

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework Amendment (Partly-participating Institutions and Other Measures) 2025

Purpose

The purpose of the instrument is to amend the *National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018* (the Framework) to:

- amend relevant provisions of the Framework to prescribe that partly-participating institutions are subject to the requirements and obligations of the Framework with respect to direct personal responses (DPRs);
- amend the review and reporting obligations of participating and partly-participating institutions to require institutions to report complaints every 6 months and include additional criteria to promote better quality DPRs for survivors.

Background

This instrument amends the *National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018* (the DPR Framework) to align it with amendments made by the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Funders of Last Resort and Other Measures) Act 2021* (the 2021 Amendment Act). The 2021 Amendment Act was the result of:

- actions stemming from the Australian Government response to the Final Report of the Second Year Review of the National Redress Scheme for Institutional Child Sexual Abuse (the Second Anniversary Review), and
- the Australian Government responses to the First and Second Interim Reports of the Joint Select Committee on Implementation of the National Redress Scheme (JSC reports).

The DPR Framework operates as guidelines about how a DPR is to be provided under the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme), including review and reporting obligations.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) found that many survivors spoke of the importance to their wellbeing of an institution acknowledging the abuse for which it is responsible. Such an acknowledgement often assists survivors' sense of achieving justice and assists with the healing process.

Currently, the DPR Framework does not include partly-participating institution (PPI) arrangements, which were introduced by the 2021 Amendment Act. An institution which is partly-participating in the Scheme is listed under section 164B for a participating jurisdiction. A PPI is required to provide DPR under the Scheme, however the current DPR Framework does not outline the role of a PPI in delivering DPR to survivors.

Since the commencement of the Scheme, the DPR Framework has sought to contribute to the psychological and physical recovery of those survivors who entrust their experience with the Scheme and acts as an acknowledgement by the Australian Government that their abuse has had a varied and personal impact on their life.

It is important that survivors who name PPIs are provided with DPR consistent with the experience of survivors who name fully participating institutions, and to ensure that PPIs are subject to the same review and reporting obligations as fully participating institutions.

Overview of the legislative instrument

The DPR Framework has not been updated since the Scheme commenced.

The proposed amendment would clarify the expectation of PPIs' compliance with the DPR Framework, including reporting obligations, by inserting explicit references to PPIs into the DPR Framework.

The proposed amendments also introduce additional reporting requirements for all institutions, whether or not partly-participating, to specifically report to the Scheme about any complaints made directly to an institution about a DPR. Further, the proposed amendments will change the reporting time frame to every six months – the current DPR Framework requires the matter to be reported 'as soon as practicable'. This change fulfils a recommendation made by the JSC reports and the Second Anniversary Review by enabling better data collection on the provision of DPRs which, in turn, will inform more timely improvements to, and Scheme support for institutions providing, DPRs.

Amendments to this instrument have also been made to align the DPR Framework with the guiding principles of the Scheme in section 10 of the Act. In particular, that redress should be assessed, offered and provided to avoid, as far as possible, further harming or traumatising the survivor. Redress includes DPR as a component.

The proposed amendments to the DPR Framework will enhance benefits to survivors by:

1. Enshrining the existence, role and reporting obligations of PPIs in the DPR Framework.

2. Enabling the Scheme to have further visibility of how many DPRs are undertaken by participating and PPIs. Where there may be trends in low-uptake and quality, the Scheme can invest targeted resources to assist institutions and improve DPRs for survivors.
3. Enabling the Scheme to have visibility of reporting of survivor complaints about DPRs to institutions.
4. Enabling more frequent, but not increased, reporting regarding DPR complaints.
5. Requiring the delivery of DPRs according to trauma-informed principles.
6. Highlighting the value of providing culturally safe DPRs, particularly for Aboriginal and Torres Strait Islander survivors.

Authority

The *National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework Amendment (Partly-participating Institutions and Other Measures) 2025* (the Instrument) is made under section 55 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

Section 55 of the Act provides the Minister may declare, in writing, guidelines about how DPRs are to be provided under the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) established by the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

Commencement

The instrument commences on the day after registration.

Consultation

The Department of Social Services (the Department) consulted with officials from the following departments regarding the proposed amendments:

- New South Wales Department of Communities and Justice
- Western Australia Department of Justice
- Victoria Department of Justice and Community Safety
- Tasmania Department of Justice
- South Australia Attorney-General's Department
- Queensland Department of Families, Seniors, Disability Services and Child Safety
- Northern Territory Attorney-General's Department
- Australian Capital Territory Department of Justice and Community Safety

No objections were raised by the State and Territory departments in relation to the proposed changes in this instrument during the consultation process.

The Department also consulted the National Redress Scheme Interjurisdictional Committee and the Ministers' Redress Scheme Governance Board. During this process, Tasmania sought to include a reference to the obligation of institutions to deliver DPRs in accordance with 'trauma informed principles'. This reference has been included in the instrument as a result of this consultation. No other substantive issues were raised during consultation.

Regulatory Impact Analysis

The Office of Impact Analysis (OIA) was consulted and considered that a detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework and no regulatory impact statement was required. The OIA reference number is OIA24-08135.

Details of the instrument

Details of the instrument are set out in **Explanation of the Provisions**.

Parliamentary scrutiny etc.

In accordance with subsection 55(4) of the Act, the Instrument is a legislative instrument but is not subject to disallowance under section 42 of the *Legislation Act 2003*.

The explanatory memorandum for the Act explains that it is necessary to exempt the DPR Framework from disallowance so that the method or matters to be taken into account can be amended for the purpose of ensuring that institutions provide a consistent approach to giving DPR to survivors. Further, the DPR Framework would ordinarily be of an administrative character and would not be a legislative instrument. However, in order to ensure certainty and transparency it was considered appropriate to make this declaration a legislative instrument under the Act.

A Statement of Compatibility with Human Rights has been prepared in relation to the instrument and provides that the instrument is compatible with human rights as it advances the protection of the rights of people who have experienced child sexual abuse in Australia.

Explanation of the provisions

Details of the *National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework Amendment (Partly-participating Institutions and Other Measures) 2025*

Section 1 – Name

This section provides that the name of the Instrument is the *National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework Amendment (Partly-participating Institutions and Other Measures) 2025*.

Section 2 – Commencement

This section provides that the Instrument commences on the day after registration.

Section 3 – Authority

This section provides that the Instrument is made under section 55 of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

Section 4 - Schedules

This section provides each instrument that is specified in Schedule 1 to the Instrument is amended as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to the Instrument has effect according to its terms.

Schedule 1 – Amendments

Items [1] to [2] – Section 4

Item 1 repeals paragraph (d) of the note to Section 4 of the Framework. It substitutes new paragraphs (d) and (e) so as to include the definition of partly-participating institution from the Act in the Framework.

Item 2 inserts the definition of “complaint” and “direct personal response facilitator”. These terms are included to facilitate the expansion of the review and reporting obligations of institutions which are providing DPRs.

A complaint for the purposes of the Instrument means an expression of dissatisfaction made to or about a responsible institution related to its products, services, staff or the handling of the complaint, where a response or resolution is explicitly or implicitly expected or legally required. For example, a survivor make a complaint that an institution did not deliver a DPR to satisfaction because it did not take into account the survivor’s cultural needs.

A DPR Facilitator means a neutral, independent third party who has the knowledge and skills to ensure the DPR process operates in accordance with the DPR Framework. For example, a DPR Facilitator should be a third party with necessary

skills to prepare participants for and conduct a face-to-face DPR so that it meets the requirements of the DPR Framework.

Item 2 also inserts a definition of “Responsible institution” for the purposes of the Framework to include both a participating institution and a partly-participating institution. The definition of “responsible institution” in the Framework is not the same definition of “responsible institution” as defined by the Act.

Items [3] and [4] – Section 5

Item 3 omits the words “participating institution (the *responsible institution*)” and substitutes the words ‘responsible institution’ in section 5 of the Framework.

Item 4 omits the words “participating institutions” to the note to section 5 of the Framework and substitutes the words “responsible institution”.

These amendments pick up the new definition of ‘responsible institution’ inserted by item 2 so that section 5 applies to both participating institutions and partly-participating institutions. This means that a person can receive a DPR from both kinds of institutions.

Items [5] to [7] – Section 6

Item 5 inserts the number “1” after the word note in the note to section 6. This item is consequential to item 7 that inserts a second note to section 6.

Item 6 omits the words “participating institution” in the existing note to section 6 and substitutes the words “responsible institution”, so as to make the note applicable to partly-participating institutions.

Item 7 inserts a second note at the end of section 6 which clarifies partly-participating institutions are not covered by the release from civil liability set out in section 43 of the Act. This item is included for clarity.

Items [8] and [9]

Item 8 inserts the number “1” after the word note in the note to section 10. This item is consequential to item 9 that inserts a second note to section 10.

Item 9 inserts a second note to section 10 which provides that a “representative” for the purposes of section 10 is an agent or employee of the responsible institution who will be providing a DPR on its behalf. This item is inserted to distinguish “representative” for the purposes of this provision from the meaning of “representative” under the Act.

Items [10] to [12] – Section 11

Item 10 inserts the words “(including cultural needs)” after the words “survivor’s needs” in paragraph 11(c). This item is included require an institution to consider a survivor’s cultural needs in providing a DPR. This provision highlights the value of providing culturally safe DPRs, particularly for Aboriginal and Torres Strait Islander survivors.

Item 11 omits the words “the survivor”, and substitutes “or traumatising the survivor by prioritising and applying trauma informed principles of safety; trust; collaboration; choice; and empowerment.” The provider of a DPR will be required to take into account these trauma informed principles and this item is included to acknowledge the negative impacts a DPR may have on a survivor, and seek to avoid or minimise those impacts.

Item 12 inserts a note to section 12 of the Framework which provides a “representative” for the purposes of section 11 is to be taken as an agent or employee of the responsible institution who will be providing a DPR on its behalf. The note is inserted to distinguish the meaning of “representative” in this provision of the Framework from the meaning of “representative” under the Act.

Item [13] – Section 13

This item omits the words “participating institution” from section 13 of the Framework and substitutes the words “responsible institution”. “Responsible institution” includes both participating and partly-participating institutions.

Item [14] – Part 4 heading

This item repeals the heading to Part 4 of the Framework and substitutes a new heading which refers to all responsible institutions, which includes both participating and partly-participating institutions.

Item [15] – Section 16

This item repeals the words “participating institution” from section 16 of the Framework and substitutes the words “responsible institution”. “Responsible institution” includes both participating and partly-participating institutions.

Item [16] – Section 17

This item repeals section 17 of the Framework which deals with reporting obligations for institutions providing DPR. The instrument substitutes new section 17 which requires each responsible institution to give the Operator information every 6 months about:

- (a) the number of requests for DPR it received the preceding 6 month period;
- (b) the number of DPRs given during the preceding 6 month period;
- (c) the types of DPRs requested and given during the preceding 6 month period;
- (d) whether a direct personal response facilitator was used for each DPR provided during the preceding 6 month period;
- (e) the time between each request made to the institution for a DPR and the giving of the DPR during the preceding 6 month period;
- (f) details of each complaint received by the institution during the preceding 6 months in relation to a DPR it provided, specifically:
 - (i) the number of complains made to the institution in relation to DPRs;
 - (ii) the nature of the complaints; and
 - (iii) how the complaints were resolved.

The preceding 6 month period means July to December for the January reporting period and January to June for the July 6 months preceding the reporting day.

New section 17 contains additional reporting requirements for participating and partly-participating institutions to improve the experience of survivors who elect to receive a DPR from institutions.

New section 17 will enable the Scheme to have further visibility of how many DPRs are undertaken by institutions, including how survivor complaints are reported to institutions.

Statement of Compatibility of Human Rights

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

Act 2011

National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018

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

Overview of the legislative instrument

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Amendments to this instrument have also been made to align the DPR Framework with the guiding principles of the Scheme in section 10 of the Act. In particular, that redress should be assessed, offered and provided to avoid, as far as possible, further harming or traumatising the survivor. Redress includes DPR as a component.

The proposed amendments to the DPR Framework will enhance benefits to survivors by:

1. Enshrining the existence, role and reporting obligations of PPIs in the DPR Framework.
2. Enabling the Scheme to have further visibility of how many DPRs are undertaken by participating and PPIs. Where there may be trends in low-uptake and quality, the Scheme can invest targeted resources to assist institutions and improve DPRs for survivors.

3. Enabling the Scheme to have visibility of reporting of survivor complaints about DPRs to institutions.
4. Enabling more frequent, but not increased, reporting regarding DPR complaints.
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Human rights implications

The Statement of Compatibility of Human Rights for the 2021 Amendment Act included additional human rights implications relevant to the introduction of PPIs into the Scheme's primary legislation.

Similarly, the instrument positively engages with the following human rights:

- The right to freedom from discrimination in upholding the rights of the child – article 2 of the Convention on the Rights of the Child (CRC)
- The right to protection from sexual abuse – articles 19 and 34 of the CRC
- The right to state-supported recovery for child victims of abuse – article 39 of the CRC
- The right to an effective remedy – article 2(3) of the International Covenant on Civil and Political Rights (ICCPR)
- The right to health – article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to freedom from discrimination in upholding the rights of the child

Article 2 of the CRC guarantees the right of children to freedom from discrimination in the upholding of their other rights in the CRC.

The Framework currently sets out the minimum requirements for engagement in a DPR to ensure that all who receive redress have equal opportunity to access a DPR that is meaningful and appropriate for their circumstances.

The proposed amendments will amend section 11 of the DPR Framework to require that a responsible institution account for the cultural needs of a survivor in preparing for or giving DPR. Further, the amendments will require an institution to seek to avoid further harming the survivor by prioritising and applying trauma informed principles which includes safety and empowerment.

By including additional obligations for institutions, the amendments are intended to ensure that DPR is given to survivors in a way which promotes diversity and the individual needs of each survivor.

The right to protection from sexual abuse

Articles 19 and 34 of the CRC guarantee the right of every child to protection from all forms of physical or mental violence, injury or abuse, including sexual exploitation and abuse.

The Framework currently promotes this right by providing the detailed requirements necessary to support and implement the DPR element of the Scheme. The amendments will expand upon the existing Framework by including part-participating institutions in the Framework which will ensure those institutions are subject to the requirements set out in that instrument.

The Framework will also be amended to expand the DPR reporting requirements institutions are subject to. The additional reporting requirements will ensure the Scheme has appropriate oversight of DPR being provided to survivors, including in terms of consistency and quality of DPRs.

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 Framework currently promotes this right by providing the detailed requirements necessary to support and implement DPR. The amendments will expand upon these requirements, both by ensuring that part-participating institutions, and therefore all responsible institutions, are subject to the Framework and also by expanding the reporting requirements and frequency of reporting for institutions. The reporting requirements are expanded by the amendments so that the Scheme has increased oversight over the provision of DPR to ensure that it is provided in accordance Scheme expectations to ensure consistency and quality of DPR being provided by responsible institutions.

The right to an effective remedy

Article 2(3) of the ICCPR guarantees the right to an effective remedy.

The Scheme currently provides an effective remedy to people and supports the recovery of people who have experienced institutional child sexual abuse by enabling recognition of past abuse and providing access to components of redress, including DPR.

A DPR is given in accordance with the requirements of the existing DPR Framework. The amendments to the DPR Framework will further promote the effectiveness of DPR by ensuring part-participating institutions are subject to the requirements of the instrument, by including additional reporting requirements for participating institutions and by expanding the things an institution must consider when providing and preparing for DPR.

The right to health

Article 12 of the ICESCR guarantees the right of everyone to the highest attainable standard of physical and mental health.

The DPR Framework currently promotes this right through providing the detailed requirements necessary to support the implementation of the direct personal response element of the Scheme in a manner that promotes the health and wellbeing of the survivor.

The amendments will further promote this right by requiring a responsible institution which is providing DPR to ensure the survivor is not further traumatised by prioritising and applying trauma informed principles of safety, trust, collaboration, choice and empowerment.

The amendments made by the instrument do not introduce any limitations on any human rights.

The expansion of the application of the DPR Framework further promotes the legislative purpose of the Scheme to deliver redress to persons who experienced child sexual abuse in institutional settings and the right to state-sponsored recovery for child victims of abuse.

Conclusion

This Instrument is compatible with human rights because it promotes the protection of human rights of people who have experienced child sexual abuse in Australia. It does not introduce any limitations on human rights.

The Hon Amanda Rishworth MP, Minister for Social Services