



National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021

No. 119, 2021

**An Act to amend the *National Redress Scheme for
Institutional Child Sexual Abuse Act 2018*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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[Assented to 2 December 2021]

The Parliament of Australia enacts:

No. 119, 2021

*National Redress Scheme for Institutional Child Sexual Abuse
Amendment (Funders of Last Resort and Other Measures) Act 2021*

1

1 Short title

This Act is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021*.

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	The day after this Act receives the Royal Assent.	3 December 2021

Note: This table relates only to the provisions of this Act as originally enacted.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.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Funders of last resort

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 Subparagraph 3(2)(b)(iii)

After “participating institutions”, insert “and partly-participating institutions”.

2 Section 4

After “each participating institution”, insert “(and, in certain circumstances, partly-participating institutions)”.

3 Section 4

After “one or more participating institutions”, insert “(or certain other institutions)”.

4 Section 4

Omit “A participating institution is responsible”, substitute “An institution is responsible”.

5 Section 4

Omit “where the participating”, substitute “where the”.

6 Section 6

Insert:

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

7 Section 6 (definition of *equally responsible*)

Omit “a participating”, substitute “an”.

8 Section 6 (definition of *funder of last resort*)

Repeal the definition, substitute:

funder of last resort: see section 163.

9 Section 6 (definition of *listed*)

Repeal the definition, substitute:

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

10 Section 6 (definition of *participating institution*)

Omit “subsections 108(2) and”, substitute “section 108 and subsection”.

11 Section 6

Insert:

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

12 Section 6 (definition of *primarily responsible*)

Omit “a participating”, substitute “an”.

13 Section 6 (definition of *related*)

Omit “a participating”, substitute “an”.

14 Section 6 (definition of *responsible*)

Omit “a participating”, substitute “an”.

15 Section 6 (definition of *responsible institution*)

Omit “an”, substitute “a participating”.

16 Section 11

After “one or more participating institutions”, insert “(or, in certain circumstances, one or more institutions that are listed for a participating jurisdiction under section 164A, 164B or 164C)”.

17 Paragraph 13(1)(d)

Repeal the paragraph, substitute:

(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

18 Subsection 13(1) (note 2)

Omit “subsection 108(2)”, substitute “section 108”.

19 Paragraph 16(1)(c)

Repeal the paragraph, substitute:

- (c) a direct personal response from:
 - (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.

20 Subsection 16(3)

After “participating institutions”, insert “or partly-participating institutions”.

21 Section 18

After “(such as the responsible institutions).”, insert “If the application is approved, the Operator must also give written notice to any funders of last resort that are specified in the determination.”.

22 Section 25 (heading)

Omit “participating”.

23 Paragraphs 25(1)(a) and (b)

After “participating institution”, insert “or partly-participating institution”.

24 Subsection 25(2)

After “participating institution”, insert “or partly-participating institution”.

25 Paragraph 26(2)(a)

After “participating institution”, insert “or partly-participating institution”.

26 At the end of subparagraph 29(2)(i)(ii)

Add “under section 164”.

27 After paragraph 29(2)(i)

Insert:

- ; 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:
 - (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.

28 Subsection 29(2) (notes 1A, 1 and 2)

Repeal the notes, substitute:

- 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 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.

29 Paragraph 29(7)(b)

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

30 Paragraph 29(7)(b)

After “section 35”, insert “or 35A”.

31 Subsection 30(5) (note 2)

Omit “subsection 165(2)”, substitute “section 165 or 165A”.

32 Subsection 31(3) (note 2)

Omit “subsection 165(3)”, substitute “section 165 or 165A”.

33 Division 5 of Part 2-3 (heading)

Omit “and participating institutions”, substitute “, participating institutions and funders of last resort”.

34 At the end of Division 5 of Part 2-3

Add:

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
- (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
 - (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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35 Subsection 36(2)

Omit “an institution”.

36 Paragraph 36(2)(a)

Before “is, or is not”, insert “an institution”.

37 Paragraph 36(2)(b)

Before “is, or is not”, insert “an institution or funder of last resort”.

38 Subsection 36(3)

Repeal the subsection, substitute:

(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.

39 Section 38

Omit:

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).

substitute:

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.

40 After paragraph 39(i)

Insert:

- (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 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

41 Paragraph 39(p)

After "responsible institutions", insert "(if any)".

42 At the end of Division 2 of Part 2-4

Add:

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.

43 Paragraph 42(2)(g)

After “participating institutions”, insert “and partly-participating institutions”.

44 After section 44

Insert:

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.

45 At the end of Division 3 of Part 2-4

Add:

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.

46 Section 47

Omit “responsible institutions”, substitute “participating institutions, and certain partly-participating institutions, that are responsible”.

47 Section 47

Omit “participating”.

48 Section 54 (heading)

After “responsible institutions”, insert “and partly-participating institutions”.

49 Subsection 54(1)

After “participating institution”, insert “or partly-participating institution”.

50 Subsection 54(1)

After “section 44”, insert “or 46B”.

51 Subsection 54(2)

Omit “a participating”, substitute “an”.

52 Subsection 54(3)

Omit “participating”.

53 Subsection 56(1)

After “participating institutions”, insert “and partly-participating institutions”.

54 Subsection 56(2)

After “participating institution”, insert “or partly-participating institution”.

55 Subsection 56(3)

After “Participating institutions”, insert “and partly-participating institutions”.

56 Subsection 56(4)

After “participating institutions”, insert “and partly-participating institutions”.

57 Subsections 56(5) and (7)

After “Participating institutions”, insert “and partly-participating institutions”.

58 At the end of subsection 58(3)

Add:

- ; 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:
 - (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.

59 Subsections 58(5) and 59(5)

Omit “or a participating institution”, substitute “, a participating institution, a partly-participating institution or a funder of last resort”.

60 Section 72

Omit “participating institutions”, substitute “institutions and funders of last resort”.

61 Section 79 (heading)

Omit “**participating institutions**”, substitute “**institutions and funders of last resort**”.

62 Subsection 79(1)

After “participating institution”, insert “, partly-participating institution, funder of last resort (other than the Commonwealth)”.

63 Subsection 79(1)

After “section 35”, insert “, 35A or 46B”.

64 Section 98 (heading)

Omit “**participating**”.

65 Subsection 98(1)

After “participating institution”, insert “or partly-participating institution”.

66 Paragraphs 98(2)(a) and (b)

Omit “participating”.

67 Paragraph 98(2)(c)

Before “the purpose”, insert “in the case of a participating institution—”.

68 Paragraph 98(2)(d)

Before “the purpose”, insert “in any case—”.

69 Paragraph 98(2)(d)

Omit “participating”.

70 Section 107

After “at least one participating institution”, insert “, or at least one institution listed for a participating jurisdiction under section 164A, 164B or 164C.”.

71 Subsection 108(1)

Repeal the subsection.

72 Subsection 108(2)

Omit “(2)”.

73 At the end of subsection 108(2)

Add:

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

74 Section 148

Omit:

One or more participating government institutions may be a funder of last resort for a defunct institution. In that case, those government institutions will be liable to pay the defunct institution's (hypothetical) share of the costs of providing redress to the person, which will increase the amount of funding contribution the government institutions will be liable to pay. (For the funder of last resort provisions, see Part 6-2.)

substitute:

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.)

75 Subsection 149(1)

Repeal the subsection (not including the notes), substitute:

- (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.

76 Section 150

Repeal the section, substitute:

150 Funding contribution

Funding contribution for a participating institution or funder of last resort for a quarter consists of:

- (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.

77 Section 151

After “participating institution”, insert “or funder of last resort”.

78 Paragraphs 151(a) and (b)

After “institution’s”, insert “or funder of last resort’s”.

79 Section 151 (note)

Repeal the note, substitute:

- 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).

80 Subsection 152(1)

After “participating institution”, insert “or funder of last resort”.

81 Subsections 152(1) and (2)

After “institution’s”, insert “or funder of last resort’s”.

82 Subsection 153(1)

After “a participating institution”, insert “or funder of last resort”.

83 Paragraph 153(1)(a)

After “participating institution”, insert “or funder of last resort”.

84 Subsections 153(2) and 154(1)

After “participating institution”, insert “or funder of last resort”.

85 Subsection 154(1)

After “the institution”, insert “or funder of last resort”.

86 Subsections 154(3), 156(1) and 157(1) and (6)

After “participating institution”, insert “or funder of last resort”.

87 Section 162

Repeal the section, substitute:

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).

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.

88 Section 163

Before “A participating”, insert “(1)”.

89 Section 163 (at the end of the note)

Add “under section 164”.

90 At the end of section 163

Add:

- (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.

91 Section 164 (at the end of the heading)

Add “—listing relating only to abuse for which participating government institution is equally responsible”.

92 Subsection 164(1)

After “a participating jurisdiction”, insert “under this section”.

93 At the end of subsection 164(1)

Add:

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.

94 At the end of subsection 164(2)

Add “under this section”.

95 At the end of subsections 164(3) and (4)

Add “under this section”.

96 At the end of paragraph 164(6)(b)

Add “under this section”.

97 At the end of subsection 164(6)

Add “under this section”.

98 At the end of paragraph 164(7)(b)

Add “under this section”.

99 At the end of subsection 164(7)

Add “under this section”.

100 After section 164

Insert:

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.
- (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.

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
 - (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:
 - (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 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
 - (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;

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.

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.

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.
- (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.

101 At the end of Division 3 of Part 6-2

Add:

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
 - (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:
- (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 out 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:
 - (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.

- (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 out 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 (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
 - (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.

102 Section 166

After "an institution", insert ", a State, a Territory".

103 Section 168

After "an institution", insert ", a State, a Territory".

104 Paragraphs 168(a) and (b)

After "the institution", insert ", State, Territory".

105 Section 172 (heading)

At the end of the heading, add "**and participating jurisdictions**".

106 Paragraph 172(c)

After "participating institution", insert "or participating jurisdiction".

107 Section 172

After "the institution", insert "or jurisdiction".

Schedule 2—Disclosing information about non-participating institutions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 After section 95

Insert:

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);
 - (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.

Schedule 3—Application and transitional provisions

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

1 In the appropriate position in Chapter 8

Insert:

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.

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.

*[Minister's second reading speech made in—
House of Representatives on 27 October 2021
Senate on 24 November 2021]*

(137/21)
