EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

National Redress Scheme for Institutional Child Sexual Abuse Amendment (2021 Measures No. 1) Rules 2021

Purpose

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2021 Measures No. 1) Rules 2021* ('the instrument') is made under section 179 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* ('the Act').

The purpose of the instrument is to amend the *National Redress Scheme for Child Sexual Abuse Rules 2018* ('the Rules') to prescribe:

- for the purposes of subsection 48(1A) of the Act, that a redress payment, or a counselling and psychological services payment, must be paid to an account that is held, and has been nominated in writing, by the administrator where one has been appointed;
- for the purposes of subsections 111(2) and 113(2) of the Act, that certain State and Territory universities are not State or Territory institutions for the purposes of the National Redress Scheme for Institutional Child Sexual Abuse ('the Scheme');
- for the purposes of paragraph 111(1)(c) of the Act, that an institution is a State institution for the purposes of the Scheme; and
- for the purposes of the definition of ***protected symbol*** set out in paragraph 185A(6)(b) of the Act, the design of a protected symbol that is used, or is for use, in connection with the Scheme.

The effect of requiring a redress payment, or counselling and psychological services payment, to be made to an account held by an administrator, instead of the person, is to ensure that payments can be made in a way that is consistent with arrangements made because an individual has impaired capacity or there is risk to the individual's property or other interests, where the Operator considers this is appropriate.

The effect of excluding certain universities from the definition of 'State institution' and 'Territory institution' is that they may only participate in the Scheme if they choose to participate in the Scheme as non-government institutions. The prescribed universities operate independently of government control, however, upon establishment of the Scheme, fell within the definition of 'State institution' or 'Territory institution' due to being established under State or Territory legislation. It is therefore appropriate to amend the Rules to ensure that if these universities choose to participate in the Scheme, they would do so in their own right as non-government institutions, rather than as State or Territory institutions.

The effect of prescribing an institution as a 'State institution' is that the relevant State may agree to the institution's participation in the Scheme. Section 136 of the Act provides that the representative for a participating group of State institutions is the participating State. Institutions that are established for a public purpose and with close connection to the State may nonetheless fall outside of the definition of 'State institution' in the Act because the institution was not established by State legislation. By prescribing such institutions as 'State institutions', the Rules give effect to the requests from and agreed arrangements with State Governments, both current and historical, between institutions and the relevant State Governments.

The effect of establishing the Scheme's brand as a protected symbol is to ensure the integrity of dealings with the Scheme.

Background

Section 179 of the Act provides the Minister with the powers to make rules prescribing matters required or permitted by the Act to be made, or that are necessary or convenient to be made for carrying out or giving effect to this Act.

Amendments requiring payments to administrator's bank accounts

Under sections 48 and 51, a redress payment, or counselling and psychological services payment, must generally be paid to an account that the person holds with a financial institution and that the person has nominated in writing to the Operator. However, subsections 48(1A) and 51(3A) provide that where another person (the 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 the Operator considers it appropriate in the circumstances, then the Operator must pay the administrator as soon as practicable.

The instrument amends the Rules to clarify that if a redress payment or counselling and psychological services payment is required to be paid to an administrator appointed to make certain decisions on behalf of a person, then it must be paid to a bank account nominated in writing by the administrator.

Amendments prescribing institutions that are not State or Territory institutions

The instrument also amends the Rules to prescribe that certain universities are not State or Territory institutions for the purposes of the Scheme.

Subsection 111(1) of the Act sets out when an institution 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.

Subsection 111(2) of the Act provides:

*(2) However, an institution is not a **State institution** if the rules prescribe that it is not a State institution.*

The power to prescribe that an institution is not a State institution under subsection 111(2) of the Act is designed to allow for the carving out, from the definition of State institution, of institutions that are not under the direction and control of the State that could, for a variety of reasons, fall within that definition.

The instrument amends the Rules to prescribe 33 universities for the purposes of subsection 111(2) of the Act.

Subsection 113(1) of the Act sets out when an institution 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.

Subsection 113(2) of the Act provides:

*(2) However, an institution is not a **Territory institution** if the rules prescribe that it is not a Territory institution.*

The power to prescribe that an institution is not a Territory institution under section 113 of the Act is similarly designed to allow for the carving out, from the definition of Territory institution, of institutions that are not under the direction and control of the Territory that could, for a variety of reasons, fall within that definition.

The instrument amends the Rules to prescribe four universities for the purposes of subsection 113(2) of the Act.

Universities operate largely independently of the Commonwealth, State and Territory Governments. As such, it is appropriate that the Rules are amended so that universities be treated as non-government institutions, where they otherwise may have been considered as State or Territory institutions under the Act.

This is achieved by prescribing in the Rules that the specific institutions are not State or Territory institutions.

Once so prescribed in the Rules, a university may agree to participate in the Scheme in the same manner as any other non-government institution.

This amendment to the Rules allows the universities named in this instrument to fully participate in the Scheme should they choose to do so, and removes any technical impediment to the universities participating in the Scheme as non-government institutions.

Amendments prescribing institutions that are State institutions

The instrument prescribes that a specific institution is a 'State institution' for the purposes of the Scheme.

Subsection 111(1) of the Act sets out when an institution 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.

The power to prescribe that an institution is a 'State institution' under paragraph 111(1)(c) of the Act is designed to allow for expansion of the definition of State institution, to appropriate institutions that could, for a variety of reasons, fall outside the Act's definition.

Once so prescribed in the Rules as a State institution, the relevant State Government may agree to the institution participating in the Scheme on its behalf. Section 136 of the Act provides that the representative for a participating group of State institutions is the participating State.

The instrument amends the Rules to prescribe an institution that is a New South Wales State institution for the purposes of the Scheme. This allows the prescribed State institution to participate in the Scheme in a manner that gives effect to the request of the New South Wales Government and reflects current and historical arrangements between the institution and the New South Wales Government.

Amendments to provide for a protected symbol

Some uses of names and symbols (called protected names and protected symbols) relating to the Scheme are prohibited unless the Operator gives consent. Subsection 185A(6) defines a protected symbol as a symbol:

(a) that is used, or use, in connection with the Scheme; and

(b) the design of which is set out in the rules.

The instrument amends the Rules to provide that the branding for the Scheme is a protected symbol for the purposes of subsection 185A(6) of the Act.

Commencement

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

Consultation

All State and Territory Governments were consulted in the preparation of this instrument in line with the Scheme's governance arrangements set out in the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse. No objections were raised by States and Territories in relation to the proposed changes.

Both the Commonwealth Government and/or State and Territory Governments consulted with the identified universities regarding the intention of the amendments concerning universities. Communications explained that following the amendments, universities would be able to participate in the Scheme as a non-government institution, should they choose to do so. No objections were raised by the identified universities.

Following a request from the New South Government, the Commonwealth Department of Social Services has worked with the New South Wales Government to prescribe PCYC NSW as a State institution. Including PCYC NSW as a State Institution allows the institution to join the Scheme as part of the participating group of New South Wales institutions. The NSW Government consulted PCYC NSW on these changes, and no objections were raised.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has been consulted and has advised that a RIS is not required (OBPR ID 43750 and 43695).

Explanation of the provisions

Section 1 - Name

Section 1 provides that the name of the instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (2021 Measures No. 1) Rules 2021*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1

Schedule 1, Item 1 of the instrument amends the simplified outline in section 32 of the Rules to include a reference to the new subsection added as a consequence of item 3.

Item 2

Schedule 1, Item 2 of the instrument amends subsection 33(2) of the Rules as a consequence of item 3.

Item 3

Schedule 1, Item 3 of the instrument inserts a new subsection 33(4) after subsection 33(3) to clarify that, if a redress payment or counselling and psychological services payment is required to be paid to an administrator appointed to make certain decisions on behalf of a person, it must be paid to a bank account nominated in writing by the administrator.

Item 4

Schedule 1, Item 4 of the instrument amends the heading of Part 11A of the Rules to be “Institutions that are not State or Territory institutions”.

Item 5

Schedule 1, Item 5 of the instrument repeals the simplified outline in section 54A of the Rules and substitutes a simplified outline of the new scope of Part 11A to include institutions that are not Territory institutions.

Item 6

Schedule 1, Item 6 of the instrument amends table item 1 at section 54B of the Rules to insert new paragraphs listing additional institutions that are not State institutions for the purposes of the Scheme.

The additional institutions are seven Queensland universities.

Item 7

Schedule 1, Item 7 of the instrument amends table item 2 at section 54B of the Rules to insert new paragraphs listing additional institutions that are not State institutions for the purposes of the Scheme.

The additional institutions are ten New South Wales universities.

Item 8

Schedule 1, Item 8 of the instrument adds table items 3 to 6 to the end of the table at section 54B of the Rules. These additions to the table prescribe institutions in Victoria, Western Australia, South Australia and Tasmania that are not State institutions for the purposes of the Act.

The additional institutions are eight Victorian universities, four Western Australian universities, three South Australian universities, and one Tasmanian university.

Item 9

Schedule 1, Item 9 of the instrument amends section 54B of the Rules to insert a note to the effect that a number of the institutions listed in the table at section 54B were established by earlier legislation, but were continued in existence as the same legal entity by an Act referred to in the table. That legislation may also have changed the institution's name. In such cases, the Rules apply to the institution under both its current and former names.

Item 10

Schedule 1, Item 10 of the instrument inserts new Division 3 to Part 11A of the Rules. This new Division contains new section 54C.

New section 54C provides that the institutions specified in the table at the end of new section 54C are prescribed for the purposes of subsection 113(2) of the Act as institutions that are not Territory institutions.

The table in new section 54C prescribes institutions in the Australian Capital Territory and Northern Territory.

The additional institutions are one Australian Capital Territory university, and three Northern Territory universities.

Item 11

Schedule 1, Item 11 of the instrument inserts a note at the end of section 54C of the Rules to the effect that a number of the institutions listed in the table at section 54C were established by earlier legislation, but were continued in existence as the same legal entity by an Act referred to in the table. That legislation may also have changed the institution's name. In such cases, the Rules apply to the institution under both its current and former names.

Item 12

Schedule 1, Item 12 of the instrument inserts new Part 11B into the Rules. This new Part contains new Divisions 1 and 2, which contain new sections 54D and 54E respectively.

New section 54D contains a simplified outline of new Part 11B.

New section 54E provides that the institutions specified in the table at the end of new section 54E are prescribed for the purposes of paragraph 111(1)(c) of the Act as institutions that are State institutions. The table in new section 54E names one New South Wales institution – the Police Citizens Youth Clubs NSW Ltd.

Item 13

Schedule 1, Item 13 of the instrument repeals the simplified outline in section 70 of the Rules and substitutes a simplified outline which establishes that Part 14 sets out protected names and symbols.

Item 14

Schedule 1, Item 14 of the instrument inserts a new Division 3A of Part 14 into the Rules which contains new section 74A.

New section 74A provides that the design of the National Redress Scheme logo is a protected symbol for the purposes of paragraph 185A(6) of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Redress Scheme for Institutional Child Sexual Abuse Amendment (2021 Measures No. 1) Rules 2021

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The instrument makes minor amendments to the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 (the Rules) that will improve the operation of the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme). Some of these amendments give effect to components of the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Act 2021*.

The amendments made by the instrument will:

- set out that a redress payment can be made to a person who has been appointed by a court, tribunal or board, or under a Commonwealth, state or territory law, to manage the financial affairs of a person entitled to redress. This addresses an issue identified in the administration of the legislation from the Scheme's inception,
- specify the protected symbols used in connection with the Scheme. This will provide assurance and clarity around their use, and support Scheme integrity through the remaining eight years of the Scheme,
- allow certain universities to be declared as not State or Territory Institutions for the purpose of the Scheme. This will allow the prescribed universities to participate in the Scheme in their own right as non-government institutions, should they choose to do so; and
- classify the Police Citizens Youth Club Limited NSW (PCYC NSW) as a State Institution, allowing this institution to participate in the Scheme as a participating State Institution;

Human rights implications

The instrument is compatible with and promotes the following rights:

- *Convention on the Rights of the Child* (CRC)
    - Article 39 – state-supported recovery for child victims of neglect, exploitation and abuse.

The right to state supported recovery for child victims of abuse

Article 39 of the CRC guarantees the right to state-supported recovery for child victims of neglect, exploitation and abuse. The Scheme supports the recovery of people who have experienced institutional child sexual abuse by enabling recognition of past abuse and providing access to redress, including a redress payment, a personal response from the responsible institution and access to counselling and psychological care services.

The instrument gives effect to provisions in the Act enabling payments to be made to an administrator appointed to manage the financial affairs of a person entitled to redress (such as a public trustee). This was previously limited to the person who is entitled to redress. An administrator may be appointed by a court, tribunal or board, or under a Commonwealth, state or territory law, where an individual has impaired capacity to manage their finances or there is risk to the individual's property or other interests. The amendments in the instrument mean the Scheme can make a redress payment for these applicants, supporting their right to state-supported recovery while ensuring their interests remain protected in a way that is consistent with the legal arrangements in place. As per the Act, the amendment restricts this to limited, legitimate circumstances.

Institutions defined as State or Territory institutions under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act) may only participate in the Scheme with the agreement of the relevant participating state or territory. The prescribed thirty-seven universities operate independently from state and territory governments. It is therefore appropriate that they are classified as not State or Territory Institutions so that they may participate in the Scheme in their own right, as non-government institutions should they choose to do so. If a prescribed institution chose to participate in the Scheme, their participation will potentially make redress available to more survivors and promote recovery.

This instrument also facilitates the inclusion of PCYC NSW in the New South Wales participating group, promoting state-supported recovery and potentially providing access to redress to more survivors.

Including NSW PCYC as a participating state institution and prescribing thirty-seven universities as non-government institutions potentially allows for more institutions to join the Scheme. This ensures that applicants who were not afforded the protection required by their status as a minor can now seek an effective remedy of redress through the Scheme.

The instrument also provides for the protection of the Scheme's logo, reducing the risk of its potential misuse. This will help ensure that applicants seeking remedy through the Scheme can be confident that the Scheme information they access is relevant and up to date, and that their communications are with the official Scheme and will therefore be afforded the appropriate protections of the Scheme. It is an equivalent provision to that employed in other government-run programs. Increased assurance around the Scheme's integrity supports a person's right to effective remedy.

Conclusion

The Instrument promotes the protection of human rights and does not introduce any new limitations on human rights.

[Circulated with the authority of the Minister for Families and Social Services, Senator the Hon Anne Ruston]