of the redress payment by the number of funding institutions; and
  (c) in determining the amount of a funding institution's share—add the amount worked out under paragraph (b) to what, apart from this section, would have been that funding institution's share of the costs of the redress payment.

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Counselling and psychological component

(3) When determining under paragraph 29(2)(d) the amount of a funding institution's share of the costs of the counselling and psychological component of redress for the person, the Operator must:
   (a) determine, in accordance with section 31, the amount of the defunct institution's share of those costs as if the defunct institution were also a responsible institution; and
   (b) divide that amount by the number of funding institutions; and
   (c) add the amount worked out under paragraph (b) to what, apart from this section, would have been the amount of that funding institution's share of those costs.

Scheme administration costs

(4) When determining under subsection 152(2) a funding institution's contribution to the costs of the administration of the scheme for a quarter, the Operator must:
   (a) determine the amount of the defunct institution's contribution to those costs as if the defunct institution were a participating institution; and
   (b) divide that amount by the number of funding institutions; and
   (c) add the amount worked out under paragraph (b) to what, apart from this section, would have been the amount of that funding institution's contribution to those costs.

165A Special rules for funder of last resort cases—participating jurisdictions

Effect of participating jurisdiction being funder of last resort

(1) If the Operator determines:
   (a) under paragraph 29(2)(j) that an institution is responsible for abuse of a person; and

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(b) under paragraph 29(2)(k) that one or more participating jurisdictions are a funder of last resort for the institution in relation to the abuse;

then each of those jurisdictions are proportionally liable, in accordance with this section, for half of what the institution would have been liable to pay in relation to providing redress to the person, had the institution been a participating institution. The Commonwealth bears the other half.

Determining amount of redress payment

(2) When determining under subparagraph 29(2)(c)(i) the amount of a redress payment for a person, the Operator must apply subsections 30(2) to (5) as if each institution:

(a) that the Operator determines under paragraph 29(2)(j) is responsible for the abuse; and

(b) for which the Operator determines under paragraph 29(2)(k) that a participating jurisdiction is a funder of last resort in relation to the abuse;

were also a responsible institution in relation to the abuse.

Determining amount of participating jurisdiction's share of redress payment

(3) Subsections (4) and (5) set out how the Operator must make a determination under subparagraph 29(2)(l)(i) about the amount of a participating jurisdiction's (the ***funding jurisdiction's***) share of the costs of a redress payment for a person.

Note: Subparagraph 29(2)(l)(i) does not apply to a participating jurisdiction if the jurisdiction is the Commonwealth. For the Commonwealth's share of the costs of the redress payment, see subsections (6) and (7) of this section.

(4) The Operator must first work out an amount, in the following way, for each institution for which the Operator determines under paragraph 29(2)(k) that the funding jurisdiction is a funder of last resort in relation to the abuse:

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(a) first, halve the amount worked out under subsection 30(2) (as applying because of subsection (2) of this section) as the amount of the institution's share of the costs of the redress payment;

(b) then divide that half by the number of participating jurisdictions that are funders of last resort for the institution in relation to the abuse.

Note 1: If the funding jurisdiction is the only funder of last resort for the institution in relation to the abuse, the amount worked under paragraph (b) will be the same as the half worked out under paragraph (a).

Note 2: If there is more than one funder of last resort for the institution in relation to the abuse, and one of those is the Commonwealth, then, although the Commonwealth's share of the costs of the redress payment is not worked out under subsections (3) to (5), the Commonwealth is included in the number of funders of last resort for the purposes of paragraph (b) of this subsection.

(5) The Operator must then work out the amount of the funding jurisdiction's share of the costs of the redress payment for the person by adding together the amounts worked out under subsection (4) of this section.

Determining amount of Commonwealth's share of redress payment

(6) When determining under subparagraph 29(2)(c)(iii) the amount of the Commonwealth's share of the costs of a redress payment for the person, the Operator must:

(a) apply subsections 30(2) to (4) as if each institution:

(i) that the Operator determines under paragraph 29(2)(j) is responsible for the abuse; and

(ii) for which the Operator determines under paragraph 29(2)(k) that a participating jurisdiction is a funder of last resort in relation to the abuse;

were also a responsible institution in relation to the abuse; and

(b) for each institution to which paragraph (a) of this subsection applies:

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(i) work out an amount under subsection (7); and

(ii) add that amount to what, apart from this paragraph, would have been the amount of the Commonwealth's share of those costs.

(7) For the purposes of subparagraph (6)(b)(i), the Operator must:

(a) first, halve the amount worked out under subsection 30(2) (as applying because of paragraph (6)(a) of this section) as the amount of the institution's share of the costs of the redress payment; and

(b) if the Operator determines that the Commonwealth is a funder of last resort for the institution in relation to the abuse—then:

(i) divide that half by the number of participating jurisdictions that the Operator determines are funders of last resort for the institution in relation to the abuse; and

(ii) add the half worked out under paragraph (a) to the amount worked out under subparagraph (i) of this paragraph.

Note: If the Commonwealth is the only funder of last resort for the institution in relation to the abuse, the amount worked out under this subsection will be the whole of the amount worked out under subsection 30(2) (as applying because of paragraph (6)(a) of this section) as the amount of the institution's share of the costs of the redress payment.

Determining participating jurisdiction's share of costs of counselling and psychological component of redress

(8) Subsections (9) and (10) set out how the Operator must make a determination under subparagraph 29(2)(l)(ii) about the amount of a participating jurisdiction's (the ***funding jurisdiction's***) share of the costs of the counselling and psychological component of redress for a person.

Note: Subparagraph 29(2)(l)(ii) does not apply to a participating jurisdiction if the jurisdiction is the Commonwealth. For how to work out the Commonwealth's share of the costs of the counselling and psychological component, see subsections (11) to (13) of this section.

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(9) The Operator must first work out an amount, in the following way, for each institution for which the Operator determines under paragraph 29(2)(k) that the funding jurisdiction is a funder of last resort in relation to the abuse:

(a) first, determine, in accordance with section 31, the amount of the institution's share of those costs as if the institution were also a responsible institution;

(b) then halve the amount worked out under paragraph (a);

(c) then divide that half by the number of participating jurisdictions that the Operator determines are funders of last resort for the institution in relation to the abuse.

Note 1: If the funding jurisdiction is the only funder of last resort for the institution in relation to the abuse, the amount worked under paragraph (c) will be the same as the half worked out under paragraph (b).

Note 2: If there is more than one funder of last resort for the institution in relation to the abuse, and one of those is the Commonwealth, then, although the Commonwealth's share of the costs of the counselling and psychological component of redress is worked out under subsections (11) to (13) rather than under subsections (8) to (10), the Commonwealth is included in the number of funders of last resort for the purposes of paragraph (b) of this subsection.

(10) The Operator must then work out the amount of the funding jurisdiction's share of the costs of the counselling and psychological component of redress for the person by adding together the amounts worked out under subsection (9).

Determining Commonwealth's share of costs of counselling and psychological component of redress

(11) Subsections (12) and (13) set out how the Operator must make a determination under subparagraph 29(2)(l)(iii) about the amount of the Commonwealth's share of the costs of the counselling and psychological component of redress for a person.

(12) The Operator must first work out an amount, in the following way, for each institution for which the Operator determines under paragraph 29(2)(k) that one or more participating jurisdictions

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(whether or not the Commonwealth) is a funder of last resort in relation to the abuse:

(a) first, determine, in accordance with section 31, the amount of the institution's share of those costs as if the institution were also a responsible institution;

(b) then halve that amount;

(c) if the Operator determines that the Commonwealth is a funder of last resort for the institution in relation to the abuse—then:

(i) divide that half by the number of participating jurisdictions that the Operator determines are funders of last resort for the institution in relation to the abuse; and

(ii) add the half worked out under paragraph (b) to the amount worked out under subparagraph (i) of this paragraph.

Note: If the Commonwealth is the only funder of last resort for the institution in relation to the abuse, the amount worked out under this subsection will be the whole of the amount worked out under paragraph (a).

(13) The Operator must then work out the amount of the Commonwealth's share of the costs of the counselling and psychological component of redress for the person by adding together the amounts worked out under subsection (12).

Scheme administration costs

(14) When determining under subsection 152(2) a participating jurisdiction's (the ***funding jurisdiction's***) (other than the Commonwealth's) contribution to the costs of the administration of the scheme for a quarter, the Operator must, for each institution for which the Operator determines under paragraph 29(2)(k) that the funding jurisdiction is a funder of last resort in relation to abuse:

(a) determine the amount of the institution's contribution to those costs as if the institution were a participating institution; and

(b) halve that amount; and

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(c) divide that half by the number of participating jurisdictions that the Operator determines are funders of last resort for the institution in relation to the abuse; and

(d) add the amount worked out under paragraph (c) to what, apart from this subsection, would have been the amount of the funding jurisdiction's contribution to those costs.

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Part 6-3—Debt recovery

Division 1—Simplified outline of this Part

166 Simplified outline of this Part

Certain amounts paid under the scheme may become a debt due to the Commonwealth. For example, if a redress payment is paid to the wrong person, that payment is a debt due to the Commonwealth and may be recovered under this Part.

This Part also allows for funding contribution or late payment penalty that is payable by an institution, a State, a Territory or a person to be recoverable as a debt due to the Commonwealth.

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Division 2—Debt recovery

167 Recovery of amounts (other than funding contribution and late payment penalty)

(1) If an amount has been paid to a person or an institution (the ***recipient***) under this Act, the amount is a debt due to the Commonwealth only to the extent expressly provided for by this section.

(2) If the amount paid to the recipient was not payable because:
  (a) the amount was paid to the wrong person or institution; or
  (b) the amount exceeds the amount payable to the recipient;
then the amount paid, or the excess, is a debt due to the Commonwealth by the recipient.

(3) If the amount paid to the recipient was paid wholly or partly because of a false or misleading statement, or a misrepresentation, by the recipient or another person, then an amount equal to so much of the amount paid as is attributable to the false or misleading statement, or the misrepresentation, is a debt due to the Commonwealth by the recipient.

(4) If:
  (a) the recipient was required under section 181 to notify the Operator about a matter; and
  (b) the recipient did not comply with the requirement; and
  (c) had the Operator been notified as required, the amount that was paid to the recipient would not have been payable;
then an amount equal to so much of the amount paid as is attributable to the failure to comply with the requirement is a debt due to the Commonwealth by the recipient.

(4A) The amount paid to the recipient is a debt due to the Commonwealth if:

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(a) the amount was an advance payment paid in relation to a person after the person made an application for redress under the scheme; and

(b) either:

(i) the person withdraws the application under section 22; or

(ii) the Operator gives the person an offer of redress under section 39, and the person declines the offer under section 45.

(5) A debt due by the recipient under this section in relation to an amount arises at the time the amount was paid to the recipient.

168 Recovery of funding contribution and late payment penalty

The following amounts may be recovered by the Commonwealth from an institution, a State, a Territory or a person as debts due to the Commonwealth:

(a) funding contribution that is due and payable by the institution, State, Territory or person;

(b) late payment penalty that is due and payable by the institution, State, Territory or person.

Note: For cases where a person may be liable to pay funding contribution, see sections 123, 131 and 141.

169 Legal proceedings to recover debt

A debt due to the Commonwealth under this Part is recoverable by the Commonwealth in a court of competent jurisdiction.

170 Arrangement for payment of debt

(1) The Operator may enter into an arrangement with a person or an institution under which the person or institution is to pay a debt, owed by the person or institution to the Commonwealth under this Part, or the outstanding amount of such a debt, in a way set out in the arrangement.

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(2) An arrangement entered into under subsection (1) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day the arrangement commences (whether that day is the day the arrangement is entered into or an earlier or later day).

(3) If an arrangement entered into under subsection (1) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.

(4) The Operator may terminate or alter an arrangement entered into under subsection (1):
   (a) at the request of the person or institution; or
   (b) after giving 28 days' notice to the person or institution of the proposed termination or alteration; or
   (c) without notice, if the Operator is satisfied that the person or institution has failed to disclose material information about the person's or institution's true capacity to repay the debt.

171 Recovery of amounts from financial institutions

Payment into wrong account

(1) This section applies if:
   (a) an amount is paid under this Act to a financial institution for the credit of an account kept with the financial institution; and
   (b) the Operator is satisfied that the payment was intended to be made to someone who was not the person or one of the persons in whose name or names the account was kept.

Notice to financial institution requiring repayment

(2) The Operator may give a written notice to the financial institution setting out the relevant matters referred to in paragraphs (1)(a) and (b) and requiring the financial institution to pay to the Commonwealth, within a reasonable period stated in the notice, the lesser of the following amounts:

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(a) the amount of the payment, as stated in the notice;
(b) the amount standing to the credit of the account when the notice is given to the financial institution.

Offence for contravening notice

(3) A financial institution must comply with a notice given to it under subsection (2).

Penalty: 300 penalty units.

(4) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (2) if the financial institution proves that it was incapable of complying with the notice.

Note: A defendant bears a legal burden in relation to the matter in this subsection (see section 13.4 of the *Criminal Code*).

Amount recovered reduces debt

(5) Any amount recovered by the Commonwealth from a financial institution under this section reduces the amount of a debt referred to in subsection 167(1) (as it relates to paragraph 167(2)(a)).

172 Repayment of recovered amount to participating institutions and participating jurisdictions

If:
(a) the Commonwealth recovers an amount under this Part (other than paragraph 167(2)(a)); and
(b) all or part of the amount relates to either or both of the following payments:
  (i) a redress payment;
  (ii) a counselling and psychological services payment; and
(c) a participating institution or participating jurisdiction has paid funding contribution in relation to that payment;

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then the Commonwealth must repay the institution or jurisdiction so much of that funding contribution as the Operator considers relates to the amount recovered.

Note: For the appropriation for the refund, see section 77 of the *Public Governance, Performance and Accountability Act 2013*.

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Chapter 7—Other matters

Part 7-1—Application of this Act

Division 1—Simplified outline of this Part

173 Simplified outline of this Part

This Act can only give an entitlement to redress if the Commonwealth has legislative power to provide that redress. This Part sets out the constitutional basis for providing redress and also deals with other aspects of the application of this Act.

The main constitutional basis for redress is based on the place where the abuse occurred, which broadly is as follows:

- If the abuse occurred inside a State that has given a reference to the Commonwealth or made an adoption for the purposes of paragraph 51(xxxvii) of the Constitution (i.e. a participating State), then the reference or adoption by the State provides the constitutional basis for the redress.

- If the abuse occurred inside a Territory (such as the Australian Capital Territory, the Northern Territory or an external Territory), then section 122 of the Constitution provides the constitutional basis for the redress.

- If the abuse occurred outside Australia, then paragraph 51(xxix) of the Constitution provides the constitutional basis for the redress.

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Division 2—Application of this Act

174 Constitutional basis for this Act

What this section is about

(1) This section sets out the constitutional basis of this Act.

Application in a participating State

(2) The application of this Act in relation to sexual abuse, and any related non-sexual abuse, of a person that occurred inside a participating State is based on:
   (a) the legislative powers that the Commonwealth Parliament has under the Constitution (other than paragraph 51(xxxvii)); and
   (b) the legislative powers that the Commonwealth Parliament has because of a reference or an adoption by the Parliaments of the participating States for the purposes of paragraph 51(xxxvii) of the Constitution.

Application in a non-participating State

(3) The application of this Act in relation to sexual abuse, and any related non-sexual abuse, of a person that occurred inside a non-participating State is based on:
   (a) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxxvii)) and section 122 of the Constitution; and
   (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Application in a Territory

(4) The application of this Act in relation to sexual abuse, and any related non-sexual abuse, of a person that occurred inside a Territory is based on:

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(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
(b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Despite section 2H of the *Acts Interpretation Act 1901*, this Act as applying in the Territory is a law of the Commonwealth.

Application outside Australia

(5) The application of this Act in relation to sexual abuse, and any related non-sexual abuse, of a person that occurred outside Australia is based on:
(a) the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
(b) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
(c) the other legislative powers that the Commonwealth Parliament has under the Constitution.

175 Concurrent operation with State and Territory laws

(1) This Act does not exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

(2) Without limiting subsection (1), this Act does not exclude or limit the concurrent operation of a law of a State or Territory merely because that law provides for redress (however described) to be provided to a person for abuse suffered by the person.

176 Extraterritorial application and extension to external Territories

(1) This Act applies both within and outside Australia.

(2) This Act extends to every external Territory.

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177 Crown to be bound

This Act binds the Crown in each of its capacities.

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Part 7-2—The National Redress Scheme Rules

Division 1—Simplified outline of this Part

178 Simplified outline of this Part

The Minister may make rules for the purposes of the scheme. They are subordinate legislation and may deal with matters that this Act requires or permits the rules to deal with, or that are necessary or convenient for giving effect to this Act.

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Division 2—The National Redress Scheme Rules

179 The National Redress Scheme Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:
  (a) required or permitted by this Act to be prescribed by the rules; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The rules may provide for the following:
  (a) matters relating to an institution ceasing to be a participating institution;
  (b) matters relating to a participating group ceasing to be a participating group;
  (c) matters relating to a participating State ceasing to be a participating State;
  (d) matters relating to a person becoming, being or ceasing to be a representative for a defunct institution, a lone institution or a participating group;
  (e) overriding, for the purposes of the scheme, any provisions of settlement agreements or deeds that:
    (i) relate to confidentiality; or
    (ii) would inhibit access to, or the operation of, the scheme.

(3) Despite section 14 of the *Legislation Act 2003*, the rules may apply, adopt or incorporate any matter contained in the assessment framework as in force or existing from time to time.

(4) The provisions of this Act that provide for the rules to deal with matters do not limit each other.

(5) To avoid doubt, the rules may not do the following:
  (a) create an offence or civil penalty;
  (b) provide powers of:

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(i) arrest or detention; or
(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

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Part 7-3—Other matters

Division 1—Simplified outline of this Part

180 Simplified outline of this Part

A person who applies for redress under the scheme may be required or permitted to notify the Operator of certain matters (e.g. that the person is sentenced to imprisonment for 5 years or longer for an offence). An institution may also be required or permitted to notify the Operator about a matter (see section 181).

The Minister and the Operator may delegate their powers and functions to certain officers of the scheme. However, the Minister cannot delegate his or her powers and functions to make the rules, and the Operator can only delegate his or her powers and functions under sections 29 and 75 (which are about determinations relating to redress applications) to an independent decision-maker.

The Operator may engage a person to be an independent decision-maker to make determinations relating to redress applications.

Some uses of names and symbols (called protected names and protected symbols) relating to the scheme are prohibited unless the Operator gives consent.

The Operator must prepare and give an annual report on the operation of the scheme and must include particular information in that report.

The Minister must cause 2 reviews of the scheme to be conducted—one starting on the second anniversary of the scheme start day and the other starting on the eighth anniversary of that day. The rules can prescribe a later date to start those reviews.

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The scheme ceases on the scheme sunset day (which ordinarily will be the tenth anniversary of the scheme start day).

This Part also deals with other miscellaneous matters (such as approved forms).

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Division 2—Giving notices for the purposes of the scheme

181 Persons or institutions giving notices to the Operator

(1) If:
  (a) a person makes an application for redress under the scheme; and
  (b) after making the application, the person is sentenced to imprisonment for 5 years or longer for an offence against a law of the Commonwealth, a State, a Territory or a foreign country;

then the person must notify the Operator of that fact in accordance with any requirements prescribed by the rules.

(2) The rules may prescribe:
  (a) circumstances for when a person or a participating institution must or may notify the Operator of a matter; and
  (b) requirements relating to the giving of the notice.

182 Operator giving notices to persons or institutions

(1) The rules may require or permit the Operator to give a notice to a person or an institution about a matter relating to the operation of this Act.

(2) If this Act requires or permits the Operator to give a notice to a person or institution, the Operator may give the notice in any way that the Operator considers appropriate.

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Division 3—Delegation

183 Delegation by the Minister

(1) The Minister may, in writing, delegate all or any of the Minister's powers or functions under this Act (other than section 179) to:
  (a) the Operator; or
  (b) a person who holds or performs the duties of an SES Band 3 position, or an equivalent position, in the Department.

(2) In exercising a power or performing a function under a delegation under subsection (1), the delegate must comply with any directions of the Minister.

184 Delegation by the Operator

Powers and functions—general

(1) The Operator may, in writing, delegate all or any of the Operator's powers or functions under this Act (other than sections 29, 75, 185 and 190) to an officer of the scheme.

(2) In exercising a power or performing a function under a delegation under subsection (1), the delegate must comply with any directions of the Operator.

Powers and functions—redress determinations

(3) The Operator may, in writing, delegate the Operator's powers and functions under section 29 or 75 (which are about determinations relating to redress applications) to an independent decision-maker.

(4) In exercising a power or performing a function under a delegation under subsection (3), the delegate is not required to comply with any directions of the Operator.

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Powers and functions—engaging independent decision-makers

(5) The Operator may, in writing, delegate the Operator's powers or functions under section 185 (which are about engaging independent decision-makers) to an SES employee, or an acting SES employee, in the Department.

(6) In exercising a power or performing a function under a delegation under subsection (5), the delegate must comply with any directions of the Operator.

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Division 4—Independent decision-makers

185 Engaging persons to be independent decision-makers

(1) The Operator may, on behalf of the Commonwealth, engage a person, under written agreement, to assist in the performance of the functions of the Operator in relation to the making of determinations under section 29 or 75 on applications for redress.

(2) Before engaging a person under subsection (1), the Operator must consult the participating States and participating Territories in accordance with the National Redress Scheme Agreement.

(3) A person engaged under subsection (1) is an ***independent decision-maker***.

(4) Subdivision A of Division 3 of Part 2-2 of the *Public Governance, Performance and Accountability Act 2013* (which deals with general duties of officials), and any rules made under that Act for the purposes of that Subdivision, apply to an independent decision-maker in the same way as they apply to an official (within the meaning of that Act).

Note: The duties of officials under the *Public Governance, Performance and Accountability Act 2013* include: the duty of care and diligence; the duty to act honestly, in good faith and for a proper purpose; the duties relating to the use of information and position; and the duty to disclose interests.

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Division 4A—Protected names and symbols

185A Use of protected names and symbols

(1) A person must not, without the Operator's written consent:

(a) use in relation to a business, trade, profession or occupation; or

(b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft; or

(c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or

(d) use in relation to:

(i) goods or services; or

(ii) the promotion, by any means, of the supply or use of goods or services:

either:

(e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or

(f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

(3) Subsection (1) does not affect the use of a name or symbol by a participating State or a participating Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

(4) Subsection (1), so far as it applies in relation to a particular protected name or a protected symbol, does not affect rights conferred by law on a person in relation to:

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(a) a trade mark that is a registered trade mark for the purposes of the *Trade Marks Act 1995*; or

(b) a design registered under the *Designs Act 2003*;

that was so registered, or was registered under the *Designs Act 1906*, at the protection time in relation to the name or symbol.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

(5) This section, so far as it applies in relation to a particular protected name or a protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (the ***relevant name or symbol***) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:

(a) was using the relevant name or symbol in good faith in that manner; or

(b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

(6) In this section:

protected name means any of the following names:

(a) "National Redress Scheme";

(b) "National Redress Scheme for Institutional Child Sexual Abuse";

(c) "National Redress Scheme for people who have experienced institutional child sexual abuse";

(d) such other names as are prescribed by the rules.

protected symbol means a symbol:

(a) that is used, or for use, in connection with the scheme; and

(b) the design of which is set out in the rules.

protection time means:

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(a) in relation to a name mentioned in paragraph (a), (b) or (c) of the definition of ***protected name***—the time immediately before the commencement of Part 4 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021*; or

(b) in relation to any other name—the time immediately before the commencement of the rule prescribing the name; or

(c) in relation to a protected symbol—the time immediately before the commencement of the rule setting out the design of the symbol.

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Division 5—Miscellaneous

186 Giving agreement

A reference in this Act to the Commonwealth, a participating Territory, an institution or a person agreeing to a matter is a reference to the body or person giving agreement in the way (if any) prescribed by the rules.

Note: For example, paragraph 115(3)(c) provides that the Minister must not make a declaration that a non-government institution is a participating institution unless the institution has agreed to participate in the scheme. Under this section, the way the institution gives its agreement must be the way prescribed by the rules (if the rules prescribe a way).

187 Annual report on operation of the scheme

(1) As soon as practicable after the end of each financial year, the Operator must prepare and give an annual report to the Minister, for presentation to the Parliament, on the operation of the scheme during the year.

(2) Without limiting subsection (1), the annual report must:
  (a) include information about any matter prescribed by the rules; and
  (b) comply with any requirements prescribed by the rules.

188 Approved forms

The Operator may, in writing, approve one or more forms for the purposes of a provision of this Act that provides for something to be done in an approved form.

189 Determinations of the Operator to be in writing

(1) A determination by the Operator under this Act must be in writing.

(2) A determination by the Operator under this Act is not a legislative instrument.

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190 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:
   (a) the Operator;
   (b) an SES employee, or an acting SES employee, in the Department or the Human Services Department.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
   (a) the Federal Court of Australia;
   (b) the Federal Circuit and Family Court of Australia (Division 2).

External Territories

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

The Crown

(5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the

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Crown in right of the Commonwealth, a State or a Territory liable to a pecuniary penalty.

191 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
   (a) the Federal Court of Australia; or
   (b) the Supreme Court of a State or participating Territory;

   for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

192 Review of the scheme

Second anniversary review

(1) The Minister must cause a review of the operation of the scheme to be commenced as soon as possible after:
   (a) the second anniversary of the scheme start day; or
   (b) if, before the second anniversary, the rules prescribe a day that is after the second anniversary—that day.

(2) The second anniversary review must consider the following matters:
   (a) the extent to which the States, participating Territories and non-government institutions have opted into the scheme, including key facilitators and barriers to opting in;
   (b) the extent to which survivors who are eligible for redress under the scheme have applied for redress;
   (c) the extent to which redress has been provided to survivors who are entitled to redress under the scheme;

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(d) the application, assessment and decision-making process, including user experiences of the process;
(e) redress payments;
(f) access to counselling and psychological services under the scheme;
(g) the extent to which survivors access direct personal responses under the scheme, including factors influencing the uptake and experiences with the direct personal response process;
(h) the availability of, and access to, support services under the scheme;
(i) the implications of the scheme's design for survivors (including Indigenous and child migrant survivors, as well as survivors who are still children or who have a criminal conviction);
(j) the operation of the scheme's funding arrangements (including a review of the scheme administration element of funding contribution);
(k) the operation of the funder of last resort provisions;
(l) the extent to which the scheme has been implemented as proposed in the National Redress Scheme Agreement;
(m) the views of key stakeholders on the scheme (including representatives from survivor groups, non-government institutions, advocacy groups, support services provider groups, the Independent Advisory Council, the Commonwealth, the States and the Territories);
(n) the impact and effectiveness of section 37 (which is about the admissibility of certain documents in evidence in civil proceedings);
(o) the question of whether an institution (the ***first institution***) should be responsible for abuse that occurs in connection with another institution merely because the first institution regulates or funds the other institution or the other institution's activities;
(p) the administration of this Act and the scheme;
(q) any other matter relevant to the operation of this Act or the scheme.

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Eighth anniversary review

(3) The Minister must cause a review of the operation of the scheme to be commenced as soon as possible after:
  (a) the eighth anniversary of the scheme start day; or
  (b) if, before the eighth anniversary, the rules prescribe a day that is after the eighth anniversary—that day.

(4) The eighth anniversary review must consider the following matters:
  (a) the matters referred to in subsection (2);
  (b) the results of any other review or evaluation conducted in relation to the operation of the scheme.

193 Sunset of the scheme

(1) Subject to this section, this Act ceases to have effect at the end of the day (the ***scheme sunset day***) that is:
  (a) the tenth anniversary of the scheme start day; or
  (b) if, before the tenth anniversary, the rules prescribe a day that is after the tenth anniversary—that day.

Note: The fact that the Act ceases to have effect does not affect the operation of section 43 in releasing and discharging an institution or official from civil liability (see section 7 of the *Acts Interpretation Act 1901*).

(2) Despite subsection (1), at any time before the first anniversary of the scheme sunset day, rules may be made under section 179 for the purposes of subsections (3) and (4) of this section.

(3) The rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to this Act ceasing to have effect under subsection (1).

(4) Without limiting subsection (3), the rules may provide that certain provisions of this Act:
  (a) continue to apply after the scheme sunset day for the purposes set out in the rules; or

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(b) continue to apply after the scheme sunset day in a modified way for the purposes set out in the rules.

Those provisions continue to apply, or continue to apply in the modified way, as set out in the rules.

(5) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to rules made for the purposes of this section.

(6) All legislative instruments (including the rules) made under this Act are repealed immediately before the first anniversary of the scheme sunset day.

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Chapter 8—Application and transitional provisions

Part 8-1—Simplified outline of this Chapter

194 Simplified outline of this Chapter

This Chapter contains application and transitional provisions relating to amendments of this Act.

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Part 8-2—Application and transitional provisions relating to the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021

195 Application of amendments relating to the funder of last resort provisions

The amendments made by Part 2 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to a determination under section 29 made on or after the commencement of that Part (whether the application for the determination was made before, on or after that commencement).

196 Application of amendments relating to engaging independent decision-makers

The amendments of sections 183, 184 and 185 made by Part 3 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to persons engaged on or after the commencement of that Part.

197 Application of amendments relating to payment of redress payments etc.

The amendments made by Part 5 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to the payment of redress payments and counselling and psychological services payments on or after the commencement of that Part.

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198 Application of amendments relating to when funding contribution is due

The amendments of section 153 made by Part 6 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply in relation to funding contributions payable before, on or after the commencement of that Part (including funding contributions in relation to which a notice has been given under section 153 before that commencement).

199 Application of amendments relating to disclosure of protected information about institutions

The amendments of section 95 made by Part 7 of Schedule 1 to the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021* apply, after commencement of that Part, in relation to protected information provided or obtained before, on or after that commencement.

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Part 8-3—Application and transitional provisions relating to the National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021

200 Definitions

In this Part:

amending Act means the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*.

application means an application for redress.

201 Application of amendments made by Schedule 1 to the amending Act

The amendments made by Part 1 of Schedule 1 to the amending Act apply in relation to:

(a) an application made on or after the commencement of this section; or

(b) an application made before that commencement, if:

(i) the application was not withdrawn before that commencement; and

(ii) the Operator did not make a determination to approve, or not approve, the application under section 29 of this Act before that commencement.

202 Application of amendments made by Schedule 2 to the amending Act

(1) The amendments made by Part 1 of Schedule 2 to the amending Act apply in relation to determinations made under section 29 of this Act:

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(a) before the commencement of this section, whether or not, as a result of the determination, any of the following occurred before that commencement:
  (i) an offer of redress was made, accepted or declined;
  (ii) a redress payment was made;
  (iii) an application for review of the determination was made, or a review determination made; or
(b) on or after that commencement.

Offers of redress made before commencement

(2) Subsections (3) and (4) of this section apply to an offer of redress given to a person under section 39 before the commencement of this section if the amount (the ***new amount***) that the Operator was required to determine under this Act, as amended by Part 1 of Schedule 2 to the amending Act, as the amount of the redress payment for the person is greater than the amount that the Operator would have been required to so determine if those amendments had not been made.

(3) The offer of redress is taken to have always stated, as the amount of the redress payment for the person, the new amount mentioned in subsection (2) of this section.

(4) To avoid doubt, if:
  (a) the Operator paid some of the redress payment under section 48 before that commencement; and
  (b) the amount paid is less than the new amount; and
  (ba) if the redress payment was paid in instalments—the last instalment was paid before that commencement;

  the Operator must, as soon as practicable after that commencement, pay, under that section (and subject to anything prescribed by the rules for the purposes of subsection 48(2)), the difference between:
  (c) the new amount; and
  (d) the amount that the Operator has already paid.

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203 Application of amendments made by Schedule 3 to the amending Act

(1) The amendments made by Part 1 of Schedule 3 to the amending Act apply in relation to determinations made under section 29 of this Act:

(a) before the commencement of this section, whether the day specified in the notice of the determination under paragraph 34(3)(a) occurred before, on or after that commencement; or

(b) on or after that commencement.

(2) For the purposes of this Act as amended by Part 1 of Schedule 3 to the amending Act, a notice that:

(a) was given to a person under section 34 of this Act before the commencement of this section; and

(b) stated that the relevant application for redress had not been approved; and

(c) specified a day (the ***specified day***) as the day by which the person may apply for review of the determination;

is taken to have specified, as the review period for the relevant determination, the period:

(d) starting on the date of the notice; and

(e) ending on the specified day.

(3) The amendments made by Part 2 of Schedule 3 to the amending Act apply in relation to acceptance periods ending before, on or after the commencement of this section.

204 Application of amendments made by Schedule 4 to the amending Act

Applications made on or after commencement

(1) The amendments made by Part 1 of Schedule 4 to the amending Act apply in relation to an application made on or after the commencement of this section.

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Applications made before commencement

(2) Despite paragraphs 19(2)(a) and (d), as in force immediately before the commencement of this section, an application that was:

(a) made under subsection 19(1) before the commencement of this section; and

(b) signed and dated by the applicant;

is not invalid merely because the application:

(c) was not in the approved form, to the extent that the approved form required the application to include a statutory declaration; or

(d) did not verify the information included in the application by statutory declaration.

205 Application of amendments made by Schedule 5 to the amending Act

The amendments made by Part 1 of Schedule 5 to the amending Act apply in relation to redress to which a person becomes entitled on or after the commencement of this section.

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Part 8-4—Application and transitional provisions relating to the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021

206 Definitions

In this Part:

amending Act means the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021*.

application means an application for redress.

207 Application of amendments made by Schedule 1 to the amending Act

The amendments made by Schedule 1 to the amending Act apply in relation to:

(a) an application made on or after the commencement of this section; or

(b) an application made before that commencement, if:

(i) the application was not withdrawn before that commencement; and

(ii) the Operator did not make a determination to approve, or not approve, the application under section 29 of this Act before that commencement.

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208 Application of amendments made by Schedule 2 to the amending Act

For the purposes of section 95A, it does not matter whether an application was made before, on or after the commencement of this section.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s)/sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

<u>underlining</u> = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Redress Scheme for Institutional Child Sexual Abuse Act 2018	45, 2018	21 June 2018	1 July 2018 (s 2(1) item 1)	
Services Australia Governance Amendment Act 2020	104, 2020	20 Nov 2020	Sch 1 (items 42–47, 66): 1 Feb 2020 (s 2(1) item 2)	Sch 1 (item 66)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 622): 1 Sept 2021 (s 2(1) item 5)	—
National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021	15, 2021	1 Mar 2021	Sch 1 (items 1–9): 1 July 2018 (s 2(1) item 2) Sch 1 (items 10–53): 2 Mar 2021 (s 2(1) item 3)	—
National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021	109, 2021	13 Sept 2021	Sch 1, 2, 4 and 5: 17 Sept 2021 (s 2(1) items 2, 3, 5–8) Sch 3: 14 Sept 2021 (s 2(1) item 4)	—
National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021	119, 2021	2 Dec 2021	3 Dec 2021 (s 2(1) item 1)	—

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1-1	
Division 2	
s 3	am No 119, 2021
Division 3	
s 4	am No 109, 2021; No 119, 2021
Part 1-2	
Division 2	
s 6	am No 104, 2020; No 15, 2021; No 109, 2021; No 119, 2021
Chapter 2	
Part 2-2	
Division 1	
s 11	am No 119, 2021
Division 2	
s 13	am No 119, 2021
s 16	am No 119, 2021
Part 2-3	
Division 1	
s 18	am No 119, 2021
Division 2	
s 19	am No 109, 2021
s 22	am No 109, 2021
Division 3	
s 25	am No 119, 2021
s 26	am No 119, 2021
Division 4	
s 29	am No 15, 2021; No 109, 2021; No 119, 2021
s 30	am No 109, 2021; No 119, 2021

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Endnote 4—Amendment history

Provision affected	How affected
s 31	am No 119, 2021
	ed C7
Division 5	
Division 5 heading	am No 119, 2021
s 34	am No 109, 2021
s 35	am No 15, 2021; No 109, 2021
s 35A	ad No 119, 2021
Division 6	
s 36	am No 119, 2021
Part 2-4	
Division 1	
s 38	am No 119, 2021
Division 2	
s 39	am No 15, 2021; No 109, 2021; No 119, 2021
s 40	am No 109, 2021
s 41A	ad No 119, 2021
Division 3	
s 42	am No 15, 2021; No 119, 2021
s 44A	ad No 119, 2021
s 46A	ad No 119, 2021
s 46B	ad No 119, 2021
Part 2-5	
Division 1	
s 47	am No 15, 2021; No 119, 2021
Division 2	
s 48	am No 15, 2021; No 109, 2021
s 49	am No 15, 2021
s 50	am No 109, 2021
Division 3	
s 51	am No 15, 2021; No 109, 2021
s 52	am No 15, 2021

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Endnote 4—Amendment history

Provision affected	How affected
s 53	am No 109, 2021
Division 4	
s 54	am No 119, 2021
s 56	am No 119, 2021
Part 2-6	
Part 2-6	ad No 109, 2021
Division 1	
s 56A	ad No 109, 2021
Division 2	
s 56B	ad No 109, 2021
s 56C	ad No 109, 2021
s 56D	ad No 109, 2021
Chapter 3	
Part 3-1	
Division 2	
s 58	am No 15, 2021; No 109, 2021; No 119, 2021
s 59	am No 119, 2021
Part 3-2	
Division 3	
Subdivision B	
s 67	rs No 104, 2020
s 70	am No 104, 2020
Chapter 4	
Part 4-1	
Division 1	
s 72	am No 119, 2021
Division 2	
s 79	am No 15, 2021; No 119, 2021
Part 4-3	
Division 2	
s 92	am No 104, 2020

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Endnote 4—Amendment history

Provision affected	How affected
s 95	am No 15, 2021
s 95A	ad No 119, 2021
s 98	am No 119, 2021
Chapter 5	
Part 5-1	
Division 1	
s 107	am No 119, 2021
Division 2	
Subdivision A	
s 108	am No 119, 2021
Chapter 6	
Part 6-1	
Division 1	
s 148	am No 15, 2021; No 119, 2021
Division 2	
s 149	am No 119, 2021
s 150	am No 15, 2021
	rs No 119, 2021
s 151	am No 119, 2021
s 152	am No 119, 2021
s 153	am No 15, 2021; No 119, 2021
s 154	am No 119, 2021
s 156	am No 119, 2021
s 157	am No 119, 2021
Division 4	
s 161	am No 109, 2021
Part 6-2	
Part 6-2 heading	am No 15, 2021
Division 1	
s 162	am No 15, 2021
	rs No 119, 2021

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Endnote 4—Amendment history

Provision affected	How affected
Division 2	
Division 2 heading	am No 15, 2021
s 163	am No 15, 2021; No 119, 2021
s 164	am No 119, 2021
s 164A	ad No 119, 2021
s 164B	ad No 119, 2021
s 164C	ad No 119, 2021
s 164D	ad No 119, 2021
Division 3	
s 165	am No 15, 2021; No 109, 2021
s 165A	ad No 119, 2021
Part 6-3	
Division 1	
s 166	am No 119, 2021
Division 2	
s 167	am No 109, 2021
s 168	am No 119, 2021
s 172	am No 119, 2021
Chapter 7	
Part 7-3	
Division 1	
s 180	am No 15, 2021
Division 3	
s 183	am No 15, 2021
s 184	am No 15, 2021
Division 4	
s 185	am No 15, 2021
Division 4A	
Division 4A	ad No 15, 2021
s 185A	ad No 15, 2021

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Endnote 4—Amendment history

Provision affected	How affected
Division 5	
s 190	am No 13, 2021
Chapter 8	
Chapter 8	ad No 15, 2021
Part 8-1	
s 194	ad No 15, 2021
Part 8-2	
s 195	ad No 15, 2021
s 196	ad No 15, 2021
s 197	ad No 15, 2021
s 198	ad No 15, 2021
s 199	ad No 15, 2021
Part 8-3	
Part 8-3	ad No 109, 2021
s 200	ad No 109, 2021
s 201	ad No 109, 2021
s 202	ad No 109, 2021
	am No 109, 2021
s 203	ad No 109, 2021
s 204	ad No 109, 2021
s 205	ad No 109, 2021
Part 8-4	
Part 8-4	ad No 119, 2021
s 206	ad No 119, 2021
s 207	ad No 119, 2021
s 208	ad No 119, 2021

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Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Subsection 31(3) (note)

Kind of editorial change

Give effect to the misdescribed amendment as intended

Details of editorial change

Schedule 1 item 32 of the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021* instructs to omit "subsection 165(3)" and substitute "section 165 or 165A" in note 2 of subsection 31(3).

Note 2 does not appear in subsection 31(3). However, a note does appear.

This compilation was editorially changed to omit "subsection 165(3)" and substitute "section 165 or 165A" in the note to subsection 31(3) to give effect to the misdescribed amendment as intended.

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