



New South Wales

National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament.

The Bill operates to refer matters relating to institutional child sexual abuse as follows:

- (a) The *text reference*, which provides for the enactment by the Commonwealth Parliament of the Bill for a proposed Commonwealth Act as set out in Schedule 1. The proposed Commonwealth Act is the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the *National Redress Act*).
- (b) The *amendment reference*, which provides for the enactment of express amendments to the National Redress Act relating to redress for institutional child sexual abuse. The amendment reference is subject to limitations under clauses 5 and 6.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) and main purpose of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 contains definitions of terms used in the proposed Act.

Part 2 Reference of matters to Commonwealth Parliament

Clause 4 deals with the reference of matters to the Commonwealth Parliament. The references comprise the text reference and the amendment reference, as referred to in the Overview above.

Clause 5 provides that the amendment reference does not include certain matters relating to State redress mechanisms.

Clause 5 (1) defines *State redress mechanism* to mean a scheme established by the State Parliament or State government or by any governmental or non-governmental entity for or in respect of persons who have suffered institutional child sexual abuse in the State, and also to mean the jurisdiction of a court or tribunal to grant compensation or support for or in respect of victims of crime (including crime relating to institutional child sexual abuse).

Clause 5 (2) provides that the amendment reference does not include the matter of making a law to the extent that it would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism.

Clause 5 (3) provides that clause 5 (2) does not cover: any matters covered by the text reference; the release or discharge of civil liability under the National Redress Scheme; the disclosure or use of evidence or other information provided or obtained under the National Redress Scheme; or the making, enforcement or protection (eg against the operation of garnishee orders) of payments under the National Redress Scheme.

Clause 6 provides that the amendment reference does not include the matter of making a law to the extent that it would substantively remove or override a provision of the National Redress Act that requires the agreement of the State (eg for a State institution to be declared a participating institution).

Clause 7 deals with the termination of the period of the references under clause 4 (namely, the period ending on a day fixed by the Governor by proclamation).

Clause 8 makes it clear that the termination of the amendment reference does not affect laws already in place.

Part 3 Miscellaneous

Clause 9 authorises the regulations or (subject to the regulations) the Minister to give directions as to how the agreement of the State is to be given or withdrawn and may be evidenced for the purposes of, and consistently with, the proposed Act and the National Redress Scheme.

Clause 10 provides that a participating institution may give information to the Operator under the National Redress Scheme in response to a relevant request of the Operator, and that a State agency may provide information to another State agency for the purpose of assisting any participating State institution to comply with such a request. The information may be provided despite any law of the State unless the law is prescribed by the regulations.

Clause 11 authorises regulations to be made for the purposes of the proposed Act.

Schedule 1 Scheduled text of the proposed Bill for a Commonwealth Act

Schedule 1 sets out the text of the Bill for the proposed *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth. The text is the subject of the text reference under clause 4 (1).



New South Wales

National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018

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New South Wales

National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018

No. , 2018

A Bill for

An Act to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth; and for other purposes.

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name and purpose of Act	3
(1) This Act is the <i>National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018</i> .	4 5
(2) The main purpose of this Act is to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth.	6 7 8 9
2 Commencement	10
This Act commences on the date of assent to this Act.	11
3 Definitions	12
In this Act, unless the contrary intention appears:	13
<i>amendment reference</i> means the reference under section 4 (2).	14
<i>express amendment</i> of the National Redress Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the National Redress Act.	15 16 17 18 19 20
<i>initial referred provisions</i> means the scheduled text, to the extent to which that text deals with matters that are included in the legislative powers of the Parliament of the State.	21 22 23
<i>National Redress Act</i> means a Commonwealth Act enacted in the terms, or substantially in the terms, of the scheduled text and as in force from time to time.	24 25
<i>National Redress Scheme</i> means the National Redress Scheme for Institutional Child Sexual Abuse as established by the National Redress Act and as in force from time to time.	26 27 28
<i>participating State institution</i> means a participating State institution within the meaning of the National Redress Act.	29 30
<i>scheduled text</i> means the text of the proposed Bill for a Commonwealth Act, as set out in Schedule 1 to this Act.	31 32
<i>State institution</i> means a State institution within the meaning of the National Redress Act.	33 34
<i>text reference</i> means the reference under section 4 (1).	35

Part 2 Reference of matters to Commonwealth Parliament

4 Reference of matters

- (1) **Text reference.** Matters to which the initial referred provisions relate are referred to the Parliament of the Commonwealth, but only to the extent of making laws with respect to those matters by including the initial referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, set out in the scheduled text.
- (2) **Amendment reference.** Matters relating to a redress scheme for institutional child sexual abuse are, except as provided by sections 5 and 6, referred to the Parliament of the Commonwealth, but only to the extent of making laws with respect to those matters by making express amendments of the National Redress Act.
- (3) The operation of each of subsections (1) and (2) is not affected by the other subsection.
- (4) The reference of a matter under subsection (1) or (2) has effect only:
 - (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth), and
 - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (5) To avoid doubt, it is the intention of the Parliament of the State that the National Redress Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of subsection (1):
 - (a) by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from under the references under subsections (1) and (2), and
 - (b) by provisions of instruments made or issued under the National Redress Act or under provisions referred to in paragraph (a).
- (6) Despite any other provision of this Act other than section 8 (2), a reference under subsection (1) or (2) has effect for a period:
 - (a) beginning when the subsection under which the reference is made comes into operation, and
 - (b) ending at the beginning of the day fixed under this Part as the day on which the reference is to terminate,but no longer.

5 State redress mechanisms

- (1) A *State redress mechanism* is:
 - (a) a scheme, program or arrangement (temporary or otherwise) established (before or after the commencement of this Act) by:
 - (i) the Parliament or government of the State, or
 - (ii) an institution (whether governmental or non-governmental) or other entity,for or in respect of persons who have suffered institutional child sexual abuse in the State (whether applying only to any such persons or applying to any class of victims of crime) and any associated matters, or

(b)	the jurisdiction of a court or tribunal to grant compensation or support for or in respect of victims of crime (including crime relating to institutional child sexual abuse) and any associated matters.	1 2 3
(2)	A matter referred by section 4 (2) does not include the matter of making a law to the extent that that law would operate to prevent or limit the power to establish, or to prevent or limit the operation of, any State redress mechanism, whether or not the mechanism deals with the same or similar subject-matters as those dealt with in any aspect of the National Redress Scheme.	4 5 6 7 8
(3)	Subsection (2) does not cover any of the following matters (if they would otherwise be covered by section 4 (2)):	9 10
(a)	any matter to which the initial referred provisions relate,	11
(b)	the matter of the release or discharge, in connection with the operation of the National Redress Scheme, of relevant civil liability of institutions or officials,	12 13
(c)	the matter of the disclosure or use of evidence or other information provided or obtained in connection with the operation of the National Redress Scheme,	14 15
(d)	the matter of the making, enforcement or protection (for example, protection against the operation of orders in the nature of garnishee orders) of payments in connection with the operation of the National Redress Scheme.	16 17 18
6	Requirements for agreement of the State	19
	A matter referred by section 4 (2) does not include the matter of making a law to the extent that that law would substantively remove or override a provision of the National Redress Act that requires the agreement of the State.	20 21 22
7	Termination of references	23
(1)	The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which:	24 25
(a)	the text reference is to terminate, or	26
(b)	the amendment reference is to terminate,	27
	or both.	28
(2)	The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 4) never to have been published.	29 30 31
(3)	A revoking proclamation has effect only if published before the day fixed under subsection (1).	32 33
(4)	The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.	34 35
8	Effect of termination of amendment reference before text reference	36
(1)	If the amendment reference terminates before the text reference, the termination of the amendment reference does not affect:	37 38
(a)	laws that were made under that reference before that termination (whether or not they have come into operation before that termination), or	39 40
(b)	the continued operation in the State of the National Redress Act as in operation immediately before that termination or as subsequently amended or affected by:	41 42 43
(i)	laws referred to in paragraph (a) that come into operation after that termination, or	44 45
(ii)	provisions referred to in section 4 (5).	46

- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the text reference is terminated.

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Part 3	Miscellaneous	1
9	How agreement of the State is given, withdrawn and evidenced	2
(1)	The regulations may make provision for or with respect to, or (subject to any relevant provisions of the regulations) the Minister may give directions as to, how the agreement of the State is to be given or withdrawn and may be evidenced for the purposes of, and consistently with, this Act and the National Redress Scheme.	3 4 5 6
(2)	Without limitation:	7
(a)	the regulations or directions may authorise a person to give agreement on behalf of the State, and	8 9
(b)	the agreement of the State to State institutions participating in the National Redress Scheme may be given in respect of:	10 11
(i)	one or more particular State institutions, or	12
(ii)	a class of State institutions, however described.	13
10	Information sharing	14
(1)	In this section:	15
	<i>Operator</i> means the Operator within the meaning of the National Redress Act.	16
	<i>State agency</i> means the whole or part of a body (whether or not incorporated) established for a public purpose by or under a law of the State, whether or not it is a State institution or participating State institution, and includes a body or class of bodies prescribed by the regulations as being within this definition, but does not include a body or class of bodies prescribed by the regulations as not being within this definition.	17 18 19 20 21 22
(2)	A participating State institution may give information to the Operator for the purpose of complying with a request made by the Operator to the participating State institution under the National Redress Act to give information in relation to an application under the National Redress Scheme.	23 24 25 26
(3)	A State agency may give information to another State agency for the purpose of assisting any participating State institution to comply with a request made by the Operator to the participating State institution under the National Redress Act to give information as referred to in subsection (2).	27 28 29 30
(4)	Nothing in a law of the State prevents:	31
(a)	a participating State institution from giving information to the Operator as referred to in subsection (2), or	32 33
(b)	a State agency from giving information to another State agency as referred to in subsection (3),	34 35
	unless that law is prescribed by the regulations under this Act.	36
(5)	A reference in this section to a participating State institution is a reference to a participating State institution that is, is part of or is connected with the State.	37 38
11	Regulations	39
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	40 41 42 43

Schedule 1 **Scheduled text of the proposed Bill for a
Commonwealth Act**

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2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Redress Scheme for
Institutional Child Sexual Abuse Bill
2018**

No. , 2018

(Social Services)

**A Bill for an Act to establish the National Redress
Scheme for Institutional Child Sexual Abuse, and
for related purposes**

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1 **A Bill for an Act to establish the National Redress**
2 **Scheme for Institutional Child Sexual Abuse, and**
3 **for related purposes**

4 The Parliament of Australia enacts:

1 **Chapter 1—Introduction**

2 **Part 1-1—Introduction**

3 **Division 1—Preliminary**

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	As follows: (a) if this Act receives the Royal Assent before 1 July 2018—1 July 2018; (b) if this Act receives the Royal Assent on or after 1 July 2018—a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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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.

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- (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.

1 **Division 2—Objects of this Act**

2 **3 Objects of this Act**

- 3 (1) The main objects of this Act are:
- 4 (a) to recognise and alleviate the impact of past institutional
- 5 child sexual abuse and related abuse; and
- 6 (b) to provide justice for the survivors of that abuse.
- 7 (2) For the purposes of achieving those objects, the objects of this Act
- 8 are also:
- 9 (a) to establish the National Redress Scheme for Institutional
- 10 Child Sexual Abuse; and
- 11 (b) to provide redress under the scheme which consists of:
- 12 (i) a monetary payment to survivors as a tangible means of
- 13 recognising the wrong survivors have suffered; and
- 14 (ii) a counselling and psychological component which,
- 15 depending on where the survivor lives, consists of
- 16 access to counselling and psychological services or a
- 17 monetary payment; and
- 18 (iii) a direct personal response to survivors from the
- 19 participating institutions responsible; and
- 20 (c) to enable institutions responsible for abuse of survivors to
- 21 participate in the scheme to provide that redress to those
- 22 survivors; and
- 23 (d) to implement the joint response of:
- 24 (i) the Commonwealth Government; and
- 25 (ii) the government of each participating State; and
- 26 (iii) the government of each participating Territory;
- 27 to the recommendations of the Royal Commission into
- 28 Institutional Responses to Child Sexual Abuse in relation to
- 29 redress.

1 **Division 3—Simplified outline of this Act**

2 **4 Simplified outline of this Act**

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

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

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

13 Redress consists of 3 components:

- 14 (a) a redress payment (of up to \$150,000); and
15 (b) a counselling and psychological component which,
16 depending on where the person lives, consists of access
17 to counselling and psychological services or a
18 counselling and psychological services payment (of up
19 to \$5,000); and
20 (c) a direct personal response from each participating
21 institution responsible for the abuse.

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

- 25 (a) the person was sexually abused; and
26 (b) the abuse is within the scope of the scheme; and
27 (c) the abuse is of a kind for which the maximum amount of
28 redress payment worked out under the assessment
29 framework would be more than nil; and
30 (d) one or more participating institutions are responsible for
31 the abuse; and

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- (e) at the time of the application, the person is an Australian citizen or a permanent resident.

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

The participating institutions are:

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

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

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

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

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

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

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

1 **Part 1-2—Definitions**

2 **Division 1—Simplified outline of this Part**

3 **5 Simplified outline of this Part**

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

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

1 **Division 2—The Dictionary**

2 **6 The Dictionary**

3 In this Act:

4 *abuse* means sexual abuse or non-sexual abuse.

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

7 *acceptance document*: see subsection 42(2).

8 *acceptance period*: see section 40.

9 *adoption Act*: see subsection 144(9).

10 *amendment reference*: see subsection 144(3).

11 *approved form* means a form approved under section 188.

12 *assessment framework*: see subsection 32(2).

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

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

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

18 *child* means a person under the age of 18.

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

21 *Commonwealth institution*: see section 109.

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

24 *counselling and psychological component* of redress means:

25 (a) the counselling and psychological services payment; or

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

3 ***counselling and psychological services contribution***: see
4 section 160.

5 ***counselling and psychological services payment*** means a payment
6 payable under subsection 51(3).

7 ***declared provider***: see subsection 146(2).

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

9 ***direct personal response***: see subsection 54(2).

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

11 ***eligible***: see section 13.

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

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

16 ***express amendment***: see subsection 144(9).

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

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

21 ***funder of last resort***: for when a participating government
22 institution is the ***funder of last resort*** for a defunct institution, see
23 section 163.

24 ***funding contribution***: see section 150.

25 ***government institution*** means a Commonwealth institution, State
26 institution or Territory institution.

- 1 **Home Affairs Minister** means the Minister administering the
2 *Australian Security Intelligence Organisation Act 1979*.
- 3 **Human Services Department** means the Department administered
4 by the Minister administering the *Human Services (Centrelink) Act*
5 1997.
- 6 **incorporated lone institution**: see paragraph 124(3)(b).
- 7 **independent decision-maker**: see subsection 185(3).
- 8 **initial referred provisions**: see subsection 144(9).
- 9 **institution** means any body, entity, group of persons or
10 organisation (whether or not incorporated), but does not include a
11 family or an individual.
- 12 **legal nominee** means a person who is appointed as a legal nominee
13 under paragraph 81(1)(b).
- 14 **listed**: for when a defunct institution is **listed** for a participating
15 jurisdiction, see subsection 164(1).
- 16 **lone institution**: see subsection 124(2).
- 17 **maximum amount**: see step 1 of the method statement in
18 subsection 30(2).
- 19 **National Redress Scheme Agreement** means the
20 Intergovernmental Agreement on the National Redress Scheme for
21 Institutional Child Sexual Abuse, as in force from time to time.
- 22 **National Redress Scheme Operator**: see the definition of
23 **Operator**.
- 24 **National Service Standards** means the National Service Standards
25 set out in the National Redress Scheme Agreement.
- 26 **nominee** means an assistance nominee or a legal nominee.
- 27 **non-government institution**: see subsections 114(2) and (3).

1 ***non-participating State*** means a State that is not a participating
2 State.

3 ***non-sexual abuse*** includes physical abuse, psychological abuse
4 and neglect.

5 ***officer of the scheme*** means:

- 6 (a) a person in the Department or the Human Services
7 Department performing duties, or exercising powers or
8 functions, under or in relation to this Act (including the
9 Operator); or
10 (b) an independent decision-maker; or
11 (c) a person prescribed by the rules.

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

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

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

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

19 ***participating defunct institution***: see section 117.

20 ***participating government institution*** means:

- 21 (a) a Commonwealth institution; or
22 (b) a participating State institution; or
23 (c) a participating Territory institution.

24 ***participating group***: see subsection 133(2).

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

26 ***participating institution***: see subsections 108(2) and 116(7).

27 ***participating jurisdiction***: see section 143.

28 ***participating lone institution***: see subsection 124(1).

- 1 ***participating non-government institution***: see subsection 114(1).
- 2 ***participating State***: see section 144.
- 3 ***participating State institution***: see section 110.
- 4 ***participating Territory*** means the Australian Capital Territory or
5 the Northern Territory.
- 6 ***participating Territory institution***: see section 112.
- 7 ***participating unincorporated lone institution***: see
8 subsection 124(4).
- 9 ***permitted purpose***: see paragraph 97(1)(e).
- 10 ***primarily responsible***: for when a participating institution is
11 ***primarily responsible*** for abuse of a person, see subsections 15(2),
12 (5) and (6).
- 13 ***production period***: see paragraphs 24(3)(c) and 25(4)(c).
- 14 ***protected information***: see subsection 92(2).
- 15 ***quarter***: see subsection 149(2).
- 16 ***reasonable likelihood***, in relation to a person being eligible for
17 redress, means the chance of the person being eligible is real, is not
18 fanciful or remote and is more than merely plausible.
- 19 ***redress***: see subsection 16(1).
- 20 ***redress element***: see section 151.
- 21 ***redress payment*** means a payment payable under section 48 or 60.
- 22 ***referral Act***: see subsection 144(9).
- 23 ***referred national redress scheme matters***: see subsections 145(1)
24 and (2).
- 25 ***Regulatory Powers Act*** means the *Regulatory Powers (Standard*
26 *Provisions) Act 2014*.

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

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

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

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

8 **representative:**

9 (a) for a participating defunct institution: see subsections 118(2),
10 (3), (4) and (5) and 120(4); or

11 (b) for a participating lone institution: see subsections 125(2) and
12 (3) and 128(4); or

13 (c) for a participating group: see subsections 136(2), (3), (4) and
14 (5) and 138(4).

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

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

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

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

22 **saved amount:**

23 (a) for a redress payment: see subsection 50(2); or

24 (b) for a counselling and psychological services payment: see
25 subsection 53(2).

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

28 **scheme administration element:** see subsection 152(1).

29 **scheme start day** means the day this Act commences.

1 ***scheme sunset day***: see subsection 193(1).

2 ***security notice***: see subsection 65(1).

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

7 ***State institution***: see section 111.

8 ***State redress mechanism***: see subsection 145(4).

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

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

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

16 ***Territory institution***: see section 113.

17 ***text reference***: see subsection 144(2).

18 ***this Act*** includes:

- 19 (a) the rules; and
20 (b) any other instrument made under this Act.

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

22 ***wholly-owned Commonwealth company*** has the same meaning as
23 in the *Public Governance, Performance and Accountability Act*
24 2013.

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

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

3 **Part 2-1—Establishment of the scheme**

4 **Division 1—Simplified outline of this Part**

5 **7 Simplified outline of this Part**

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

1 **Division 2—Establishment of the scheme**

2 **8 Establishment of the scheme**

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

5 **9 The National Redress Scheme Operator**

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

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

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

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

16 (4) The Operator may, on behalf of the Commonwealth:

17 (a) enter into a contract, agreement, deed or understanding
18 relating to the provision of support or assistance provided
19 under the scheme; and

20 (b) vary and administer that contract, agreement, deed or
21 understanding.

22 **10 General principles guiding actions of officers under the scheme**

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

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

27 (3) Redress should be assessed, offered and provided with appropriate
28 regard to:

- 1 (a) what is known about the nature and impact of child sexual
2 abuse, and institutional child sexual abuse in particular; and
3 (b) the cultural needs of survivors; and
4 (c) the needs of particularly vulnerable survivors.
- 5 (4) Redress should be assessed, offered and provided so as to avoid, as
6 far as possible, further harming or traumatising the survivor.
- 7 (5) Redress should be assessed, offered and provided in a way that
8 protects the integrity of the scheme.

1 **Part 2-2—Entitlement to redress under the scheme**

2 **Division 1—Simplified outline of this Part**

3 **11 Simplified outline of this Part**

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

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

8 Then the person must meet the eligibility criteria for redress. These
9 are that the person was sexually abused, the abuse is within the
10 scope of the scheme, the abuse is of a kind for which the amount of
11 redress payment worked out under the assessment framework
12 would be more than nil, one or more participating institutions are
13 responsible for the abuse, and, at the time of the application, the
14 person is an Australian citizen or a permanent resident.

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

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

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

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

1 **Division 2—Entitlement to redress under the scheme**

2 **12 When is a person entitled to be provided with redress?**

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

5 (2) A person is *entitled* to redress under the scheme if:

6 (a) the person applies for redress under section 19; and

7 (b) the Operator considers that there is a reasonable likelihood
8 that the person is eligible for redress under the scheme (see
9 section 13 for eligibility); and

10 (c) the Operator approves the application under section 29; and

11 (d) the Operator makes an offer of redress to the person under
12 section 39; and

13 (e) the person accepts the offer in accordance with section 42.

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

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

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

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

24 **13 When is a person eligible for redress?**

25 (1) A person is *eligible* for redress under the scheme if:

26 (a) the person was sexually abused; and

27 (b) the sexual abuse is within the scope of the scheme (see
28 section 14); and

29 (c) the sexual abuse is of a kind for which the maximum amount
30 of redress payment that could be payable to the person (as

1 worked out under the assessment framework) would be more
2 than nil; and

3 (d) one or more participating institutions are responsible for the
4 abuse (see section 15); and

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

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

11 Note 2: For which institutions are participating institutions, see
12 subsection 108(2).

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

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

18 **14 When is abuse within the scope of the scheme?**

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

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

21 (b) it occurred:

22 (i) inside a participating State; or

23 (ii) inside a Territory; or

24 (iii) outside Australia; and

25 (c) it occurred before the scheme start day.

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

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

1 **15 When is an institution responsible for abuse?**

2 *When is an institution responsible for abuse?*

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

6 *When an institution is primarily responsible for abuse*

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

10 *When an institution is equally responsible for abuse*

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

17 *Relevant circumstances for determining responsibility*

- 18 (4) Without limiting the circumstances that might be relevant for
19 determining under subsection (2) or (3) whether an institution is
20 primarily responsible or equally responsible for the abuser having
21 contact with the person, the following circumstances are relevant:
22 (a) whether the institution was responsible for the day-to-day
23 care or custody of the person when the abuse occurred;
24 (b) whether the institution was the legal guardian of the person
25 when the abuse occurred;
26 (c) whether the institution was responsible for placing the person
27 into the institution in which the abuse occurred;
28 (d) whether the abuser was an official of the institution when the
29 abuse occurred;
30 (e) whether the abuse occurred:

- 1 (i) on the premises of the institution; or
2 (ii) where activities of the institution took place; or
3 (iii) in connection with the activities of the institution;
4 (f) any other circumstances that are prescribed by the rules.

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

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

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

16 **16 What redress is provided to a person?**

17 (1) *Redress* for a person consists of 3 components:

- 18 (a) a redress payment (of up to \$150,000); and
19 (b) a counselling and psychological component which,
20 depending on where the person lives (as stated in the
21 person's application for redress), consists of:
22 (i) access to counselling and psychological services
23 provided under the scheme; or
24 (ii) a payment (of up to \$5,000) to enable the person to
25 access counselling and psychological services provided
26 outside of the scheme; and
27 (c) a direct personal response from each of the participating
28 institutions that are determined by the Operator under
29 paragraph 29(2)(b) to be responsible for the abuse of the
30 person.

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

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

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

6 **17 What is redress for?**

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

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

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

2 **Division 1—Simplified outline of this Part**

3 **18 Simplified outline of this Part**

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

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

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

20 The Operator must make a determination to approve, or not
21 approve, the application as soon as practicable. If the Operator
22 considers there is a reasonable likelihood that the person is eligible
23 for redress, then the Operator must approve the application and
24 make a number of other important determinations under
25 subsection 29(2). For example, the Operator must make a
26 determination about which participating institutions are responsible
27 for the abuse and therefore liable for providing redress to the
28 person. The Operator must also make a determination about the
29 amount of the redress payment that is payable to the person, as
30 well as the amount of the counselling and psychological
31 component of redress for the person.

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

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

1 **Division 2—Application for redress under the scheme**

2 **19 Application for redress**

- 3 (1) To obtain redress under the scheme, a person must make an
4 application to the Operator.
- 5 (2) To be valid, the application must:
- 6 (a) be in the approved form; and
- 7 (b) specify where the person lives; and
- 8 (c) include any information, and be accompanied by any
9 documents, required by the Operator; and
- 10 (d) verify the information included in the application by statutory
11 declaration.
- 12 (3) The Operator is not required to make a determination on an
13 application that is not valid.

14 **20 When an application cannot be made**

- 15 (1) A person cannot make an application for redress under the scheme
16 if:
- 17 (a) the person has already made an application for redress under
18 the scheme; or
- 19 (b) a security notice is in force in relation to the person; or
- 20 (c) the person is a child who will not turn 18 before the scheme
21 sunset day; or
- 22 (d) the person is in gaol (within the meaning of subsection 23(5)
23 of the *Social Security Act 1991*); or
- 24 (e) the application is being made in the period of 12 months
25 before the scheme sunset day.
- 26 (2) Paragraphs (1)(d) and (e) do not apply if the Operator determines
27 there are exceptional circumstances justifying the application being
28 made.
- 29 (3) Before making a determination under subsection (2), the Operator
30 must comply with any requirements prescribed by the rules.

1 **21 Special process for child applicants**

- 2 (1) If:
- 3 (a) a person makes an application for redress under the scheme;
- 4 and
- 5 (b) the person is a child who will turn 18 before the scheme
- 6 sunset day;
- 7 then the Operator must deal with the application in accordance
- 8 with any requirements prescribed by the rules.
- 9 (2) Rules made for the purposes of subsection (1) apply despite
- 10 subsection 29(1) (which requires the Operator to make a
- 11 determination on the application as soon as practicable).

12 **22 Withdrawal of an application**

- 13 (1) A person may withdraw an application for redress at any time
- 14 before the Operator makes a determination on the application
- 15 under section 29.
- 16 (2) If the person withdraws the application under subsection (1), then
- 17 for the purposes of this Act it is treated as not having been made.

18 **23 Notice of a withdrawal to participating institutions**

- 19 (1) If:
- 20 (a) a person withdraws an application under subsection 22(1);
- 21 and
- 22 (b) before the withdrawal, the Operator had requested a
- 23 participating institution under section 25 to provide
- 24 information that may be relevant to the application;
- 25 then the Operator must give the institution written notice that the
- 26 person has withdrawn the application.
- 27 (2) The notice must also comply with any requirements prescribed by
- 28 the rules.

1 **Division 3—Obtaining information for the purposes of**
2 **determining the application**

3 **24 Power to request information from the applicant**

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

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

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

11 (3) The notice must specify:

12 (a) the nature of the information that is requested to be given;
13 and

14 (b) how the person is to give the information to the Operator; and

15 (c) the period (the *production period*) within which the person is
16 requested to give the information to the Operator; and

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

18 (4) The production period must be at least:

19 (a) if the Operator considers the application is urgent—4 weeks;
20 and

21 (b) otherwise—8 weeks;

22 beginning on the date of the notice.

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

25 (6) An extension under subsection (5) may be given:

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

27 (b) on a request made by the person under subsection (7).

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

30 (a) be made before the end of the production period; and

1 (b) comply with any requirements prescribed by the rules.

2 **25 Power to request information from participating institutions**

3 (1) If a person has applied for redress and either:

4 (a) the application identifies a particular participating institution
5 as being involved in the abuse of the person; or

6 (b) the Operator has reasonable grounds to believe that a
7 participating institution may be responsible for the abuse of
8 the person;

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

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

14 (2) If a person has applied for redress and the Operator has reasonable
15 grounds to believe that a participating institution has information
16 that may be relevant to determining the application, then the
17 Operator may request the institution to give the information to the
18 Operator.

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

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

24 (4) The notice must specify:

25 (a) the nature of the information that is requested to be given;
26 and

27 (b) how the institution is to give the information to the Operator;
28 and

29 (c) the period (the *production period*) within which the
30 institution is requested to give the information to the
31 Operator; and

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

33 (5) The production period must be at least:

- 1 (a) if the Operator considers the application is urgent—4 weeks;
2 and
3 (b) otherwise—8 weeks;
4 beginning on the date of the notice.
- 5 (6) The Operator may, by notice to the institution, extend the
6 production period if the Operator considers it appropriate to do so.
- 7 (7) An extension under subsection (6) may be given:
8 (a) on the Operator’s own initiative; or
9 (b) on a request made by the institution under subsection (8).
- 10 (8) The institution may request the Operator to extend the production
11 period. The request must:
12 (a) be made before the end of the production period; and
13 (b) comply with any requirements prescribed by the rules.

14 **26 Failure of the applicant or institutions to comply with a request**

- 15 (1) If:
16 (a) under section 24, the Operator requests a person who has
17 made an application for redress to provide further
18 information; and
19 (b) the information requested is not provided in the production
20 period referred to in that section;
21 then the Operator is not required to make a determination on the
22 application until the information is provided.
- 23 (2) If:
24 (a) under section 25, the Operator requests a participating
25 institution to provide information in relation to an application
26 for redress; and
27 (b) the information requested is not provided in the production
28 period referred to in that section;
29 then the Operator may progress the application and make a
30 determination on it on the basis of the information that has been
31 obtained by, or provided to, the Operator.

1 **27 State or Territory laws do not prevent complying with request**

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

6 **28 False or misleading information, documents or statements**

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

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

14 Civil penalty: 60 penalty units.

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

3 **29 The Operator must make a determination on the application**

4 *Requirement for the Operator to make a determination*

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

8 *Determination to approve application*

- 9 (2) If the Operator considers that there is a reasonable likelihood that
10 the person is eligible for redress, then the Operator must:
11 (a) approve the application; and
12 (b) determine each participating institution that is responsible for
13 the abuse (see section 15) and therefore liable for providing
14 redress to the person under the scheme; and
15 (c) determine, in accordance with section 30:
16 (i) the amount of the redress payment for the person; and
17 (ii) the amount of each responsible institution's share of the
18 costs of the redress payment; and
19 (d) determine, in accordance with section 31:
20 (i) the amount of the counselling and psychological
21 component of redress for the person; and
22 (ii) the amount of each responsible institution's share of the
23 costs of that component; and
24 (e) determine whether the counselling and psychological
25 component of redress for the person consists of:
26 (i) access to the counselling and psychological services that
27 are provided under the scheme; or
28 (ii) a counselling and psychological services payment; and
29 (f) if the counselling and psychological component of redress for
30 the person consists of a counselling and psychological
31 services payment—determine that the amount of the payment

- 1 equals the amount of the counselling and psychological
2 component of redress for the person; and
3 (g) for each responsible institution that is a member of a
4 participating group—determine each other participating
5 institution that is an associate of the responsible institution at
6 that time; and
7 (h) for a participating institution that was identified in the
8 application and is not covered by a determination under
9 paragraph (b)—determine that the participating institution is
10 not responsible for the abuse and therefore not liable for
11 providing redress to the person under the scheme; and
12 (i) if:
13 (i) the Operator determines, in accordance with section 15,
14 that a participating government institution is equally
15 responsible with a defunct institution for the abuse; and
16 (ii) the defunct institution is listed for the participating
17 jurisdiction that the participating government institution
18 belongs to;
19 determine that the participating government institution is the
20 funder of last resort for the defunct institution in relation to
21 the abuse.

22 Note 1: If the Operator determines that the participating government
23 institution is the funder of last resort for the defunct institution,
24 then the participating government institution will be liable to pay
25 the defunct institution's (hypothetical) share of the costs of
26 providing redress to the person (see section 165). Those costs are
27 in addition to the participating government institution's own
28 share of the costs for providing redress to the person. For the
29 funder of last resort provisions, see Part 6-2.

30 Note 2: Only defunct institutions that are both non-government
31 institutions and not participating institutions can be listed for a
32 jurisdiction (see subsection 164(1)).

33 *Determination not to approve application*

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

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Revoking a determination

- (4) The rules may require or permit the Operator to revoke, under this subsection, a determination made under subsection (2) or (3).
- (5) However, the Operator cannot revoke a determination made under subsection (2) if:
 - (a) the person has been given an offer of redress; and
 - (b) the person has accepted the offer in accordance with section 42.
- (6) If the Operator revokes a determination made under subsection (2) or (3), then:
 - (a) every determination made under subsection (2) or (3) is taken never to have been made; and
 - (b) if the person has been given an offer of redress but has not accepted or declined the offer—the offer is taken to be withdrawn; and
 - (c) if the person has made an application for review of the determination—the review application is taken to be withdrawn; and
 - (d) the Operator may make further requests under section 24 or 25 for information relating to the person’s application.
- (7) The Operator must give a written notice to:
 - (a) the person; and
 - (b) each participating institution that was notified under section 35 of the determination;notifying them of the following:
 - (c) that the determination has been revoked;
 - (d) that the determination is taken never to have been made;
 - (e) if an offer of redress has been withdrawn under paragraph (6)(b)—that fact;
 - (f) if an application for review of the determination has been withdrawn under paragraph (6)(c)—that fact;
 - (g) any other matter prescribed by the rules.

1 **30 Working out the amount of redress payment and sharing of costs**

2 *Working out amounts*

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

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

10 *Working out share of the costs of redress payment*

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

14 *Method statement*

15 Step 1. Apply the assessment framework to work out the
16 maximum amount of redress payment that could be
17 payable to the person. The maximum amount must not be
18 more than \$150,000, regardless of the number of
19 responsible institutions. The amount worked out is the
20 **maximum amount** of the redress payment that could be
21 payable to the person.

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

27 Step 3. Work out the amount of any payment (a **relevant prior**
28 **payment**) that was paid to the person by, or on behalf of,
29 the responsible institution in relation to abuse for which
30 the institution is responsible (but do not include any

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payment to the extent that it is prescribed by the rules as not being a relevant prior payment). This amount is the **original amount** of the relevant prior payment.

Step 4. Multiply the original amount by the following:

$$(1.019)^n$$

where:

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

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

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

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

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

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Working out amount of redress payment

- (3) The Operator must then work out the amount of redress payment for the person by adding together the amounts of each responsible institution's share of the costs of the redress payment. The amount may be nil, but it must not exceed the maximum amount of the redress payment.

Note 1: The amount may be nil because the total amount of relevant prior payments that were paid to the person by the responsible institutions

1 exceeds the maximum amount of the redress payment that could be
2 payable to the person. However, even though the person may not be
3 paid any redress payment in that case, the person will still be entitled
4 to the other components of redress under the scheme (i.e. the
5 counselling and psychological component and a direct personal
6 response).

7 Note 2: For funder of last resort cases, subsection 165(2) affects how the
8 amount of the redress payment and the share of the costs of the
9 payment are worked out.

10 **31 Working out the amount of the counselling and psychological** 11 **component and sharing of costs**

12 (1) This section sets out how the Operator must make a determination
13 under paragraph 29(2)(d) about:

- 14 (a) the amount of the counselling and psychological component
15 of redress for a person; and
16 (b) the amount of each responsible institution's share of the costs
17 of that component.

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

20 (2) The Operator must apply the assessment framework to work out
21 the amount of the component. The amount must not be more than
22 \$5,000, regardless of the number of responsible institutions.

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

26 Note: For funder of last resort cases, subsection 165(3) affects how the
27 amount of the counselling and psychological component and the share
28 of the costs of the component is worked out.

29 **32 The assessment framework**

30 (1) The Minister may declare, in writing, a method, or matters to take
31 into account, for the purposes of working out:

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

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

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

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

6 **33 The assessment framework policy guidelines**

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

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

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

13 (4) The guidelines are not a legislative instrument.

1 **Division 5—Notice of determination to applicant and**
2 **participating institutions**

3 **34 Notice of determination to applicant**

- 4 (1) If the Operator makes a determination under section 29 on an
5 application for redress for a person, the Operator must give the
6 person written notice of the determination stating:
7 (a) whether or not the application has been approved; and
8 (b) the reasons for the determination; and
9 (c) that the person may apply under section 73 for review of the
10 determination.
- 11 (2) If the application has been approved, the notice must include the
12 offer of redress to the person under section 39.
- 13 (3) The notice must also:
14 (a) specify the day by which the person may apply for review of
15 the determination (which must be at least 28 days, but no
16 longer than 6 months, after the date of the notice) under
17 section 73; and
18 (b) comply with any matters prescribed by the rules.

19 **35 Notice of determination to participating institutions**

- 20 (1) If:
21 (a) the Operator makes a determination under section 29 in
22 relation to a person; and
23 (b) a participating institution is specified in the determination;
24 then the Operator must give the institution written notice of the
25 determination in accordance with subsection (2).
- 26 (2) The notice must state:
27 (a) whether or not the application has been approved; and
28 (b) if Operator determined under paragraph 29(2)(b) that the
29 institution is responsible for the abuse and therefore liable for
30 providing redress to the person under the scheme:

- 1 (i) that fact; and
2 (ii) the amount of the redress payment for the person; and
3 (iii) the amount of the institution's share of the costs of that
4 payment; and
5 (iv) the amount of the counselling and psychological
6 component of redress for the person; and
7 (v) the amount of the institution's share of the costs of that
8 component; and
9 (c) if the Operator determined under paragraph 29(2)(g) that the
10 institution is an associate of a responsible institution—that
11 fact; and
12 (d) if the Operator determined under paragraph 29(2)(h) that the
13 institution is not responsible for the abuse and therefore not
14 liable for providing redress to the person under the scheme—
15 that fact; and
16 (e) if the Operator determined under paragraph 29(2)(i) that the
17 institution is the funder of last resort for a defunct
18 institution—that fact; and
19 (f) the reasons for the determination, as they relate to the
20 institution; and
21 (g) the day by which the person may apply under section 73 for
22 review of the determination.
23 (3) The notice must also comply with any requirements prescribed by
24 the rules.

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

3 **36 Effect of determination**

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

6 (2) In particular, a determination under section 29 that an institution:
7 (a) is, or is not, responsible for the abuse of a person; or
8 (b) is, or is not, liable to provide redress to a person;
9 is not a finding of law or fact made by a court in civil or criminal
10 proceedings.

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

16 (3) However, a determination under section 29 that an institution is
17 responsible for abuse of a person and therefore liable to provide
18 redress may result in the imposition of a civil liability on the
19 institution to make payments under the scheme in relation to that
20 redress.

21 **37 Admissibility of documents in evidence in civil proceedings**

22 (1) The following documents are not admissible in evidence in civil
23 proceedings in a court or tribunal:

24 (a) a person's application for redress;

25 (b) a document created solely for the purposes of accompanying
26 a person's application for redress;

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

- 1 (2) Subsection (1) does not apply if the admission of the document in
2 evidence in civil proceedings is for the purposes of giving effect to
3 this Act.
- 4 (3) For the purposes of subsection (2) (and without limiting that
5 subsection), if the admission of the document in evidence is in civil
6 proceedings for judicial review of a decision made under this Act,
7 then the admission is for the purposes of giving effect to this Act.
- 8 (4) Subsection (1) does not apply if the admission of the document in
9 evidence is in civil proceedings under, or arising out of, section 28
10 (which is about providing false or misleading documents or
11 information to an officer of the scheme).

1 **Part 2-4—Offers and acceptance of redress**

2 **Division 1—Simplified outline of this Part**

3 **38 Simplified outline of this Part**

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

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

18 If the person accepts the offer, the Operator must notify the
19 participating institutions determined by the Operator to be
20 responsible for the abuse of the person’s acceptance of the offer
21 (including the components of redress that the person wishes to
22 receive).

23 If the person declines the offer (either by formally declining, or by
24 doing nothing, in the acceptance period), the person is not required
25 to release any institution or official from civil liability for the abuse
26 of the person, but the person will not be provided with redress
27 under the scheme.

1 **Division 2—Offers of redress**

2 **39 Offer of redress**

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

- 5 (a) explains the 3 components of redress (i.e. redress payment,
6 access to the counselling and psychological component of
7 redress for the person, and direct personal response); and
8 (b) specifies the amount of the redress payment; and
9 (c) specifies whether the counselling and psychological
10 component of redress for the person consists of:
11 (i) access to the counselling and psychological services that
12 are provided under the scheme; or
13 (ii) the counselling and psychological services payment;
14 and
15 (d) if the counselling and psychological component of redress for
16 the person consists of the counselling and psychological
17 services payment—specifies the amount of that payment; and
18 (e) specifies the participating institutions determined by the
19 Operator under paragraph 29(2)(b) to be responsible for the
20 abuse and therefore liable for providing redress to the person
21 under the scheme; and
22 (f) if any of those responsible institutions is a defunct institution
23 that has a representative:
24 (i) specifies the person who is the representative; and
25 (ii) explains that the representative is liable for providing
26 redress to the person under the scheme; and
27 (g) if any of those responsible institutions is a member of a
28 participating group—specifies the participating institutions
29 determined by the Operator under paragraph 29(2)(g) to be
30 associates of any of those responsible institutions; and
31 (h) specifies the participating institutions that were identified in
32 the person’s application but determined by the Operator
33 under paragraph 29(2)(h) not to be responsible for the

- 1 person's abuse and therefore not liable for providing redress
2 to the person under the scheme; and
- 3 (i) if any of those responsible institutions is a participating
4 government institution that is determined by the Operator
5 under paragraph 29(2)(i) to be the funder of last resort for a
6 defunct institution:
- 7 (i) specifies the defunct institution; and
8 (ii) explains that the government institution is liable for the
9 defunct institution's (hypothetical) share of the costs of
10 providing redress to the person; and
11 (iii) explains that a direct personal response is not available
12 to the person in relation to the abuse for which the
13 defunct institution is responsible; and
- 14 (j) states the date of the offer; and
- 15 (k) specifies the acceptance period for the offer (see section 40);
16 and
- 17 (l) gives information about the opportunity for the person to
18 access legal services under the scheme for the purposes of
19 obtaining legal advice about whether to accept the offer; and
- 20 (m) gives information about other services available to the person
21 under the scheme to help the person to decide whether to
22 accept the offer; and
- 23 (n) explains how to accept or decline the offer, should the person
24 decide to do so; and
- 25 (o) informs the person that the offer expires at the end of the
26 acceptance period; and
- 27 (p) explains the effect of section 43 (which is about the release
28 from civil liability of the responsible institutions, their
29 officials, their associates and the officials of their associates)
30 should the person accept the offer; and
- 31 (q) informs the person that the person does not have to accept the
32 offer and that, by doing nothing, the offer is taken to be
33 declined at the end of the acceptance period; and
- 34 (r) informs the person that the person will not be able to make
35 another application for redress under the scheme, whether or
36 not the offer is accepted; and

- 1 (s) informs the person that the person may request an extension
2 of the acceptance period and explains how to make that
3 request; and
4 (t) complies with any requirements prescribed by the rules.

5 **40 Acceptance period for offers of redress**

- 6 (1) The *acceptance period* for an offer of redress to a person is the
7 period determined by the Operator, which must be at least 6
8 months, starting on the date of the offer.
- 9 (2) Before the end of the acceptance period, the Operator may, by
10 written notice to the person, extend the acceptance period if the
11 Operator considers there are exceptional circumstances that justify
12 the extension.
- 13 (3) An extension under subsection (2) may be given:
14 (a) on the Operator's own initiative; or
15 (b) on a request made by the person under subsection (4).
- 16 (4) The person may request the Operator to extend the acceptance
17 period. The request must comply with any requirements prescribed
18 by the rules.
- 19 (5) If the Operator extends the period, the *acceptance period* is the
20 original period as extended by the Operator.

21 **41 Notice of offer to participating institutions**

- 22 (1) If:
23 (a) the Operator gives an offer of redress under section 39; and
24 (b) a participating institution or person referred to in
25 paragraph 39(e), (f) or (g) is specified in the offer;
26 then the Operator must give the institution or person written notice
27 of the offer.
- 28 (2) The notice must:
29 (a) state the acceptance period for the offer; and
30 (b) comply with any requirements prescribed by the rules.

1 **Division 3—Accepting or declining offers of redress**

2 **42 Accepting the offer of redress**

- 3 (1) A person may accept an offer of redress by complying with this
4 section.
- 5 (2) The person must give the Operator a document (the *acceptance*
6 *document*) that:
- 7 (a) is in the approved form; and
8 (b) states that the person accepts the offer; and
9 (c) states that the person releases and forever discharges each of
10 the following institutions and officials (a *released institution*
11 *or official*) from all civil liability for abuse of the person that
12 is within the scope of the scheme:
- 13 (i) all participating institutions that are determined by the
14 Operator under paragraph 29(2)(b) to be responsible for
15 the abuse of the person;
16 (ii) all participating institutions that are determined by the
17 Operator under paragraph 29(2)(g) to be associates of
18 those responsible institutions;
19 (iii) all officials of those responsible institutions and
20 associates (other than an official who is an abuser of the
21 person); and
- 22 (d) states that the person forgoes any entitlement to be paid
23 damages by a released institution or official if the released
24 institution or official were joined as a party to civil
25 proceedings brought or continued by the person against
26 another party in relation to abuse of the person that is within
27 the scope of the scheme; and
- 28 (e) states that the person will not, whether as an individual, a
29 representative party or a member of a group, bring or
30 continue any civil claim against a released institution or
31 official in relation to abuse of the person that is within the
32 scope of the scheme; and
- 33 (f) states the components of redress that the person wishes to
34 receive; and

- 1 (g) if the person wishes to receive a direct personal response—
2 specifies the participating institutions that the person wishes
3 to receive a direct personal response from; and
4 (h) acknowledges that the person understands the effect of
5 accepting the offer; and
6 (i) is signed by the person; and
7 (j) complies with any requirements prescribed by the rules.
- 8 (3) The person must give the Operator the acceptance document:
9 (a) before the end of the acceptance period; and
10 (b) in the manner (if any) prescribed by the rules.
- 11 (4) Rules made for the purposes of paragraph (2)(j) must not require
12 the person to enter into a confidentiality agreement.

13 **43 Effect of acceptance on civil liability**

- 14 If a person accepts an offer of redress in accordance with
15 section 42, then, at the time the person gives the acceptance and by
16 force of this section:
17 (a) the person releases and forever discharges every released
18 institution or official from civil liability for abuse of the
19 person that is within the scope of the scheme; and
20 (b) the person cannot (whether as an individual, a representative
21 party or a member of a group) bring or continue civil
22 proceedings against a released institution or official in
23 relation to that abuse; and
24 (c) the release and discharge of civil liability of a released
25 institution or official for that abuse does not:
26 (i) release or discharge another institution or person from
27 civil liability for that abuse; and
28 (ii) prevent the person (whether as an individual, a
29 representative party or a member of a group) from
30 bringing or continuing civil proceedings against another
31 institution or person in relation to that abuse; and
32 (d) if a released institution or official would, apart from this
33 section, be liable to make a contribution to another institution

- 1 or person in relation to damages payable to the person in civil
2 proceedings brought or continued by the person (whether as
3 an individual, a representative party or a member of a group)
4 against the other institution or person in relation to that
5 abuse, then:
6 (i) the released institution or official is released and forever
7 discharged from liability to make that contribution; and
8 (ii) the amount of damages payable to the person in those
9 proceedings is reduced by the amount of that
10 contribution.

11 **44 Notice to participating institutions that the offer is accepted**

- 12 (1) If a person accepts an offer of redress in accordance with
13 section 42, then the Operator must give each institution that was
14 notified under section 41 about the offer written notice of:
15 (a) the person's acceptance of the offer; and
16 (b) the components of redress that the person wishes to receive
17 (including whether the person wishes to receive a direct
18 personal response from the institution); and
19 (c) any matters prescribed by the rules.
20 (2) The notice must be accompanied by a copy of the person's
21 acceptance document.

22 **45 Declining the offer of redress**

23 *Declining by taking positive action*

- 24 (1) A person may decline an offer of redress by giving the Operator,
25 before the end of the acceptance period, a document that:
26 (a) is in the approved form; and
27 (b) states that the person declines the offer; and
28 (c) acknowledges that the person understands the effect of
29 declining the offer (including that the person will not be able
30 to make another application for redress under the scheme);
31 and
32 (d) is signed by the person; and

1 (e) complies with any requirements prescribed by the rules.

2 *Declining by not accepting in the acceptance period*

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

6 (3) Subsection (2) does not apply if:

7 (a) the person has applied for review under section 73 of the
8 Operator's determination on the person's application for
9 redress; and

10 (b) the review has not been completed at the end of the
11 acceptance period.

12 **46 Notice to participating institutions that the offer is declined**

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

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

1 **Part 2-5—Provision of redress under the scheme**

2 **Division 1—Simplified outline of this Part**

3 **47 Simplified outline of this Part**

4

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

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(a) the Operator must pay the redress payment to the person; and

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

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(c) the responsible institutions for the abuse must take reasonable steps to provide the person with a direct personal response.

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

1 **Division 2—The redress payment**

2 **48 The Operator must pay the redress payment**

- 3 (1) If:
- 4 (a) a person is entitled to redress under the scheme (see
- 5 section 12); and
- 6 (b) the person stated in the acceptance document that the person
- 7 wishes to be paid the redress payment;
- 8 then the Operator must pay the redress payment to the person as
- 9 soon as practicable.
- 10 (2) The rules may prescribe matters relating to the payment of redress
- 11 payments.

12 **49 Protection of the redress payment—general**

- 13 (1) A redress payment is a payment of compensation under the
- 14 scheme. However, for the purposes of:
- 15 (a) the *Social Security Act 1991* and the *Veterans' Entitlements*
- 16 *Act 1986*; and
- 17 (b) any other legislation of the Commonwealth, a State or a
- 18 Territory;
- 19 the payment is not to be treated as being a payment of
- 20 compensation or damages.
- 21 Note: This subsection prevents a redress payment affecting other payments
- 22 that may be payable to the person under legislation. For example,
- 23 when determining whether a social security payment is payable, or the
- 24 amount of such a payment, a redress payment is not to be taken into
- 25 account.
- 26 (2) For the purposes of the application of any law of the
- 27 Commonwealth, a State or a Territory in relation to a redress
- 28 payment:
- 29 (a) the payment and the entitlement to the payment are
- 30 absolutely inalienable, whether by way of, or in consequence
- 31 of, sale, assignment, charge, execution, bankruptcy or
- 32 otherwise; and

- 1 (b) no amount may be deducted from the payment.
- 2 (3) Nothing in this Act prevents a liability insurance contract from
3 treating a redress payment as being a payment of compensation or
4 damages.

5 **50 Additional protection of the redress payment—garnishee orders**

- 6 (1) If:
- 7 (a) a redress payment is being paid, or has been paid, to the
8 credit of an account; and
- 9 (b) a court order in the nature of a garnishee order comes into
10 force in relation to the account;
11 the court order does not apply to the saved amount (if any) in the
12 account.
- 13 (2) The *saved amount* is worked out as follows:

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Method statement

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Step 1. Work out the amount of the redress payment that has
16 been paid to the credit of the account in the year
17 immediately before the court order came into force.

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

1 **Division 3—Counselling and psychological component of**
2 **redress**

3 **51 The Operator must enable access to the counselling and**
4 **psychological component of redress**

- 5 (1) This section applies if:
- 6 (a) a person is entitled to redress under the scheme (see
- 7 section 12); and
- 8 (b) the person stated in the acceptance document under
- 9 section 42 that the person wishes to access the counselling
- 10 and psychological component of redress.
- 11 (2) If the place where the person lives (as stated in the person’s
- 12 application) is in a participating jurisdiction that is a declared
- 13 provider of counselling and psychological services under the
- 14 scheme, then:
- 15 (a) the Operator must, as soon as practicable after the person
- 16 becomes entitled to redress, refer the person to the
- 17 participating jurisdiction; and
- 18 (b) the participating jurisdiction must, as soon as practicable
- 19 after receiving the referral, provide for the delivery of
- 20 counselling and psychological services under the scheme in
- 21 accordance with the National Service Standards.
- 22 (3) If subsection (2) does not apply, then the Operator must, as soon as
- 23 practicable, pay the counselling and psychological services
- 24 payment to the person.
- 25 (4) The rules may prescribe matters relating to the payment of
- 26 counselling and psychological services payments.

27 **52 Protection of the counselling and psychological services**
28 **payment—general**

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

- 1 (a) the *Social Security Act 1991* and the *Veterans' Entitlements*
2 *Act 1986*; and
3 (b) any other legislation of the Commonwealth, a State or a
4 Territory;
5 the payment is not to be treated as being a payment of
6 compensation or damages.

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

- 13 (2) For the purposes of the application of any law of the
14 Commonwealth, a State or a Territory in relation to a counselling
15 and psychological services payment:
16 (a) the payment and the entitlement to the payment are
17 absolutely inalienable, whether by way of, or in consequence
18 of, sale, assignment, charge, execution, bankruptcy or
19 otherwise; and
20 (b) no amount may be deducted from the payment.
21 (3) Nothing in this Act prevents a liability insurance contract from
22 treating a counselling and psychological services payment as being
23 a payment of compensation or damages.

24 **53 Additional protection of the counselling and psychological**
25 **services payment—garnishee orders**

- 26 (1) If:
27 (a) a counselling and psychological services payment is being
28 paid, or has been paid, to the credit of an account; and
29 (b) a court order in the nature of a garnishee order comes into
30 force in relation to the account;
31 the court order does not apply to the saved amount (if any) in the
32 account.
33 (2) The *saved amount* is worked out as follows:

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Method statement

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

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

1 **Division 4—Direct personal responses**

2 **54 Direct personal response from responsible institutions**

- 3 (1) If a participating institution is given a notice under section 44 that
4 notifies the institution that a person wishes to be given a direct
5 personal response from the institution, then the institution must
6 take reasonable steps to provide the person with a direct personal
7 response.
- 8 (2) A *direct personal response* from a participating institution to a
9 person is any one or more of the following:
10 (a) an apology or a statement of acknowledgement or regret;
11 (b) an acknowledgement of the impact of the abuse on the
12 person;
13 (c) an assurance as to the steps the institution has taken, or will
14 take, to prevent abuse occurring again;
15 (d) an opportunity for the person to meet with a senior official of
16 the institution.
- 17 (3) When providing a direct personal response, the participating
18 institution must take into account the direct personal response
19 framework.

20 **55 The direct personal response framework**

- 21 (1) The Minister may declare, in writing, guidelines about how direct
22 personal responses are to be provided under the scheme.
- 23 Note: For variation or revocation of the declaration, see subsection 33(3) of
24 the *Acts Interpretation Act 1901*.
- 25 (2) The declaration is the *direct personal response framework*.
- 26 (3) When making the declaration, the Minister must have regard to the
27 principles in section 56.
- 28 (4) The declaration is a legislative instrument, but section 42
29 (disallowance) of the *Legislation Act 2003* does not apply to it.

1 **56 General principles guiding provision of direct personal responses**

- 2 (1) All participating institutions should offer and provide on request by
3 a survivor:
- 4 (a) meaningful recognition of the institution’s responsibility by
5 way of a statement of apology, acknowledgement or regret;
6 and
7 (b) an assurance as to steps taken to protect against further abuse.
- 8 (2) Engagement between a survivor and a participating institution
9 should occur only if, and to the extent that, a survivor wishes it.
- 10 (3) Participating institutions should make clear what they are willing
11 to offer and provide by way of a direct personal response to
12 survivors. Institutions should ensure that they are able to provide
13 the direct personal response that they offer to survivors.
- 14 (4) In offering direct personal responses, participating institutions
15 should be responsive to survivors’ needs.
- 16 (5) Participating institutions that already offer a broader range of direct
17 personal responses to survivors and others should consider
18 continuing to offer those forms of direct personal response.
- 19 (6) Direct personal responses should be delivered by people who have
20 received training about the nature and impact of child sexual abuse
21 and the needs of survivors, including cultural awareness and
22 sensitivity training where relevant.
- 23 (7) Participating institutions should welcome feedback from survivors
24 about the direct personal responses the institutions offer and
25 provide.

1 **Chapter 3—Special rules to deal with**
2 **exceptional cases**

3 **Part 3-1—Special rules allowing entitlement to**
4 **redress**

5 **Division 1—Simplified outline of this Part**

6 **57 Simplified outline of this Part**

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

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

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

1 **Division 2—Death of person before acceptance of redress**
2 **offer**

3 **58 Person dies before determination is made on application for**
4 **redress**

- 5 (1) This section applies if:
- 6 (a) a person makes an application for redress under section 19;
- 7 and
- 8 (b) the person dies before a determination on the application is
- 9 made under section 29.
- 10 (2) The Operator must continue to deal with the application as if the
- 11 person had not died.
- 12 (3) If the Operator approves the application under paragraph 29(2)(a),
- 13 then the Operator must:
- 14 (a) determine, under paragraph 29(2)(b), each participating
- 15 institution that is responsible for the abuse; and
- 16 (b) determine, under paragraph 29(2)(c):
- 17 (i) the amount of the redress payment for the person; and
- 18 (ii) the amount of each responsible institution's share of the
- 19 costs of the redress payment; and
- 20 (c) if paragraph 29(2)(i) applies to a participating government
- 21 institution and a defunct institution—determine, under that
- 22 paragraph, that the participating government institution is the
- 23 funder of last resort for the defunct institution.
- 24 (4) The redress payment for the person is payable in accordance with
- 25 section 60.
- 26 (5) The rules may prescribe matters relating to the giving of notices to
- 27 a person or a participating institution in relation to the operation of
- 28 this section.

1 **59 Person dies before offer of redress is accepted, declined or**
2 **withdrawn**

- 3 (1) This section applies if:
- 4 (a) a person makes an application for redress under section 19;
 - 5 and
 - 6 (b) the Operator makes a determination under section 29
 - 7 approving the application; and
 - 8 (c) the Operator gives the person an offer of redress under
 - 9 section 39; and
 - 10 (d) the person dies before the offer is accepted, declined or
 - 11 withdrawn.
- 12 (2) The offer is taken to be withdrawn immediately after the person
- 13 dies.
- 14 (3) If, before the person died:
- 15 (a) the person had not made an application under section 73 for
 - 16 review of the determination; or
 - 17 (b) the person had made such an application but the review had
 - 18 been completed;
- 19 then the redress payment for the person is payable in accordance
- 20 with section 60.
- 21 (4) If, before the person died:
- 22 (a) the person had made an application under section 73 for
 - 23 review of the determination; and
 - 24 (b) the review had not been completed;
- 25 then:
- 26 (c) the application for review continues as if the person had not
 - 27 died; and
 - 28 (d) if the review determination approves the person's application
 - 29 for redress—the redress payment for the person specified in
 - 30 the review determination is payable in accordance with
 - 31 section 60.

- 1 (5) The rules may prescribe matters relating to the giving of notices to
2 a person or a participating institution in relation to the operation of
3 this section.

4 **60 Entitlement to redress payment**

- 5 (1) This section applies if under subsection 58(4) or 59(3) or
6 paragraph 59(4)(d) a redress payment for a deceased person is
7 payable in accordance with this section.
- 8 (2) The Operator must:
9 (a) determine who should be paid the redress payment; and
10 (b) pay the redress payment to that person or those persons as
11 soon as practicable.
- 12 (3) In determining who should be paid the redress payment, the
13 Operator may consider the people who are entitled to the property
14 of the deceased person under:
15 (a) the deceased person's will; and
16 (b) the law relating to the disposition of the property of deceased
17 persons.
- 18 (4) The Operator may pay the redress payment without requiring:
19 (a) production of probate of the will of the deceased person; or
20 (b) letters of administration of the estate of the deceased person.
- 21 (5) The rules may prescribe matters relating to the payment of redress
22 payments under this section.

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

4 **61 Abuse occurring inside a non-participating State**

- 5 (1) For the purposes of subsection 13(2), a person is eligible for
6 redress under the scheme if:
- 7 (a) the person would be eligible under subsection 13(1) apart
8 from the fact that the person does not meet the condition in
9 paragraph 13(1)(b) because the sexual abuse of the person
10 occurred inside a non-participating State (disregarding
11 subsection (2) of this section); and
- 12 (b) a Commonwealth institution or a participating Territory
13 institution is primarily responsible for the abuse of the
14 person.
- 15 (2) For the purposes of subsection 14(2), if a person is eligible for
16 redress under the scheme because of subsection (1) of this section,
17 then the abuse of the person is within the scope of the scheme.

1 **Part 3-2—Special rules excluding entitlement to**
2 **redress**

3 **Division 1—Simplified outline of this Part**

4 **62 Simplified outline of this Part**

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

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

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

1 **Division 2—Special assessment of applicants with serious**
2 **criminal convictions**

3 **63 Special assessment of applicants with serious criminal convictions**

- 4 (1) This section applies if:
- 5 (a) a person makes an application under section 19 for redress
6 for abuse of the person; and
- 7 (b) before or after making the application, the person is
8 sentenced to imprisonment for 5 years or longer for an
9 offence against a law of the Commonwealth, a State, a
10 Territory or a foreign country.
- 11 (2) For the purposes of subsection 12(4), the person is not entitled to
12 redress under the scheme unless there is a determination in force
13 under subsection (5) of this section that the person is not prevented
14 from being entitled to redress.
- 15 (3) As soon as practicable after becoming aware of the person's
16 sentence, the Operator must:
- 17 (a) consider whether to make a determination under
18 subsection (5); and
- 19 (b) give a written notice under subsection (4) to each of the
20 following (a *specified advisor*):
- 21 (i) if the abuse of the person occurred inside a participating
22 State or a participating Territory—the Attorney-General
23 of the State or Territory, or another person nominated
24 by that Attorney-General in writing;
- 25 (ii) if the abuse of the person occurred outside a
26 participating State or a participating Territory—the
27 Commonwealth Attorney-General;
- 28 (iii) if the offence was against a law of a participating State
29 or a participating Territory—the Attorney-General of
30 the State or Territory, or another person nominated by
31 that Attorney-General in writing;

- 1 (iv) if the offence was against a law not covered by
2 subparagraph (iii)—the Commonwealth
3 Attorney-General.
- 4 (4) The notice must:
- 5 (a) request the specified advisor to provide advice about whether
6 the Operator should make a determination under
7 subsection (5); and
- 8 (b) include sufficient information to enable the specified advisor
9 to provide that advice; and
- 10 (c) specify the period (which must be at least 28 days starting on
11 the date of the notice) in which the specified advisor may
12 provide that advice.
- 13 (5) The Operator may determine that the person is not prevented from
14 being entitled to redress under the scheme if the Operator is
15 satisfied that providing redress to the person under the scheme
16 would not:
- 17 (a) bring the scheme into disrepute; or
18 (b) adversely affect public confidence in, or support for, the
19 scheme.
- 20 (6) When making a determination under subsection (5), the Operator
21 must take into account:
- 22 (a) any advice given by a specified advisor in the period referred
23 to in the notice; and
- 24 (b) the nature of the offence; and
- 25 (c) the length of the sentence of imprisonment; and
- 26 (d) the length of time since the person committed the offence;
27 and
- 28 (e) any rehabilitation of the person; and
29 (f) any other matter that the Operator considers is relevant.
- 30 (7) When taking into account the matters set out in subsection (6), the
31 Operator must give greater weight to any advice that:
- 32 (a) is given by a specified advisor from the jurisdiction in which
33 the abuse of the person occurred; and
34 (b) is given in the period referred to in the notice;

1 than to any other matter.

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

1 **Division 3—Security notices**

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

4 **64 Person not entitled to redress while security notice in force**

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

8 **Subdivision B—Security notice**

9 **65 Security notice from the Home Affairs Minister**

- 10 (1) The Home Affairs Minister may give the Minister a written notice
11 (a *security notice*) requiring that this Division apply in relation to a
12 specified person if:
- 13 (a) the Foreign Affairs Minister gives the Home Affairs Minister
14 a notice under subsection 66(1) in relation to the person; or
 - 15 (b) the person's visa is cancelled under section 116 or 128 of the
16 *Migration Act 1958* because of an assessment by the
17 Australian Security Intelligence Organisation that the person
18 is directly or indirectly a risk to security (within the meaning
19 of section 4 of the *Australian Security Intelligence*
20 *Organisation Act 1979*); or
 - 21 (c) the person's visa is cancelled under section 134B of the
22 *Migration Act 1958* (emergency cancellation on security
23 grounds) and the cancellation has not been revoked because
24 of subsection 134C(3) of that Act; or
 - 25 (d) the person's visa is cancelled under section 501 of the
26 *Migration Act 1958* and there is an assessment by the
27 Australian Security Intelligence Organisation that the person
28 is directly or indirectly a risk to security (within the meaning
29 of section 4 of the *Australian Security Intelligence*
30 *Organisation Act 1979*).

- 1 (2) Before giving a security notice, the Home Affairs Minister must
2 have regard to the extent (if any) that any payments to the person
3 under the scheme have been or may be used for a purpose that
4 might prejudice the security of Australia or a foreign country, if the
5 Home Affairs Minister is aware of that extent.
- 6 (3) Subsection (2) does not limit the matters to which regard may be
7 had when giving a security notice.
- 8 (4) A security notice is not a legislative instrument.

9 **66 Notice from the Foreign Affairs Minister**

- 10 (1) If:
11 (a) either:
12 (i) under subsection 14(2) of the *Australian Passports Act*
13 *2005*, the Foreign Affairs Minister refuses to issue a
14 person an Australian travel document; or
15 (ii) under section 22 of that Act, the Foreign Affairs
16 Minister cancels a person's Australian travel document;
17 and
18 (b) the refusal or cancellation was because of a
19 refusal/cancellation request made in relation to the person
20 under subsection 14(1) of that Act; and
21 (c) the request was made on the basis of the circumstance
22 mentioned in subparagraph 14(1)(a)(i) of that Act;
23 the Foreign Affairs Minister may give the Home Affairs Minister a
24 written notice setting out those matters.
- 25 (2) A notice under subsection (1) is not a legislative instrument.

26 **67 Copy of a security notice to be given to the Operator and the**
27 **Human Services Secretary**

- 28 The Minister must give a copy of a security notice to:
29 (a) the Operator; and
30 (b) the Secretary of the Human Services Department.

1 **68 Period a security notice is in force**

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

4 **69 Annual review of a security notice**

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

- 8 (a) 12 months after it came into force;
9 (b) 12 months after the Home Affairs Minister last considered
10 whether to revoke it.

11 **70 Revoking a security notice**

- 12 (1) The Home Affairs Minister may, by written notice given to the
13 Minister, revoke a security notice.
14 (2) The revocation takes effect on the day it is made.
15 (3) The Minister must give a copy of a notice under subsection (1) to:
16 (a) the Operator; and
17 (b) the Secretary of the Human Services Department.

18 **Subdivision C—Other matters affected by a security notice**

19 **71 Other matters affected by a security notice**

- 20 (1) If at the time a security notice comes into force in relation to a
21 person:
22 (a) the person has made an application for redress under
23 section 19; and
24 (b) either:
25 (i) a determination has not been made in relation to the
26 application under section 29; or
27 (ii) an offer of redress has not been given to the person
28 under section 39;

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

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

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

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

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

10 then, at that time:

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

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

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

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

1 **Chapter 4—Administrative matters**

2 **Part 4-1—Review of determinations**

3 **Division 1—Simplified outline of this Part**

4 **72 Simplified outline of this Part**

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

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

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

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

21 The Operator must notify the person who applied for review, and
22 certain participating institutions, about the outcome of the review.

1 **Division 2—Review of determinations**

2 **73 Application for review of determination**

- 3 (1) If:
- 4 (a) a person has made an application for redress; and
- 5 (b) the Operator has made a determination (the *original*
- 6 *determination*) on the application under section 29;
- 7 then the person may apply to the Operator for review of the
- 8 original determination.
- 9 (2) The application for review must:
- 10 (a) be made before the day specified in the notice of the
- 11 determination given under section 34; and
- 12 (b) be in the approved form.

13 **74 Withdrawal of application for review**

- 14 (1) The person may withdraw an application for review, by giving oral
- 15 or written notice to the Operator, at any time before the review has
- 16 been completed.
- 17 (2) An application for review that is withdrawn under subsection (1) is
- 18 taken never to have been made.

19 **75 The review**

- 20 (1) If an application is made under section 73, the Operator must
- 21 review the original determination or cause the original
- 22 determination to be reviewed by an independent decision-maker:
- 23 (a) to whom the Operator's power under this section is
- 24 delegated; and
- 25 (b) who was not involved in the making of the determination.
- 26 (2) The person reviewing the original determination must:
- 27 (a) reconsider the determination; and
- 28 (b) make a determination (the *review determination*) doing one
- 29 of the following:

- 1 (i) affirming the original determination;
2 (ii) varying the original determination;
3 (iii) setting the original determination aside and substituting
4 a new determination.
- 5 (3) When reviewing the original determination, the person may have
6 regard only to the information and documents that were available
7 to the person who made the original determination.

8 **76 Date of effect of review determination**

- 9 (1) This section applies if the review determination:
10 (a) varies the original determination; or
11 (b) sets aside the original determination and substitutes a new
12 determination.
- 13 (2) The review determination takes effect on the day specified in the
14 review determination.
- 15 (3) From the day the review determination takes effect, the original
16 determination as varied or substituted is taken to be the
17 determination made by the Operator under section 29.

18 **77 Notice of review determination to applicant**

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

21 **78 Interaction between review and offer of redress**

- 22 (1) This section applies if:
23 (a) a person is given an offer of redress under section 39; and
24 (b) the person applies for review of the original determination.
- 25 (2) If the person accepts or declines the offer in the acceptance period
26 for the offer but before the review has been completed, then the
27 application for review is taken to have been withdrawn
28 immediately before the person accepted or declined the offer.

- 1 (3) If, on review, the original determination is varied or substituted,
2 then the Operator must:
3 (a) withdraw the offer and notify the person in writing of that
4 withdrawal; and
5 (b) if the determination as varied or substituted approves the
6 application for redress—give the person a new written offer
7 of redress in accordance with section 39.
- 8 (4) If:
9 (a) on review, the original determination is affirmed; and
10 (b) the determination as affirmed approves the application for
11 redress; and
12 (c) the person has been given an offer of redress under
13 section 39;
14 then the Operator must extend the acceptance period under
15 subsection 40(2) for an additional 2 months.

16 **79 Notices to participating institutions about review**

- 17 (1) If:
18 (a) a person makes an application for review under section 73; or
19 (b) a person withdraws an application for review under
20 subsection 74(1); or
21 (c) a review determination is made under subsection 75(2);
22 then the Operator must give each participating institution that was
23 notified under section 35 written notice of that fact.
- 24 (2) The notice must comply with any requirements prescribed by the
25 rules.

1 **Part 4-2—Nominees**

2 **Division 1—Simplified outline of this Part**

3 **80 Simplified outline of this Part**

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

9 There are 2 types of nominees:

- 10 (a) assistance nominees; and
11 (b) legal nominees.

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

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

1 **Division 2—Appointment of nominees**

2 **81 Appointment of nominees**

3 (1) If a person (the *applicant*) makes an application for redress under
4 the scheme, or proposes to make such an application, the Operator
5 may, in writing, appoint another person to be:

- 6 (a) the assistance nominee of the applicant; or
7 (b) the legal nominee of the applicant.

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

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

12 (3) The Operator must not appoint a person to be the legal nominee of
13 the applicant unless:

- 14 (a) under a law of the Commonwealth, a State or a Territory the
15 person has power to make decisions for the applicant in all
16 matters that are relevant to the duties of a legal nominee; and
17 (b) the person gives written consent to the appointment; and
18 (c) the Operator has taken into account any wishes of the
19 applicant regarding the making of such an appointment.

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

23 (4) The Operator must give a copy of an appointment under this
24 section to:

- 25 (a) the nominee; and
26 (b) the applicant.

27 **82 Suspension and revocation of nominee appointments**

28 (1) If:

- 29 (a) an assistance nominee or a legal nominee appointed under
30 section 81 requests the Operator, in writing, to revoke the
31 appointment; or

- 1 (b) the applicant requests the Operator, in writing, to revoke the
2 appointment of the applicant's assistance nominee;
3 then the Operator must revoke the appointment as soon as
4 practicable.
- 5 (2) If:
6 (a) the Operator gives a nominee a notice under section 87; and
7 (b) the nominee informs the Operator that:
8 (i) an event or change of circumstances has happened or is
9 likely to happen; and
10 (ii) the event or change of circumstances is likely to have an
11 effect referred to in paragraph 87(1)(b);
12 then the Operator may suspend or revoke the nominee's
13 appointment.
- 14 (3) If:
15 (a) the Operator gives a nominee a notice under section 87; and
16 (b) the nominee does not comply with a requirement of the
17 notice;
18 then the Operator may suspend or revoke the nominee's
19 appointment.
- 20 (4) While an appointment is suspended, the appointment has no effect
21 for the purposes of this Act.
- 22 (5) The Operator may, at any time, revoke the suspension of an
23 appointment under subsection (2) or (3).
- 24 (6) The suspension or revocation of an appointment, and the
25 revocation of such a suspension, must be in writing.
- 26 (7) The revocation of an appointment has effect on and from such day,
27 being later than the day of the revocation, as is specified in the
28 revocation.
- 29 (8) The Operator must give the nominee and the applicant a copy of:
30 (a) a suspension of the nominee's appointment; or
31 (b) a revocation of the nominee's appointment; or
32 (c) a revocation of a suspension of the nominee's appointment.

1 **Division 3—Duties, functions and responsibilities of**
2 **nominees**

3 **83 Duty of nominee**

- 4 (1) It is the duty of an assistance nominee or a legal nominee of a
5 person to act in the best interests of the person at all times.
- 6 (2) A nominee does not commit a breach of the duty imposed by
7 subsection (1) by doing an act if, when the act is done, the nominee
8 reasonably believes that it is in the best interests of the person that
9 the act be done.
- 10 (3) A nominee does not commit a breach of the duty imposed by
11 subsection (1) by refraining from doing an act if, at the relevant
12 time, the nominee reasonably believes that it is in the best interests
13 of the person that the act not be done.

14 **84 Actions of assistance nominee**

- 15 (1) If a person has an assistance nominee, then any act that may be
16 done by the person under, or for the purposes of, this Act may be
17 done by that assistance nominee.
- 18 (2) However, subsection (1) does not authorise a person's assistance
19 nominee to do any of the following on behalf of the person:
20 (a) make an application for redress under section 19;
21 (b) accept an offer of redress under section 42;
22 (c) decline an offer of redress under section 45;
23 (d) do an act for the purposes of Division 2;
24 (e) do an act prescribed by the rules.
- 25 (3) If under a provision of this Act the Operator gives a notice to a
26 person who has an assistance nominee, subsection (1) does not
27 extend to an act that is required by the notice to be done by the
28 person.

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

4 **85 Actions of legal nominee**

- 5 (1) If a person has a legal nominee, then any act that may be done by
6 the person under, or for the purposes of, this Act may be done by
7 that legal nominee.
- 8 (2) Without limiting subsection (1):
9 (a) an application that may be made by the person under this Act
10 may be made by that legal nominee on behalf of the person;
11 and
12 (b) an application so made is taken to be made by the person;
13 and
14 (c) an offer of redress that may be accepted under section 42 or
15 declined under section 45 by the person may be accepted or
16 declined in accordance with the relevant provision by that
17 legal nominee on behalf of the person; and
18 (d) an offer so accepted or declined is taken to have been done so
19 by the person.
- 20 (3) Any act done by a person's legal nominee under this section has
21 effect, for the purposes of this Act (other than this Part), as if it had
22 been done by the person.

23 **86 Giving notices to assistance nominee or legal nominee**

- 24 (1) If a person has an assistance nominee or a legal nominee, then any
25 notice that the Operator is required or authorised by this Act to
26 give to the person may be given by the Operator to that nominee.
- 27 (2) A notice given under subsection (1) must, in every respect, be in
28 the same form, and in the same terms, as if it were being given to
29 the person.

1 **87 Nominee to inform the Operator of matters affecting ability to**
2 **act as nominee**

3 (1) The Operator may give a nominee of a person a notice that requires
4 the nominee to inform the Operator if:

5 (a) either:

6 (i) an event or change of circumstances happens; or

7 (ii) the nominee becomes aware that an event or change of
8 circumstances is likely to happen; and

9 (b) the event or change of circumstances is likely to affect:

10 (i) the ability of the nominee to act as the assistance
11 nominee or legal nominee of the person; or

12 (ii) the ability of the Operator to give notices to the nominee
13 under this Act; or

14 (iii) the ability of the nominee to comply with notices given
15 to the nominee by the Operator under this Act.

16 (2) A notice under subsection (1):

17 (a) must be in writing; and

18 (b) must specify how, and the period within which, the nominee
19 is to inform the Operator.

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

22 (4) The period specified under paragraph (2)(b) must not end earlier
23 than 14 days after:

24 (a) the day on which the event or change of circumstances
25 happens; or

26 (b) the day on which the nominee becomes aware that the event
27 or change of circumstances is likely to happen.

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

1 **Division 4—Other matters relating to nominees**

2 **88 Protection of person against liability for actions of nominee**

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

6 **89 Protection of nominee against criminal liability**

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

- 9 (a) any act or omission of the person; or
10 (b) anything done, in good faith, by the nominee in his or her
11 capacity as nominee.

12 **90 Informing nominee if notice given to person**

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

1 **Part 4-3—Protecting information under the scheme**

2 **Division 1—Simplified outline of this Part**

3 **91 Simplified outline of this Part**

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

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

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

1 **Division 2—Use and disclosure of protected information**

2 **92 Protected information**

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

5 (2) *Protected information* is:

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

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

9 (ii) is or was held in the records of the Department or the
10 Human Services Department; or

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

14 **93 Main authorisation—obtaining, recording, disclosing or using**
15 **protected information**

16 (1) A person may:

17 (a) obtain protected information; or

18 (b) make a record of protected information; or

19 (c) disclose protected information to another person; or

20 (d) use protected information;

21 if:

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

24 (i) for the purposes of the scheme; or

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

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

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

4 **94 Additional authorisation—Operator disclosing to nominee**

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

7 **95 Additional authorisation—Operator disclosing in public interest**
8 **or for another specified purpose**

- 9 (1) The Operator may disclose protected information that was
10 provided to, or obtained by, an officer of the scheme for the
11 purposes of the scheme if:
12 (a) the Operator certifies that the disclosure is necessary in the
13 public interest in a particular case or class of cases and the
14 disclosure is to such persons and for such purposes as the
15 Operator determines; or
16 (b) the disclosure:
17 (i) is to a person who is expressly or impliedly authorised
18 by the person or institution to which the information
19 relates to obtain it; or
20 (ii) is to the Chief Executive Centrelink for the purposes of
21 a centrelink program (within the meaning of the *Human*
22 *Services (Centrelink) Act 1997*); or
23 (iii) is to the Chief Executive Medicare for the purposes of a
24 medicare program (within the meaning of the *Human*
25 *Services (Medicare) Act 1973*); or
26 (iv) is to the head (however described) of a government
27 institution, for the purposes of that institution.
- 28 (2) A person to whom protected information is disclosed under
29 subsection (1) may:
30 (a) obtain the information; or
31 (b) make a record of the information; or
32 (c) disclose the information to another person; or

- 1 (d) use the information;
2 if the person does so for the purpose for which the information was
3 disclosed to the person under subsection (1).
- 4 (3) In certifying for the purposes of paragraph (1)(a) or disclosing
5 information for the purposes of subparagraph (1)(b)(iv), the
6 Operator must act in accordance with any rules made for the
7 purposes of subsection (4).
- 8 (4) The rules may make provision for and in relation to the exercise of
9 either or both of the following:
10 (a) the Operator's power to certify for the purposes of
11 paragraph (1)(a);
12 (b) the Operator's power under subparagraph (1)(b)(iv) to
13 disclose information to the head of a government institution.
- 14 (5) If a certificate or determination under paragraph (1)(a) is given or
15 made in writing, the certificate or determination is not a legislative
16 instrument.

17 **96 Additional authorisation—Operator disclosing for law**
18 **enforcement or child safety or wellbeing**

19 *When this section applies*

- 20 (1) This section applies if the Operator is satisfied that disclosure of
21 protected information is reasonably necessary for either of the
22 following purposes (a *relevant purpose*):
23 (a) the enforcement of the criminal law;
24 (b) the safety or wellbeing of children.

25 *Disclosure by Operator*

- 26 (2) The Operator may disclose the information to a government
27 institution that has functions that relate to the relevant purpose.
- 28 (3) However, before disclosing protected information that relates to a
29 person who has applied for redress, the Operator must have regard
30 to the impact the disclosure might have on the person.

1 *Disclosure, use etc. by government official*

- 2 (4) If information is disclosed to a government institution under
3 subsection (2), then an employee or officer of the institution (the
4 **government official**) may:
5 (a) obtain the information; or
6 (b) make a record of the information; or
7 (c) disclose the information to a person; or
8 (d) use the information;
9 but only if the government official does so for a relevant purpose in
10 the official's capacity as an employee or officer of the government
11 institution.

12 *Conditions*

- 13 (5) The Operator may, in writing, impose conditions to be complied
14 with in relation to protected information disclosed under
15 subsection (2).
- 16 (6) A person commits an offence if:
17 (a) the person is subject to a condition under subsection (5); and
18 (b) the person engages in conduct (within the meaning of the
19 *Criminal Code*); and
20 (c) the person's conduct breaches the condition.
- 21 Penalty: Imprisonment for 2 years or 120 penalty units, or both.
- 22 (7) An instrument under subsection (5) is not a legislative instrument.

23 **97 Additional authorisation—disclosing etc. for a permitted purpose**

24 *Disclosure, use etc. by a government official*

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

- 1 (c) disclose the information to a person; or
2 (d) use the information;
3 if:
4 (e) the government official does so for any of the following
5 purposes (a *permitted purpose*):
6 (i) the enforcement of the criminal law;
7 (ii) the safety or wellbeing of children;
8 (iii) investigatory, disciplinary or employment processes
9 related to the safety or wellbeing of children;
10 (iv) a purpose prescribed by the rules; and
11 (f) the government official does so in the official's capacity as
12 an employee or officer of the government institution; and
13 (g) a law of the Commonwealth (other than this Part), or of a
14 State or a Territory, does not prohibit the government official
15 from doing so.

16 *Disclosure by a person to a government institution*

- 17 (2) If:
18 (a) a person is satisfied that disclosure of protected information
19 is reasonably necessary for a permitted purpose; and
20 (b) a law of the Commonwealth, a State or a Territory requires or
21 permits the person to disclose the information to a
22 government institution that has functions that relate to the
23 permitted purpose;
24 then the person may disclose the information to the government
25 institution for that purpose.
26 (3) Subsection (2) does not apply if the person is:
27 (a) an officer of the scheme; or
28 (b) an employee or officer of a government institution.

29 *Officers of government institutions*

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

1 **98 Additional authorisation—person engaged by participating**
2 **institution disclosing etc. for a specified purpose**

- 3 (1) A person engaged (whether as an employee or otherwise) by a
4 participating institution may:
5 (a) obtain protected information; or
6 (b) make a record of protected information; or
7 (c) disclose protected information to another person; or
8 (d) use protected information;
9 if the person believes, on reasonable grounds, that the obtaining,
10 recording, disclosure or use that is proposed to be made of the
11 information by the person is reasonably necessary for one or more
12 of the purposes specified in subsection (2).
- 13 (2) The purposes for which the person may obtain, record, disclose or
14 use protected information are as follows:
15 (a) the purpose of the participating institution complying with a
16 request under section 25 to provide information;
17 (b) the purpose of the participating institution providing a direct
18 personal response to a person under section 54;
19 (c) the purpose of the participating institution facilitating a claim
20 under an insurance policy;
21 (d) the purpose of the participating institution undertaking
22 internal investigation and disciplinary procedures.
- 23 (3) However, before the person discloses information that relates to
24 another person who has applied for redress, the person must have
25 regard to the impact the disclosure might have on the other person.

26 **99 Offence—unauthorised access, recording, disclosure or use of**
27 **protected information**

- 28 (1) A person commits an offence if:
29 (a) the person:
30 (i) obtains information; or
31 (ii) makes a record of information; or
32 (iii) discloses information to another person; or

- 1 (iv) uses information; and
2 (b) the person is not authorised or required by or under this Act:
3 (i) to obtain the information; or
4 (ii) to make the record of the information; or
5 (iii) to disclose the information; or
6 (iv) to use the information; and
7 (c) the information is protected information.

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

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

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

17 **100 Offence—soliciting disclosure of protected information**

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

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

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

26 **101 Offence—offering to disclose protected information**

- 27 (1) A person commits an offence if:
28 (a) the person offers to disclose (whether to a particular person
29 or otherwise) information about another person or an
30 institution; and

- 1 (b) the disclosure would be in contravention of this Division; and
2 (c) the information is protected information.

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

4 (2) A person commits an offence if:

- 5 (a) the person holds himself or herself out as being able to
6 disclose (whether to a particular person or otherwise)
7 information about another person or an institution; and
8 (b) the disclosure would be in contravention of this Division; and
9 (c) the information is protected information.

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

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

3 **102 Main authorisation for obtaining, recording, disclosing or using**
4 **the assessment framework policy guidelines**

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

9 **103 Additional authorisation—disclosure and use in accordance**
10 **with the National Redress Scheme Agreement**

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

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

19 **104 Offence—unauthorised recording, disclosure or use of**
20 **assessment framework policy guidelines**

21 A person commits an offence if:

22 (a) the person:

23 (i) obtains information; or

24 (ii) makes a record of information; or

25 (iii) discloses information to another person; or

26 (iv) uses information; and

27 (b) the person is not authorised or required by or under this Act:

28 (i) to obtain the information; or

29 (ii) to make the record of the information; or

30 (iii) to disclose the information; or

- 1 (iv) to use the information; and
2 (c) the information is contained in the assessment framework
3 policy guidelines.
4 **Penalty:** Imprisonment for 2 years or 120 penalty units, or both.

1 **Division 4—Other matters**

2 **105 Disclosures to a court or tribunal**

- 3 (1) A person must not be required to disclose to a court or tribunal in
4 any civil proceedings:
- 5 (a) protected information; or
6 (b) information that is contained in the assessment framework
7 policy guidelines.
- 8 (2) Subsection (1) does not apply if the disclosure of the information is
9 for the purposes of giving effect to this Act.
- 10 (3) For the purposes of subsection (2) (and without limiting that
11 subsection), if the disclosure of the information is in civil
12 proceedings for judicial review of a decision made under this Act,
13 then the disclosure is for the purposes of giving effect to this Act.
- 14 (4) Subsection (1) does not apply if the disclosure of the information is
15 in civil proceedings under, or arising out of, section 28 (which is
16 about giving false or misleading information, documents or
17 statements to an officer of the scheme).
- 18 (5) Subsection (1) does not apply if:
- 19 (a) the person did not obtain the information under, for the
20 purposes of, or in connection with, the scheme; or
21 (b) the person had already obtained the information before the
22 person obtained the information under, for the purposes of, or
23 in connection with, the scheme.
- 24 (6) Protected information and information that is contained in the
25 assessment framework policy guidelines are not to be published by
26 any person, court or tribunal.

27 **106 Disclosing information in good faith**

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

- 1 (2) The person is not liable to any civil or criminal proceedings, or any
2 disciplinary action, for disclosing the information.
- 3 (3) In disclosing the information, the person cannot be held to have
4 breached any code of professional etiquette or ethics or departed
5 from any accepted standards of professional conduct.

1 **Chapter 5—Participating institutions,**
2 **participating groups and participating**
3 **jurisdictions**

4 **Part 5-1—Participating institutions**

5 **Division 1—Simplified outline of this Part**

6 **107 Simplified outline of this Part**

7 For a person to be eligible for redress, at least one participating
8 institution must be responsible for the abuse of the person.

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

- 11 (a) Commonwealth institutions (such as Commonwealth
12 Departments and bodies established under
13 Commonwealth law); and
14 (b) State institutions (such as State Departments and certain
15 bodies established under State law); and
16 (c) Territory institutions (such as Territory Departments and
17 certain bodies established under Territory law); and
18 (d) non-government institutions (such as churches or
19 sporting clubs).

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

25 A defunct institution (which is a government or non-government
26 institution that no longer exists) can become a participating
27 institution. However, it must have a representative in order to do
28 so. The representative acts on the institution's behalf and assumes

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its obligations and liabilities under the scheme (such as the obligation to provide a direct personal response to a person and the liability to pay funding contribution).

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

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

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

1 **Division 2—Institutions participating in the scheme**

2 **Subdivision A—Participating institutions**

3 **108 What is a participating institution?**

4 (1) For a person to be eligible for redress for sexual abuse, or
5 non-sexual abuse, of the person, a participating institution must be
6 responsible for the abuse (see paragraph 13(1)(d)).

7 (2) An institution is a *participating institution* under the scheme if it
8 is:

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

13 **Subdivision B—Commonwealth institutions**

14 **109 What is a Commonwealth institution?**

15 (1) An institution is a *Commonwealth institution* if:

- 16 (a) it is or was part of the Commonwealth; or
17 (b) it is or was a Commonwealth entity (within the meaning of
18 the *Public Governance, Performance and Accountability Act*
19 2013); or
20 (c) it is or was a wholly-owned Commonwealth company; or
21 (d) it is or was a body (whether or not incorporated) established
22 by or under a law of the Commonwealth; or
23 (e) the rules prescribe that it is a Commonwealth institution.

24 (2) However, an institution is not a *Commonwealth institution* if:

- 25 (a) it is a body politic that is a participating Territory, or is or
26 was part of a body politic that is a participating Territory; or
27 (b) it is or was a body corporate (other than a wholly-owned
28 Commonwealth company) that is or was registered under the
29 *Corporations Act 2001* (including a body corporate taken to

- 1 be registered under that Act because of the operation of
2 Chapter 10 of that Act (which is about transitional
3 provisions)); or
4 (c) the rules prescribe that it is not a Commonwealth institution.
- 5 (3) Rules made for the purposes of paragraph (1)(e) or (2)(c) may
6 prescribe that an institution is, or is not, a Commonwealth
7 institution in relation to a period specified by the rules.

8 **Subdivision C—Participating State institutions**

9 **110 What is a participating State institution?**

- 10 An institution is a *participating State institution* if:
11 (a) it is a State institution; and
12 (b) a declaration is in force under subsection 115(2) that the
13 institution is a participating institution.

14 **111 What is a State institution?**

- 15 (1) An institution is a *State institution* if:
16 (a) it is or was part of a State; or
17 (b) it is or was a body (whether or not incorporated) established
18 for a public purpose by or under a law of a State; or
19 (c) the rules prescribe that it is a State institution.
- 20 (2) However, an institution is not a *State institution* if the rules
21 prescribe that it is not a State institution.
- 22 (3) Rules made for the purposes of paragraph (1)(c) or subsection (2)
23 may prescribe that an institution is, or is not, a State institution in
24 relation to a period specified by the rules.

25 **Subdivision D—Participating Territory institutions**

26 **112 What is a participating Territory institution?**

- 27 An institution is a *participating Territory institution* if:

- 1 (a) the institution is a Territory institution; and
2 (b) a declaration is in force under subsection 115(2) that the
3 institution is a participating institution.

4 **113 What is a Territory institution?**

- 5 (1) An institution is a *Territory institution* if:
6 (a) it is or was part of a participating Territory; or
7 (b) it is or was a body (whether or not incorporated) established
8 for a public purpose by or under a law of a participating
9 Territory; or
10 (c) the rules prescribe that it is a Territory institution.
11 (2) However, an institution is not a *Territory institution* if the rules
12 prescribe that it is not a Territory institution.
13 (3) Rules made for the purposes of paragraph (1)(c) or subsection (2)
14 may prescribe that an institution is, or is not, a Territory institution
15 in relation to a period specified by the rules.

16 **Subdivision E—Participating non-government institutions**

17 **114 What is a participating non-government institution?**

- 18 (1) An institution is a *participating non-government institution* if:
19 (a) the institution is or was a non-government institution; and
20 (b) a declaration is in force under subsection 115(2) that the
21 institution is a participating institution.
22 (2) An institution is a *non-government institution* if it is not a
23 Commonwealth institution, a State institution or a Territory
24 institution.
25 (3) However, an institution is not a *non-government institution* if the
26 rules prescribe that the institution is not a non-government
27 institution.

- 1 (4) Rules made for the purposes of subsection (3) may prescribe that
2 an institution is not a non-government institution in relation to a
3 period specified by the rules.

1 **Division 3—Ministerial declarations about participating**
2 **institutions**

3 **115 Institutions becoming participating institutions**

4 (1) An institution becomes a participating institution if the Minister
5 makes a declaration under subsection (2) in relation to the
6 institution.

7 (2) The Minister may, by notifiable instrument, declare that an
8 institution is a participating institution.

9 Note 1: An institution may be identified by name, by inclusion in a particular
10 class, or in any other way.

11 Note 2: The Minister need not make a declaration under this subsection for a
12 Commonwealth institution because all Commonwealth institutions are
13 participating institutions automatically (see section 108).

14 (3) The Minister must not make a declaration under subsection (2)
15 unless the Minister is satisfied that:

16 (a) for a State institution—the participating State has agreed, in a
17 way provided for in the State’s referral Act or adoption Act,
18 to the institution participating in the scheme; and

19 (b) for a Territory institution—the participating Territory has
20 agreed to the institution participating in the scheme; and

21 (c) for a non-government institution (other than a defunct
22 institution or an unincorporated lone institution)—the
23 institution has agreed to participate in the scheme; and

24 (d) for a non-government institution that is a defunct
25 institution—a person has agreed:

26 (i) to the defunct institution participating in the scheme;
27 and

28 (ii) to be the representative for the defunct institution; and

29 (e) for a non-government institution that is an unincorporated
30 lone institution:

31 (i) the institution has agreed to participate in the scheme;
32 and

- 1 (ii) the institution has agreed to a person being the
2 representative for the institution; and
3 (iii) the person has agreed to being the representative for the
4 institution; and
5 (f) in all cases—any requirements prescribed by the rules are
6 satisfied.

7 Note 1: For how the agreement of a participating Territory, an institution or a
8 person is given, see section 186.

9 Note 2: For representatives for defunct institutions and lone institutions, see
10 Divisions 4 and 5.

11 (4) The Minister must not make a declaration under subsection (2) in
12 relation to an institution after:

- 13 (a) the second anniversary of the scheme start day; or
14 (b) a later day prescribed by the rules;
15 unless the institution is a defunct institution.

16 (5) If:

- 17 (a) a State or Territory has agreed to a State institution or
18 Territory institution participating in the scheme; and
19 (b) the institution is a body corporate;

20 then the institution is taken to have also agreed to participate in the
21 scheme.

22 **116 Institutions ceasing to be participating institutions**

23 *Revoking the declaration*

24 (1) An institution ceases to be a participating institution if the
25 declaration made under subsection 115(2) in relation to the
26 institution is revoked under subsection (2), (3), (4) or (5) of this
27 section.

28 (2) The Minister may, by notifiable instrument, revoke a declaration
29 made under subsection 115(2) in relation to an institution.

30 Note: If the declaration is revoked, the institution will cease to be a
31 participating institution. However, it will still be a participating

1 institution in relation to a person who made an application for redress
2 before the declaration is revoked (see subsection (7)).

3 *Minister must revoke on request*

4 (3) If:

- 5 (a) a participating State requests the Minister in writing to
6 revoke a declaration made under subsection 115(2) in
7 relation to a State institution; or
8 (b) a participating Territory requests the Minister in writing to
9 revoke a declaration made under subsection 115(2) in
10 relation to a Territory institution; or
11 (c) a participating non-government institution (other than a
12 defunct institution) requests the Minister in writing to revoke
13 a declaration made under subsection 115(2) in relation to the
14 institution;

15 then the Minister must, by notifiable instrument, revoke the
16 declaration as soon as practicable.

17 *Minister must revoke if no representative*

18 (4) If a defunct participating non-government institution ceases to have
19 a representative, then the Minister must revoke the declaration
20 made under subsection 115(2) in relation to the institution as soon
21 as practicable.

22 (5) If a participating unincorporated lone institution ceases to have a
23 representative, then the Minister must revoke the declaration made
24 under subsection 115(2) in relation to the institution as soon as
25 practicable.

26 *No revocation unless requirements in rules satisfied*

27 (6) Despite subsections (2), (3), (4) and (5), the Minister must not
28 revoke a declaration made under subsection 115(2) in relation to an
29 institution unless any requirements prescribed by the rules in
30 relation to the revocation are satisfied.

1 *Institution continues to be participating institution for limited time*

2 (7) If the Minister revokes a declaration made under subsection 115(2)
3 in relation to an institution, then, despite the revocation, the
4 institution continues to be a ***participating institution*** in relation to
5 a person who made an application for redress before the
6 revocation, as if the declaration were still in force.

7 Example: If the Operator determines that the institution is responsible for the
8 abuse of the person, the institution will still be required to provide a
9 direct personal response to the person (if the person chooses that
10 component of redress) and pay funding contribution in relation to the
11 person.

1 **Division 4—Participating defunct institutions**

2 **Subdivision A—Participating defunct institutions**

3 **117 What is a participating defunct institution?**

4 A *participating defunct institution* is a participating institution that
5 is defunct.

6 Note: The institution may be a government institution or a non-government
7 institution.

8 **Subdivision B—Representatives for participating defunct**
9 **institutions**

10 **118 Representatives for participating defunct institutions**

11 (1) A participating defunct institution must have a representative for
12 the institution.

13 Note: This Act applies to the representative for a participating defunct
14 institution as if it were the defunct institution (see sections 121, 122
15 and 123).

16 (2) The *representative* for a defunct Commonwealth institution is the
17 Commonwealth.

18 (3) The *representative* for a defunct participating State institution is
19 the participating State.

20 (4) The *representative* for a defunct participating Territory institution
21 is the participating Territory.

22 (5) The *representative* for a defunct participating non-government
23 institution is the person in relation to whom a declaration is force
24 under section 119.

25 (6) A participating defunct institution may have only one
26 representative for the institution.

27 (7) However, a person may be the representative for more than one
28 participating defunct institution.

1 **119 Becoming the representative for a defunct non-government**
2 **institution**

3 If a defunct non-government institution is declared to be a
4 participating institution under subsection 115(2), then the Minister
5 must, by notifiable instrument, make a declaration that the person
6 who agreed to be the representative for the institution (as referred
7 to in paragraph 115(3)(d)) is the representative for the institution.

8 **120 Ceasing to be the representative for a defunct non-government**
9 **institution**

10 (1) The Minister may, by notifiable instrument, vary or revoke a
11 declaration made under section 119 in relation to a representative
12 for a defunct non-government institution.

13 (2) If:

14 (a) the representative for a defunct institution requests the
15 Minister in writing to revoke the declaration made under
16 section 119 in relation to the representative; and

17 (b) any requirements prescribed by the rules in relation to the
18 person ceasing to be the representative are satisfied;

19 then the Minister must, by notifiable instrument, revoke the
20 declaration made under section 119 as soon as practicable.

21 Note: If a participating defunct non-government institution does not have a
22 representative, then the Minister must revoke the declaration made
23 under subsection 115(2) that the defunct institution is a participating
24 institution (see subsection 116(4)).

25 (3) Despite subsections (1) and (2), the Minister must not vary or
26 revoke a declaration made under section 119 in relation to an
27 institution unless any requirements prescribed by the rules in
28 relation to the variation or revocation are satisfied.

29 (4) If:

30 (a) the Minister revokes a declaration made under
31 subsection 115(2) in relation to a defunct institution; but

1 (b) because of subsection 116(7), the institution continues to be a
2 participating institution in relation to a person who made an
3 application for redress before the revocation;
4 then the representative for the institution continues to be the
5 *representative* for the institution in relation to the person (even if
6 the declaration made under section 119 for the representative has
7 been revoked under this section).

8 **121 Actions of the representative for a defunct institution**

- 9 (1) Any act that may be done by a participating defunct institution
10 under, or for the purposes of, this Act must be done by the
11 representative for the institution on behalf of the institution.
- 12 (2) Any act that is done by the representative for a participating
13 defunct institution on behalf of the institution has effect, for the
14 purposes of this Act, as if it had been done by the institution.

15 **122 Giving notices to the representative for a defunct institution**

16 Any notice that the Operator is required or authorised by this Act
17 to give to a participating defunct institution must be given by the
18 Operator to the representative for the institution.

19 **123 Obligations and liabilities of the representative for a defunct 20 institution**

21 Any obligation or liability imposed by this Act on a participating
22 defunct institution is taken to be imposed instead on the
23 representative for the institution.

24 Note 1: An example of an obligation that may be imposed on the defunct
25 institution is the obligation under section 54 to provide a direct
26 personal response to a person. That obligation will be imposed instead
27 on the representative.

28 Note 2: An example of a liability that may be imposed on the defunct
29 institution is the liability under section 149 to pay funding
30 contribution. That liability will be imposed instead on the
31 representative.

1 **Division 5—Participating lone institutions**

2 **Subdivision A—Participating lone institutions**

3 **124 What is a participating lone institution?**

- 4 (1) A *participating lone institution* is a participating institution that is
5 a lone institution.
- 6 (2) An institution is a *lone institution* if it:
7 (a) is a non-government institution; and
8 (b) is not a member of a participating group; and
9 (c) is not defunct.
- 10 (3) There are 2 types of lone institutions:
11 (a) a lone institution that is not a legal person (which is an
12 *unincorporated lone institution*); and
13 (b) a lone institution that is a legal person (which is an
14 *incorporated lone institution*).
- 15 (4) A *participating unincorporated lone institution* is a participating
16 institution that is an unincorporated lone institution.
- 17 (5) A *participating incorporated lone institution* is a participating
18 institution that is an incorporated lone institution.

19 **Subdivision B—Representatives for participating lone**
20 **institutions**

21 **125 Representatives for participating lone institutions**

- 22 (1) A participating incorporated lone institution may have a
23 representative for the institution. However, a participating
24 unincorporated lone institution must have a representative for the
25 institution.
- 26 (2) The *representative* for a participating unincorporated lone
27 institution is the person in relation to whom a declaration is in
28 force under section 126.

- 1 (3) The *representative* for a participating incorporated lone institution
2 is the person in relation to whom a declaration is in force under
3 subsection 127(1).
- 4 (4) A participating lone institution may have only one representative
5 for the institution.
- 6 (5) However, a person may be the representative for more than one
7 participating lone institution.

8 **126 Becoming the representative for an unincorporated lone**
9 **institution**

10 If an unincorporated lone institution is declared to be a
11 participating institution under subsection 115(2), then the Minister
12 must, by notifiable instrument, make a declaration that the person
13 who agreed to be the representative for the institution (as referred
14 to in paragraph 115(3)(e)) is the representative for the institution.

15 **127 Becoming the representative for an incorporated lone institution**

- 16 (1) The Minister may, by notifiable instrument, make a declaration
17 that a person is the representative for a participating incorporated
18 lone institution.
- 19 (2) The Minister must not make a declaration under subsection (1)
20 unless the Minister is satisfied that:
- 21 (a) the institution has agreed to the person being the
22 representative for the institution; and
- 23 (b) the person has agreed to being the representative for the
24 institution.

25 Note: For how the agreement of the institution or person is given, see
26 section 186.

27 **128 Ceasing to be the representative for a lone institution**

- 28 (1) The Minister may, by notifiable instrument, vary or revoke a
29 declaration made under section 126 or 127 in relation to a
30 representative for a lone institution.

- 1 (2) If:
2 (a) the institution or the representative requests the Minister in
3 writing to revoke a declaration made under section 126 or
4 127; and
5 (b) any requirements prescribed by the rules in relation to the
6 person ceasing to be the representative are satisfied;
7 then the Minister must, by notifiable instrument, revoke the
8 declaration made under section 126 or 127 as soon as practicable.

9 Note: If a participating unincorporated lone institution does not have a
10 representative, then the Minister must revoke the declaration made
11 under subsection 115(2) that the lone institution is a participating
12 institution (see subsection 116(5)).

- 13 (3) Despite subsections (1) and (2), the Minister must not revoke a
14 declaration made under section 126 or 127 in relation to an
15 institution unless any requirements prescribed by the rules in
16 relation to the variation or revocation are satisfied.

- 17 (4) If:
18 (a) the Minister revokes a declaration made under
19 subsection 115(2) in relation to an unincorporated lone
20 institution; but
21 (b) because of subsection 116(7), the institution continues to be a
22 participating institution in relation to a person who made an
23 application for redress before the revocation;
24 then the representative for the institution continues to be the
25 *representative* for the institution in relation to the person (even if
26 the declaration made under section 126 for the representative has
27 been revoked under this section).

28 **129 Actions of the representative for a lone institution**

- 29 (1) Any act that may be done by a participating lone institution under,
30 or for the purposes of, this Act may be done by the representative
31 for the institution on behalf of the institution.
- 32 (2) Any act that is done by the representative for a participating lone
33 institution on behalf of the institution has effect, for the purposes of
34 this Act, as if it had been done by the institution.

1 **130 Giving notices to the representative for a lone institution**

2 (1) Any notice that the Operator is required or authorised by this Act
3 to give to a participating lone institution must be given by the
4 Operator to the representative for the institution.

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

8 **131 Joint and several liability of the representative for an**
9 **unincorporated lone institution for funding contribution**

10 If a participating unincorporated lone institution is liable to pay
11 funding contribution for a quarter, then the institution and the
12 representative for the institution are jointly and severally liable to
13 pay the funding contribution for the quarter.

1 **Part 5-2—Groups of institutions participating in**
2 **the scheme**

3 **Division 1—Simplified outline of this Part**

4 **132 Simplified outline of this Part**

5 Two or more participating institutions may form a participating
6 group for the purposes of the scheme. There are 2 main features of
7 an institution being a member of a participating group.

8 The first is that the members of the group will be associates of each
9 other. Some provisions of this Act apply in a special way for
10 associates. For example, if a person accepts an offer of redress,
11 then the person releases the participating institutions determined by
12 the Operator to be responsible for the abuse (and their officials), as
13 well as all of the associates of that institution (and their officials).

14 The second is that all participating groups must have a
15 representative for the group. The representative may act on behalf
16 of each member of the group (for example, communicate with the
17 Operator). However, the representative will not assume any
18 obligations or liabilities of the members, except for the liability of
19 a member to pay funding contribution.

1 **Division 2—Participating groups**

2 **133 Participating groups**

- 3 (1) Two or more participating institutions may form a participating
4 group for the purposes of the scheme.
- 5 (2) A *participating group* is a group of participating institutions for
6 which a declaration is force under subsection 134(1).
- 7 (3) A participating institution that is a member of a participating group
8 is an *associate* of each other participating institution in the group.

9 Note: Particular provisions of this Act apply in a special way for associates
10 (see sections 42 and 43, which are about releasing institutions and
11 officials from civil liability for abuse).

12 **134 Institutions becoming members of a participating group**

- 13 (1) The Minister may, by notifiable instrument, declare that 2 or more
14 participating institutions form a participating group.
- 15 (2) The Minister must not make a declaration under subsection (1)
16 unless the Minister is satisfied that:
- 17 (a) for a group of Commonwealth institutions—the
18 Commonwealth has agreed to each Commonwealth
19 institution being a member of the group; and
- 20 (b) for a group of State institutions—the participating State has
21 agreed, in a way provided for in the State’s referral Act or
22 adoption Act, to each State institution being a member of the
23 group; and
- 24 (c) for a group of Territory institutions—the participating
25 Territory has agreed to each Territory institution being a
26 member of the group; and
- 27 (d) for a group of non-government institutions:
- 28 (i) each institution has agreed to be a member of the group
29 and to each other institution being a member of the
30 group; and

- 1 (ii) there is a sufficient connection between each institution
2 in the group; and
3 (e) in all cases:
4 (i) each institution is not a member of another participating
5 group; and
6 (ii) there is a representative for the group (see
7 subsection 136(1)); and
8 (iii) any other requirements prescribed by the rules are
9 satisfied.

10 Note: For how the agreement of the Commonwealth, a participating
11 Territory, an institution or a person is given, see section 186.

- 12 (3) If:
13 (a) a State or Territory has agreed to a State institution or
14 Territory institution being a member of a participating group;
15 and
16 (b) the institution is a body corporate;
17 then the institution is taken to have also agreed to be a member of
18 the participating group.

19 **135 Institutions ceasing to be members of a participating group**

- 20 (1) The Minister may, by notifiable instrument, vary or revoke a
21 declaration made under subsection 134(1).
- 22 (2) If:
23 (a) a State requests the Minister in writing to vary or revoke a
24 declaration made under subsection 134(1) in relation to a
25 group of State institutions so that:
26 (i) the group ceases to be a participating group; or
27 (ii) a State institution ceases to be a member of the group;
28 or
29 (b) a participating Territory requests the Minister in writing to
30 vary or revoke a declaration made under subsection 134(1) in
31 relation to a group of Territory institutions so that:
32 (i) the group ceases to be a participating group; or

- 1 (ii) a Territory institution ceases to be a member of the
2 group; or
3 (c) all of the non-government institutions that are members of a
4 participating group request the Minister in writing to revoke a
5 declaration made under subsection 134(1) in relation to the
6 group so that it ceases to be a participating group; or
7 (d) a participating non-government institution that is a member
8 of a participating group requests the Minister in writing to
9 vary a declaration made under subsection 134(1) in relation
10 to the institution so that it ceases to be a member of the
11 group;
12 then the Minister must, by notifiable instrument, vary or revoke the
13 declaration as requested as soon as practicable.
- 14 (3) If a participating group of non-government institutions ceases to
15 have a representative for the group, then the Minister must revoke
16 the declaration made under subsection 134(1) as soon as
17 practicable.
- 18 (4) Despite subsections (1), (2) and (3), the Minister must not vary or
19 revoke a declaration made under subsection 134(1) in relation to a
20 participating group unless any requirements prescribed by the rules
21 relating to the variation or revocation are satisfied.
- 22 (5) If:
23 (a) the Minister revokes a declaration made under
24 subsection 115(2) in relation to a participating institution that
25 is a member of a participating group immediately before the
26 revocation; but
27 (b) because of subsection 116(7), the institution continues to be a
28 participating institution in relation to a person who made an
29 application for redress before the revocation;
30 then each of the associates of the institution continues to be an
31 *associate* of the institution in relation to the person, as if the
32 institution were still a member of the group.

1 **Division 3—Representatives for participating groups**

2 **136 Representatives for participating groups**

- 3 (1) A participating group must have a representative for the group.
- 4 (2) The *representative* for a participating group of Commonwealth
5 institutions is the Commonwealth.
- 6 (3) The *representative* for a participating group of State institutions is
7 the participating State.
- 8 (4) The *representative* for a participating group of Territory
9 institutions is the participating Territory.
- 10 (5) The *representative* for a participating group of non-government
11 institutions is the person in relation to whom a declaration is force
12 under subsection 137(1).
- 13 (6) A participating group may have only one representative for the
14 group.
- 15 (7) However, a person may be the representative for more than one
16 participating group.

17 **137 Becoming the representative for a participating group of**
18 **non-government institutions**

- 19 (1) The Minister may, by notifiable instrument, declare that a person is
20 the representative for a participating group of non-government
21 institutions.
- 22 (2) The Minister must not make a declaration under subsection (1)
23 unless the Minister is satisfied that:
- 24 (a) the person has agreed to be the representative for the group;
25 and
- 26 (b) each participating institution that is a member of the group
27 has agreed to the person being the representative for the
28 group; and

- 1 (c) there is not a declaration in force under subsection (1)
2 declaring another person to be the representative for the
3 group; and
4 (d) any other requirements prescribed by the rules are satisfied.

5 Note: For how the agreement of an institution or a person is given, see
6 section 186.

7 **138 Ceasing to be the representative for a participating group of**
8 **non-government institutions**

9 (1) The Minister may, by notifiable instrument, revoke a declaration
10 made under subsection 137(1) in relation to a representative for a
11 participating group.

12 (2) The Minister must, by notifiable instrument, revoke a declaration
13 made under subsection 137(1) if:

- 14 (a) the representative; or
15 (b) each of the members of the group (other than the
16 representative, if the representative is a member);

17 requests the Minister in writing to revoke the declaration.

18 Note: If a participating group of non-government institutions does not have a
19 representative, then the Minister must revoke the declaration made
20 under subsection 134(1) that the group is a participating group (see
21 subsection 135(3)).

22 (3) Despite subsections (1) and (2), the Minister must not revoke a
23 declaration made under subsection 137(1) unless any requirements
24 prescribed by the rules in relation to the revocation are satisfied.

25 (4) If:

26 (a) the Minister revokes a declaration made under
27 subsection 115(2) in relation to a participating institution that
28 is a member of a participating group immediately before the
29 revocation; but

30 (b) because of subsection 116(7), the institution continues to be a
31 participating institution in relation to a person who made an
32 application for redress before the revocation;

1 then the representative for the participating group continues to be
2 the *representative* for the group in relation to the person, as if the
3 institution were still a member of the group.

4 **139 Actions of the representative for a participating group**

5 (1) Any act that a participating institution that is a member of a
6 participating group may do under, or for the purposes of, this Act
7 (other than this Division) may be done by the representative for the
8 group on behalf of that institution.

9 (2) Any act that is done by the representative for a participating group
10 on behalf of a participating institution that is a member of the
11 group has effect, for the purposes of this Act (other than this
12 Division) as if it had been done by that institution.

13 **140 Giving notices to the representative for a participating group**

14 (1) Any notice that the Operator is required or authorised by this Act
15 to give to a participating institution that is a member of a
16 participating group must be given by the Operator to the
17 representative for the group.

18 (2) A notice given under subsection (1) must, in every respect, be in
19 the same form, and in the same terms, as if it were being given to
20 the participating institution concerned.

21 **141 Joint and several liability of the representative for funding
22 contribution**

23 If:

24 (a) a participating institution is liable to pay funding contribution
25 for a quarter; and

26 (b) that institution is a member of a participating group;
27 then that institution and the representative for the group are jointly
28 and severally liable to pay the funding contribution for the quarter.

1 **Part 5-3—Jurisdictions participating in the scheme**

2 **Division 1—Simplified outline of this Part**

3 **142 Simplified outline of this Part**

4 Only participating jurisdictions are part of the scheme. While the
5 Commonwealth and participating Territories are automatically
6 participating jurisdictions, a State is only a participating
7 jurisdiction (and therefore part of the scheme) if it makes a law that
8 gives certain legislative powers to the Commonwealth Parliament
9 for the purposes of paragraph 51(xxxvii) of the Constitution. This
10 is known as a State reference. Section 144 deals with this.

11 Broadly, if a State is not a participating State, then abuse of a
12 person that occurred inside that State will not be within the scope
13 of the scheme. This means that the person will not be eligible for
14 redress for that abuse.

15 The Minister may declare that a participating jurisdiction is a
16 declared provider of counselling and psychological services under
17 the scheme if the jurisdiction requests the Minister to do so. If that
18 happens, then that jurisdiction will provide for the delivery of those
19 services to those who are entitled to redress and live in that
20 jurisdiction.

1 **Division 2—Participating jurisdictions**

2 **143 What is a participating jurisdiction?**

3 Each of the following jurisdictions is a *participating jurisdiction*:

- 4 (a) the Commonwealth;
- 5 (b) a participating State;
- 6 (c) a participating Territory.

7 **144 What is a participating State?**

8 *Participating State*

9 (1) A State is a *participating State* if, for the purposes of
10 paragraph 51(xxxvii) of the Constitution, the Parliament of the
11 State:

12 (a) has, by its referral Act, referred to the Commonwealth
13 Parliament:

- 14 (i) the text reference (see subsection (2)); and
 - 15 (ii) the amendment reference (see subsection (3));
- 16 before the enactment of this Act; or

17 (b) has, by its adoption Act:

- 18 (i) adopted the relevant version of this Act; and
- 19 (ii) referred to the Commonwealth Parliament the
20 amendment reference;

21 after the enactment of this Act.

22 *Text reference*

23 (2) *Text reference* means the matters to which the initial referred
24 provisions relate, to the extent of making laws with respect to those
25 matters by including the initial referred provisions in the original
26 version of this Act.

1 *Amendment reference*

2 (3) **Amendment reference** means the referred national redress scheme
3 matters (as defined in section 145), to the extent of making laws
4 with respect to those matters by making express amendments of
5 this Act.

6 *Certain things do not affect participating State's status*

7 (4) A State is a **participating State** even if the State's referral Act or
8 adoption Act provides that:
9 (a) the reference to the Commonwealth Parliament of the text
10 reference or the amendment reference is to terminate in
11 particular circumstances; or
12 (b) the adoption of the relevant version of this Act is to terminate
13 in particular circumstances; or
14 (c) the reference to the Commonwealth Parliament of the text
15 reference or the amendment reference has effect only:
16 (i) if and to the extent that the matter is not included in the
17 legislative powers of the Commonwealth Parliament
18 (otherwise than by a reference for the purposes of
19 paragraph 51(xxxvii) of the Constitution); or
20 (ii) if and to the extent that the matter is included in the
21 legislative powers of the Parliament of the State.

22 *Timeframe for becoming a participating State*

23 (5) A State is not a **participating State** if it has not become a
24 participating State before the second anniversary of the scheme
25 start day or a later day prescribed by the rules.

26 *When a State ceases to be a participating State*

27 (6) A State ceases to be a **participating State** if:
28 (a) in the case where the Parliament of the State has referred to
29 the Commonwealth Parliament the text reference—that
30 reference terminates; or
31 (b) in the case where the Parliament of the State has adopted the
32 relevant version of this Act—that adoption terminates.

- 1 (7) A State ceases to be a *participating State* if:
2 (a) the State's amendment reference terminates; and
3 (b) subsection (8) does not apply to the termination.
- 4 (8) A State does not cease to be a *participating State* because of the
5 termination of its amendment reference if:
6 (a) the termination is effected by the Governor of that State
7 fixing a day by Proclamation as the day on which the
8 reference terminates; and
9 (b) the day fixed is no earlier than the first day after the end of
10 the period of 6 months beginning on the day on which the
11 Proclamation is published; and
12 (c) that State's amendment reference, and the amendment
13 reference of every other participating State, terminates on the
14 same day.

15 *Definitions*

- 16 (9) In this Act:

17 *adoption Act*, of a State, means the Act of the State that adopts the
18 relevant version of this Act and refers the amendment reference to
19 the Commonwealth Parliament.

20 *express amendment* of this Act means the direct amendment of the
21 text of this Act (whether by the insertion, omission, repeal,
22 substitution or relocation of words or matter) by another
23 Commonwealth Act or by an instrument under a Commonwealth
24 Act, but does not include the enactment by a Commonwealth Act
25 of a provision that has, or will have, substantive effect otherwise
26 than as part of the text of this Act.

27 *initial referred provisions* means the original version of this Act,
28 to the extent to which it deals with matters that are included in the
29 legislative powers of the Parliament of the State.

30 *original version of this Act* means this Act as originally enacted.

1 *referral Act*, of a State, means the Act of the State that refers the
2 text reference and the amendment reference to the Commonwealth
3 Parliament.

4 *relevant version of this Act*, in relation to a State's adoption Act,
5 means the original version of this Act and as subsequently
6 amended by amendments enacted at any time before the enactment
7 of the State's adoption Act.

8 **145 The referred national redress scheme matters**

- 9 (1) The *referred national redress scheme matters* are the matters
10 relating to a redress scheme for institutional child sexual abuse.
- 11 (2) However, the following matters are not *referred national redress*
12 *scheme matters*:
- 13 (a) the matter of making a law to the extent that that law would
14 operate to prevent or limit the power to establish, or to
15 prevent or limit the operation of, any State redress
16 mechanism, whether or not the mechanism deals with the
17 same or similar subject matters as those dealt with in any
18 aspect of the scheme;
- 19 (b) the matter of making a law to the extent that that law would
20 substantively remove or override a provision of this Act that
21 requires the agreement of the State.
- 22 (3) Paragraph (2)(a) does not cover any of the following matters (if
23 they would otherwise be covered by subsection (1)):
- 24 (a) any matter to which the initial referred provisions relate;
- 25 (b) the matter of the release or discharge, in connection with the
26 operation of the scheme, of relevant civil liability of
27 institutions or officials;
- 28 (c) the matter of the disclosure or use of evidence or other
29 information provided or obtained in connection with the
30 operation of the scheme;
- 31 (d) the matter of the making, enforcement or protection (for
32 example, protection against the operation of orders in the

1 nature of garnishee orders) of payments in connection with
2 the operation of the scheme.

3 (4) A *State redress mechanism* is:

4 (a) a scheme, program or arrangement (temporary or otherwise)
5 established (before or after the commencement of the State's
6 referral Act or adoption Act) by:

7 (i) the Parliament or government of the State; or

8 (ii) an institution (whether governmental or
9 non-governmental) or other entity;

10 for or in respect of persons who have suffered institutional
11 child sexual abuse in the State (whether applying only to any
12 such persons or applying to any class of victims of crime)
13 and any associated matters; or

14 (b) the jurisdiction of a court or tribunal to grant compensation
15 or support for or in respect of victims of crime (including
16 crime relating to institutional child sexual abuse) and any
17 associated matters.

1 **Division 3—Participating jurisdictions providing**
2 **counselling and psychological services under the**
3 **scheme**

4 **146 Participating jurisdictions that are declared providers**

- 5 (1) A participating jurisdiction may notify the Minister, in writing,
6 that:
- 7 (a) arrangements are in place in the jurisdiction for the delivery
8 of counselling and psychological services in accordance with
9 the National Service Standards; and
 - 10 (b) the jurisdiction requests to become a declared provider of
11 counselling and psychological services under the scheme.
- 12 (2) A participating jurisdiction is a *declared provider* of counselling
13 and psychological services under the scheme if a declaration to that
14 effect is in force under subsection 147(1).

15 **147 Ministerial declarations about declared providers**

- 16 (1) If the Minister receives a notice under subsection 146(1) from a
17 participating jurisdiction, then the Minister must, by notifiable
18 instrument, declare that the jurisdiction is a declared provider of
19 counselling and psychological services under the scheme.
- 20 (2) If the participating jurisdiction requests the Minister, in writing, to
21 revoke a declaration made under subsection (1), then the Minister
22 must, by notifiable instrument, revoke the declaration as soon as
23 practicable.

1 **Chapter 6—Financial matters**

2 **Part 6-1—Liability for funding**

3 **Division 1—Simplified outline of this Part**

4 **148 Simplified outline of this Part**

5 The Commonwealth is liable to bear the initial costs of paying
6 redress payments and the counselling and psychological
7 component of redress under the scheme, as well as the
8 administration of the scheme. However, participating institutions
9 are liable to pay funding contribution to reimburse the
10 Commonwealth for their share of those costs.

11 Funding contribution is worked out on a quarterly basis and
12 consists of 2 elements:

13 (a) the redress element (which covers the total amount of
14 the institution's share of the costs of redress payments
15 and the counselling and psychological component of
16 redress in the quarter); and

17 (b) the scheme administration element (which covers the
18 total amount of the institution's contribution to the costs
19 of the administration of the scheme in the quarter).

20 The Operator determines the amount of funding contribution that a
21 participating institution is required to pay for the quarter, and
22 notifies the institution of the amount and the due date for payment.

23 The Commonwealth is liable to pay counselling and psychological
24 services contribution to a participating jurisdiction that is a
25 declared provider of counselling and psychological services under
26 the scheme. The Commonwealth must pay the contribution to the
27 jurisdiction for a quarter if the jurisdiction became liable in that
28 quarter to provide for the delivery of counselling and psychological
29 services to a person.

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A participating government institution may be the funder of last resort for a defunct institution. In that case, the government institution 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 institution will be liable to pay. (For funders of last resort, see Part 6-2.)

1 **Division 2—Liability of participating institutions for**
2 **funding contribution**

3 **149 Liability for funding contribution**

4 (1) If, in a quarter, a person becomes entitled to redress for abuse of
5 the person, then each participating institution that is determined by
6 the Operator under paragraph 29(2)(b) to be responsible for the
7 abuse is liable to pay funding contribution for that quarter.

8 Note 1: If the responsible institution is a defunct institution, its representative
9 will be liable to pay the funding contribution (see section 123).

10 Note 2: If the responsible institution is an unincorporated lone institution, its
11 representative will be jointly and severally liable with the institution to
12 pay the funding contribution (see section 131).

13 Note 3: If the responsible institution is a member of a participating group, the
14 representative for the group will be jointly and severally liable with
15 the institution to pay the funding contribution (see section 141).

16 (2) A *quarter* is a period of 3 months beginning on 1 July, 1 October,
17 1 January or 1 April.

18 (3) Subsection (1) does not apply to a Commonwealth institution.

19 (4) The rules may provide for the application of this Part to a
20 Commonwealth institution.

21 **150 Funding contribution**

22 ***Funding contribution*** for a participating institution for a quarter
23 consists of:

- 24 (a) the redress element for the institution for the quarter; and
25 (b) the scheme administration element for the institution for the
26 quarter.

27 Note: If the Operator determines under paragraph 29(2)(i) that a
28 participating government institution is the funder of last resort for a
29 defunct institution in relation to abuse of a person, the government
30 institution will be liable for the defunct institution's (hypothetical)
31 share of the costs of providing redress to the person (see section 165).

1 **151 Redress element**

2 The *redress element* of funding contribution for a participating
3 institution for a quarter is the amount equal to the sum of the
4 following amounts for each person who is entitled to redress:

- 5 (a) the amount of the institution's share of the costs of the
6 redress payment to the person in the quarter;
7 (b) the amount of the institution's share of the costs of the
8 counselling and psychological component of redress for the
9 person in the quarter.

10 Note: The Operator determines the amount of an institution's share of the
11 costs of the redress payment under paragraph 29(2)(c) and the amount
12 of an institution's share of the costs of the counselling and
13 psychological component of redress for the person under
14 paragraph 29(2)(d).

15 **152 Scheme administration element**

- 16 (1) The *scheme administration element* of funding contribution for a
17 participating institution for a quarter is the amount equal to the
18 institution's contribution to the costs of the administration of the
19 scheme for the quarter.
- 20 (2) For the purposes of subsection (1), the Operator must, in
21 accordance with any requirements prescribed by the rules,
22 determine the institution's contribution to the costs of the
23 administration of the scheme for the quarter.

24 **153 When funding contribution is due for payment**

25 Funding contribution that is payable by a participating institution is
26 due and payable on a business day that is:

- 27 (a) specified in a notice that the Operator gives to the
28 participating institution; and
29 (b) not earlier than 30 days after the date of the notice.

1 **154 Late payment penalty**

- 2 (1) If any funding contribution payable by a participating institution
3 remains unpaid at the start of a calendar month after the funding
4 contribution became due for payment, the institution is liable to
5 pay, for that calendar month, a penalty worked out using the
6 following formula:

7 Amount of funding contribution × $\frac{0.1}{12}$
 unpaid at the start of the calendar month

- 8 (2) Late payment penalty for a calendar month is due and payable at
9 the end of the calendar month.

- 10 (3) However, the Operator may, by written notice given to the
11 participating institution before, on or after the day on which late
12 payment penalty would be due and payable apart from this
13 subsection, specify a later day as the day on which the late
14 payment penalty is due and payable. The notice has effect, and is
15 taken always to have had effect, according to its terms.

16 **155 Payment of funding contribution and late payment penalty**

17 Each of the following are payable to the Operator on behalf of the
18 Commonwealth:

- 19 (a) funding contribution;
20 (b) late payment penalty.

21 **156 Waiver of funding contribution and late payment penalty**

- 22 (1) The Operator may, on behalf of the Commonwealth, waive the
23 payment of all or part of funding contribution or late payment
24 penalty payable by a participating institution, if the Operator is
25 satisfied that there are exceptional circumstances justifying the
26 waiver.

- 27 (2) The Operator may do so on the Operator's own initiative or on
28 written application by a person in the approved form.

1 **157 Review of decision about waiving funding contribution or**
2 **penalty**

- 3 (1) A participating institution that is affected by a decision of the
4 Operator under section 156 about waiving the payment of all or
5 part of funding contribution or late payment penalty may, if
6 dissatisfied with the decision, request the Operator to reconsider
7 the decision.
- 8 (2) The request must:
- 9 (a) be made by notice given to the Operator in the approved form
10 within:
- 11 (i) the period of 21 days after the day of the notice of the
12 decision; or
- 13 (ii) any further period that the Operator allows; and
- 14 (b) set out the reasons for making the request.
- 15 (3) After receiving the request, the Operator must review the decision
16 or cause the decision to be reviewed by a person:
- 17 (a) to whom the Operator's power under this section is
18 delegated; and
- 19 (b) who was not involved in the making of the decision.
- 20 (4) Within 30 business days after receiving the request or such longer
21 period as the Operator determines in writing (the *review period*),
22 the person reviewing the decision must:
- 23 (a) reconsider the decision; and
- 24 (b) confirm, revoke or vary the decision, as the person thinks fit.
- 25 (5) If the person reviewing the decision does not confirm, revoke or
26 vary the decision within the review period, he or she is taken to
27 have confirmed the decision under subsection (4) immediately after
28 the end of that period.
- 29 (6) The person reviewing the decision must give a notice in writing to
30 the participating institution that made the request that sets out the
31 result of the reconsideration of the decision and gives the reasons
32 for that result.

1 **158 Liability of corporate State or Territory institutions for funding**
2 **contribution**

3 If:

- 4 (a) a State institution or a Territory institution is a body
5 corporate; and
6 (b) the institution is taken to have agreed to participate in the
7 scheme (see subsection 115(5)); and
8 (c) the imposition of a liability on the institution to pay funding
9 contribution under section 149 would impermissibly:
10 (i) impose taxation on the institution; or
11 (ii) acquire property of the institution otherwise than on just
12 terms;

13 then section 149 is taken to impose the liability on the relevant
14 State or Territory instead.

1 **Division 3—Liability of the Commonwealth for counselling**
2 **and psychological services contribution**

3 **159 Liability for counselling and psychological services contribution**

4 The Commonwealth is liable to pay counselling and psychological
5 services contribution to a participating jurisdiction for a quarter if:

- 6 (a) the jurisdiction is a declared provider of counselling and
7 psychological services under the scheme; and
8 (b) in that quarter the jurisdiction becomes required under
9 paragraph 51(2)(b) to provide for the delivery of those
10 services to a person.

11 **160 Counselling and psychological services contribution**

12 *Counselling and psychological services contribution* for a
13 participating jurisdiction for a quarter is the amount equal to the
14 sum of the amounts of the counselling and psychological
15 component of redress for each person in relation to whom the
16 jurisdiction becomes required under paragraph 51(2)(b) in the
17 quarter to provide for the delivery of counselling and psychological
18 services.

1 **Division 4—Appropriation**

2 **161 Appropriation**

3 The Consolidated Revenue Fund is appropriated to the extent
4 necessary for the purposes of the payment or discharge of the costs
5 incurred by the Commonwealth in making the following payments:

- 6 (a) redress payments;
- 7 (b) counselling and psychological services payments;
- 8 (c) counselling and psychological services contribution.

1 **Part 6-2—Funders of last resort**

2 **Division 1—Simplified outline of this Part**

3 **162 Simplified outline of this Part**

4 In some cases, a participating government institution will be the
5 funder of last resort for a defunct institution that is not participating
6 in the scheme. In those cases, the government institution will be
7 liable to pay the defunct institution's share of the costs of
8 providing redress to a person, in addition to the government
9 institution's liability to pay its own share of those costs.

10 Before a government institution can become the funder of last
11 resort for a defunct institution in relation to abuse of a person, the
12 Operator must first make a determination to that effect (see
13 paragraph 29(2)(i)). The Operator can only make that
14 determination if:

- 15 (a) the Operator has determined that the government
16 institution is equally responsible with the defunct
17 institution for the abuse; and
18 (b) the defunct institution is listed for the jurisdiction that
19 the government institution belongs to.

1 **Division 2—Funders of last resort**

2 **163 Funders of last resort**

3 A participating government institution is the *funder of last resort*
4 for a defunct institution in relation to abuse of a person if a
5 determination of the Operator to that effect is in force under
6 paragraph 29(2)(i).

7 Note: The Operator can only make that determination if the participating
8 government institution and the defunct institution are equally
9 responsible for the abuse and the defunct institution is listed for the
10 jurisdiction that the government institution belongs to.

11 **164 Listing defunct institutions**

12 (1) A defunct institution is *listed* for a participating jurisdiction if:

13 (a) the defunct institution:

14 (i) is a non-government institution; and

15 (ii) is not a participating institution; and

16 (b) a declaration that the defunct institution is listed for the
17 jurisdiction is in force under subsection (2).

18 (2) The Minister may, by notifiable instrument, declare that a defunct
19 institution is listed for one or more participating jurisdictions.

20 Note: A defunct institution may be identified by name, by inclusion in a
21 particular class, or in any other way.

22 (3) The Minister must not make a declaration under subsection (2)
23 listing a defunct institution for the Commonwealth or a
24 participating Territory unless the Minister is satisfied that the
25 relevant jurisdiction has agreed, in the way (if any) prescribed by
26 the rules, to the institution being listed for the jurisdiction.

27 (4) The Minister must not make a declaration under subsection (2)
28 listing a defunct institution for a participating State unless the
29 Minister is satisfied that the State has agreed, in a way provided for
30 in the State's referral Act or adoption Act, to the institution being
31 listed for the State.

- 1 (5) The Minister may, by notifiable instrument, vary or revoke a
2 declaration made under subsection (2).
- 3 (6) If:
4 (a) a declaration is made under subsection (2) that a defunct
5 institution is listed for the Commonwealth or a participating
6 Territory; and
7 (b) the jurisdiction withdraws its agreement, in the way (if any)
8 prescribed by the rules, to the defunct institution being listed
9 for the jurisdiction;
10 then, as soon as is practicable, the Minister must, by notifiable
11 instrument, vary or revoke the declaration so that the defunct
12 institution is no longer listed for the jurisdiction.
- 13 (7) If:
14 (a) a declaration is made under subsection (2) that a defunct
15 institution is listed for a participating State; and
16 (b) the State withdraws its agreement, in a way provided for in
17 the State's referral Act or adoption Act, to the defunct
18 institution being listed for the State;
19 then, as soon as is practicable, the Minister must, by notifiable
20 instrument, vary or revoke the declaration so that the defunct
21 institution is no longer listed for the State.

1 **Division 3—Special rules for funder of last resort cases**

2 **165 Special rules for funder of last resort cases**

3 *Effect of government institution being funder of last resort*

- 4 (1) If the Operator determines under paragraph 29(2)(i) that:
- 5 (a) a participating government institution is equally responsible
- 6 with a defunct institution for abuse of a person; and
- 7 (b) the government institution is the funder of last resort for the
- 8 defunct institution in relation to the abuse;
- 9 then the government institution is liable, in accordance with this
- 10 section, for what the defunct institution would have been liable to
- 11 pay in relation to providing redress to the person, had the defunct
- 12 institution been a participating institution.

13 *Redress payment*

- 14 (2) When determining under paragraph 29(2)(c) the amount of the
- 15 redress payment for the person and the amount of the government
- 16 institution's share of the costs of that payment, the Operator must:
- 17 (a) apply subsection 30(2) as if the defunct institution were also
- 18 a responsible institution in relation to the abuse; and
- 19 (b) add the amount worked out under subsection 30(2) (as
- 20 applying because of paragraph (a) of this subsection) as the
- 21 amount of the defunct institution's share of the costs of the
- 22 redress payment to what, apart from this section, would have
- 23 been the government institution's share of the costs of the
- 24 redress payment.

25 *Counselling and psychological component*

- 26 (3) When determining under paragraph 29(2)(d) the amount of the
- 27 government institution's share of the costs of the counselling and
- 28 psychological component of redress for the person, the Operator
- 29 must:

- 1 (a) determine, in accordance with section 31, the amount of the
2 defunct institution's share of those costs as if the defunct
3 institution were also a responsible institution; and
4 (b) add that amount to what, apart from this section, would have
5 been the amount of the government institution's share of
6 those costs.

7 *Scheme administration costs*

- 8 (4) When determining under subsection 152(2) the government
9 institution's contribution to the costs of the administration of the
10 scheme for a quarter, the Operator must:
11 (a) determine the amount of the defunct institution's contribution
12 to those costs as if the defunct institution were a participating
13 institution; and
14 (b) add that amount to what, apart from this section, would have
15 been the amount of the government institution's contribution
16 to those costs.

1 **Part 6-3—Debt recovery**

2 **Division 1—Simplified outline of this Part**

3 **166 Simplified outline of this Part**

4 Certain amounts paid under the scheme may become a debt due to
5 the Commonwealth. For example, if a redress payment is paid to
6 the wrong person, that payment is a debt due to the Commonwealth
7 and may be recovered under this Part.

8 This Part also allows for funding contribution or late payment
9 penalty that is payable by an institution or a person to be
10 recoverable as a debt due to the Commonwealth.

1 **Division 2—Debt recovery**

2 **167 Recovery of amounts (other than funding contribution and late**
3 **payment penalty)**

- 4 (1) If an amount has been paid to a person or an institution (the
5 *recipient*) under this Act, the amount is a debt due to the
6 Commonwealth only to the extent expressly provided for by this
7 section.
- 8 (2) If the amount paid to the recipient was not payable because:
9 (a) the amount was paid to the wrong person or institution; or
10 (b) the amount exceeds the amount payable to the recipient;
11 then the amount paid, or the excess, is a debt due to the
12 Commonwealth by the recipient.
- 13 (3) If the amount paid to the recipient was paid wholly or partly
14 because of a false or misleading statement, or a misrepresentation,
15 by the recipient or another person, then an amount equal to so
16 much of the amount paid as is attributable to the false or
17 misleading statement, or the misrepresentation, is a debt due to the
18 Commonwealth by the recipient.
- 19 (4) If:
20 (a) the recipient was required under section 181 to notify the
21 Operator about a matter; and
22 (b) the recipient did not comply with the requirement; and
23 (c) had the Operator been notified as required, the amount that
24 was paid to the recipient would not have been payable;
25 then an amount equal to so much of the amount paid as is
26 attributable to the failure to comply with the requirement is a debt
27 due to the Commonwealth by the recipient.
- 28 (5) A debt due by the recipient under this section in relation to an
29 amount arises at the time the amount was paid to the recipient.

1 **168 Recovery of funding contribution and late payment penalty**

2 The following amounts may be recovered by the Commonwealth
3 from an institution or a person as debts due to the Commonwealth:

- 4 (a) funding contribution that is due and payable by the institution
5 or person;
6 (b) late payment penalty that is due and payable by the
7 institution or person.

8 Note: For cases where a person may be liable to pay funding contribution,
9 see sections 123, 131 and 141.

10 **169 Legal proceedings to recover debt**

11 A debt due to the Commonwealth under this Part is recoverable by
12 the Commonwealth in a court of competent jurisdiction.

13 **170 Arrangement for payment of debt**

14 (1) The Operator may enter into an arrangement with a person or an
15 institution under which the person or institution is to pay a debt,
16 owed by the person or institution to the Commonwealth under this
17 Part, or the outstanding amount of such a debt, in a way set out in
18 the arrangement.

19 (2) An arrangement entered into under subsection (1) has effect, or is
20 taken to have had effect, on and after the day specified in the
21 arrangement as the day the arrangement commences (whether that
22 day is the day the arrangement is entered into or an earlier or later
23 day).

24 (3) If an arrangement entered into under subsection (1) does not
25 specify a day as mentioned in subsection (2), it has effect on and
26 after the day on which it is entered into.

27 (4) The Operator may terminate or alter an arrangement entered into
28 under subsection (1):
29 (a) at the request of the person or institution; or
30 (b) after giving 28 days' notice to the person or institution of the
31 proposed termination or alteration; or

- 1 (c) without notice, if the Operator is satisfied that the person or
2 institution has failed to disclose material information about
3 the person's or institution's true capacity to repay the debt.

4 **171 Recovery of amounts from financial institutions**

5 *Payment into wrong account*

- 6 (1) This section applies if:
7 (a) an amount is paid under this Act to a financial institution for
8 the credit of an account kept with the financial institution;
9 and
10 (b) the Operator is satisfied that the payment was intended to be
11 made to someone who was not the person or one of the
12 persons in whose name or names the account was kept.

13 *Notice to financial institution requiring repayment*

- 14 (2) The Operator may give a written notice to the financial institution
15 setting out the relevant matters referred to in paragraphs (1)(a) and
16 (b) and requiring the financial institution to pay to the
17 Commonwealth, within a reasonable period stated in the notice, the
18 lesser of the following amounts:
19 (a) the amount of the payment, as stated in the notice;
20 (b) the amount standing to the credit of the account when the
21 notice is given to the financial institution.

22 *Offence for contravening notice*

- 23 (3) A financial institution must comply with a notice given to it under
24 subsection (2).

25 Penalty: 300 penalty units.

- 26 (4) It is a defence to a prosecution of a financial institution for failing
27 to comply with a notice given to it under subsection (2) if the
28 financial institution proves that it was incapable of complying with
29 the notice.

1 Note: A defendant bears a legal burden in relation to the matter in this
2 subsection (see section 13.4 of the *Criminal Code*).

3 *Amount recovered reduces debt*

4 (5) Any amount recovered by the Commonwealth from a financial
5 institution under this section reduces the amount of a debt referred
6 to in subsection 167(1) (as it relates to paragraph 167(2)(a)).

7 **172 Repayment of recovered amount to participating institutions**

8 If:

- 9 (a) the Commonwealth recovers an amount under this Part (other
10 than paragraph 167(2)(a)); and
11 (b) all or part of the amount relates to either or both of the
12 following payments:
13 (i) a redress payment;
14 (ii) a counselling and psychological services payment; and
15 (c) a participating institution has paid funding contribution in
16 relation to that payment;

17 then the Commonwealth must repay the institution so much of that
18 funding contribution as the Operator considers relates to the
19 amount recovered.

20 Note: For the appropriation for the refund, see section 77 of the *Public*
21 *Governance, Performance and Accountability Act 2013*.

1 **Chapter 7—Other matters**

2 **Part 7-1—Application of this Act**

3 **Division 1—Simplified outline of this Part**

4 **173 Simplified outline of this Part**

5 This Act can only give an entitlement to redress if the
6 Commonwealth has legislative power to provide that redress. This
7 Part sets out the constitutional basis for providing redress and also
8 deals with other aspects of the application of this Act.

9 The main constitutional basis for redress is based on the place
10 where the abuse occurred, which broadly is as follows:

- 11 • If the abuse occurred inside a State that has given a reference
12 to the Commonwealth or made an adoption for the purposes of
13 paragraph 51(xxxvii) of the Constitution (i.e. a participating
14 State), then the reference or adoption by the State provides the
15 constitutional basis for the redress.
- 16 • If the abuse occurred inside a Territory (such as the Australian
17 Capital Territory, the Northern Territory or an external
18 Territory), then section 122 of the Constitution provides the
19 constitutional basis for the redress.
- 20 • If the abuse occurred outside Australia, then
21 paragraph 51(xxix) of the Constitution provides the
22 constitutional basis for the redress.

1 **Division 2—Application of this Act**

2 **174 Constitutional basis for this Act**

3 *What this section is about*

- 4 (1) This section sets out the constitutional basis of this Act.

5 *Application in a participating State*

- 6 (2) The application of this Act in relation to sexual abuse, and any
7 related non-sexual abuse, of a person that occurred inside a
8 participating State is based on:

- 9 (a) the legislative powers that the Commonwealth Parliament has
10 under the Constitution (other than paragraph 51(xxxvii)); and
11 (b) the legislative powers that the Commonwealth Parliament has
12 because of a reference or an adoption by the Parliaments of
13 the participating States for the purposes of
14 paragraph 51(xxxvii) of the Constitution.

15 *Application in a non-participating State*

- 16 (3) The application of this Act in relation to sexual abuse, and any
17 related non-sexual abuse, of a person that occurred inside a
18 non-participating State is based on:

- 19 (a) the legislative powers that the Commonwealth Parliament has
20 under section 51 (other than paragraph 51(xxxvii)) and
21 section 122 of the Constitution; and
22 (b) the other legislative powers that the Commonwealth
23 Parliament has under the Constitution.

24 *Application in a Territory*

- 25 (4) The application of this Act in relation to sexual abuse, and any
26 related non-sexual abuse, of a person that occurred inside a
27 Territory is based on:

- 28 (a) the legislative powers that the Commonwealth Parliament has
29 under section 122 of the Constitution to make laws for the
30 government of a Territory; and

- 1 (b) the other legislative powers that the Commonwealth
2 Parliament has under the Constitution.
3 Despite section 2H of the *Acts Interpretation Act 1901*, this Act as
4 applying in the Territory is a law of the Commonwealth.

5 *Application outside Australia*

- 6 (5) The application of this Act in relation to sexual abuse, and any
7 related non-sexual abuse, of a person that occurred outside
8 Australia is based on:
9 (a) the legislative power the Commonwealth Parliament has
10 under paragraph 51(xxix) of the Constitution; and
11 (b) the legislative powers that the Commonwealth Parliament has
12 under section 122 of the Constitution to make laws for the
13 government of a Territory; and
14 (c) the other legislative powers that the Commonwealth
15 Parliament has under the Constitution.

16 **175 Concurrent operation with State and Territory laws**

- 17 (1) This Act does not exclude or limit the operation of a law of a State
18 or Territory to the extent that the law is capable of operating
19 concurrently with this Act.
20 (2) Without limiting subsection (1), this Act does not exclude or limit
21 the concurrent operation of a law of a State or Territory merely
22 because that law provides for redress (however described) to be
23 provided to a person for abuse suffered by the person.

24 **176 Extraterritorial application and extension to external
25 Territories**

- 26 (1) This Act applies both within and outside Australia.
27 (2) This Act extends to every external Territory.

28 **177 Crown to be bound**

- 29 This Act binds the Crown in each of its capacities.

1 **Part 7-2—The National Redress Scheme Rules**

2 **Division 1—Simplified outline of this Part**

3 **178 Simplified outline of this Part**

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The Minister may make rules for the purposes of the scheme. They are subordinate legislation and may deal with matters that this Act requires or permits the rules to deal with, or that are necessary or convenient for giving effect to this Act.

1 **Division 2—The National Redress Scheme Rules**

2 **179 The National Redress Scheme Rules**

- 3 (1) The Minister may, by legislative instrument, make rules
4 prescribing matters:
5 (a) required or permitted by this Act to be prescribed by the
6 rules; or
7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.
- 9 (2) The rules may provide for the following:
10 (a) matters relating to an institution ceasing to be a participating
11 institution;
12 (b) matters relating to a participating group ceasing to be a
13 participating group;
14 (c) matters relating to a participating State ceasing to be a
15 participating State;
16 (d) matters relating to a person becoming, being or ceasing to be
17 a representative for a defunct institution, a lone institution or
18 a participating group;
19 (e) overriding, for the purposes of the scheme, any provisions of
20 settlement agreements or deeds that:
21 (i) relate to confidentiality; or
22 (ii) would inhibit access to, or the operation of, the scheme.
- 23 (3) Despite section 14 of the *Legislation Act 2003*, the rules may
24 apply, adopt or incorporate any matter contained in the assessment
25 framework as in force or existing from time to time.
- 26 (4) The provisions of this Act that provide for the rules to deal with
27 matters do not limit each other.
- 28 (5) To avoid doubt, the rules may not do the following:
29 (a) create an offence or civil penalty;
30 (b) provide powers of:
31 (i) arrest or detention; or

- 1 (ii) entry, search or seizure;
- 2 (c) impose a tax;
- 3 (d) set an amount to be appropriated from the Consolidated
- 4 Revenue Fund under an appropriation in this Act;
- 5 (e) directly amend the text of this Act.

1 **Part 7-3—Other matters**

2 **Division 1—Simplified outline of this Part**

3 **180 Simplified outline of this Part**

4 A person who applies for redress under the scheme may be
5 required or permitted to notify the Operator of certain matters (e.g.
6 that the person is sentenced to imprisonment for 5 years or longer
7 for an offence). An institution may also be required or permitted to
8 notify the Operator about a matter (see section 181).

9 The Minister and the Operator may delegate their powers and
10 functions to certain officers of the scheme. However, the Minister
11 cannot delegate his or her powers and functions to make the rules,
12 and the Operator can only delegate his or her powers and functions
13 under sections 29 and 75 (which are about determinations relating
14 to redress applications) to an independent decision-maker.

15 The Operator may engage a person to be an independent
16 decision-maker to make determinations relating to redress
17 applications.

18 The Operator must prepare and give an annual report on the
19 operation of the scheme and must include particular information in
20 that report.

21 The Minister must cause 2 reviews of the scheme to be
22 conducted—one starting on the second anniversary of the scheme
23 start day and the other starting on the eighth anniversary of that
24 day. The rules can prescribe a later date to start those reviews.

25 The scheme ceases on the scheme sunset day (which ordinarily will
26 be the tenth anniversary of the scheme start day).

27 This Part also deals with other miscellaneous matters (such as
28 approved forms).

1 **Division 2—Giving notices for the purposes of the scheme**

2 **181 Persons or institutions giving notices to the Operator**

- 3 (1) If:
- 4 (a) a person makes an application for redress under the scheme;
- 5 and
- 6 (b) after making the application, the person is sentenced to
- 7 imprisonment for 5 years or longer for an offence against a
- 8 law of the Commonwealth, a State, a Territory or a foreign
- 9 country;
- 10 then the person must notify the Operator of that fact in accordance
- 11 with any requirements prescribed by the rules.
- 12 (2) The rules may prescribe:
- 13 (a) circumstances for when a person or a participating institution
- 14 must or may notify the Operator of a matter; and
- 15 (b) requirements relating to the giving of the notice.

16 **182 Operator giving notices to persons or institutions**

- 17 (1) The rules may require or permit the Operator to give a notice to a
- 18 person or an institution about a matter relating to the operation of
- 19 this Act.
- 20 (2) If this Act requires or permits the Operator to give a notice to a
- 21 person or institution, the Operator may give the notice in any way
- 22 that the Operator considers appropriate.

1 **Division 3—Delegation**

2 **183 Delegation by the Minister**

- 3 (1) The Minister may, in writing, delegate all or any of the Minister’s
4 powers or functions under this Act (other than section 179 or 185)
5 to:
6 (a) the Operator; or
7 (b) a person who holds or performs the duties of an SES Band 3
8 position, or an equivalent position, in the Department.
- 9 (2) In exercising a power or performing a function under a delegation
10 under subsection (1), the delegate must comply with any directions
11 of the Minister.

12 **184 Delegation by the Operator**

13 *Powers and functions—general*

- 14 (1) The Operator may, in writing, delegate all or any of the Operator’s
15 powers or functions under this Act (other than sections 29, 75 and
16 190) to an officer of the scheme.
- 17 (2) In exercising a power or performing a function under a delegation
18 under subsection (1), the delegate must comply with any directions
19 of the Operator.

20 *Powers and functions—redress determinations*

- 21 (3) The Operator may, in writing, delegate the Operator’s powers and
22 functions under section 29 or 75 (which are about determinations
23 relating to redress applications) to an independent decision-maker.
- 24 (4) In exercising a power or performing a function under a delegation
25 under subsection (3), the delegate is not required to comply with
26 any directions of the Operator.

1 **Division 4—Independent decision-makers**

2 **185 Engaging persons to be independent decision-makers**

- 3 (1) The Operator may, on behalf of the Commonwealth and with the
4 approval of the Minister, engage a person, under written
5 agreement, to assist in the performance of the functions of the
6 Operator in relation to the making of determinations under
7 section 29 or 75 on applications for redress.
- 8 (2) Before giving an approval under subsection (1), the Minister must
9 consult the appropriate Ministers from the participating States and
10 participating Territories in accordance with the National Redress
11 Scheme Agreement.
- 12 (3) A person engaged under subsection (1) is an *independent*
13 *decision-maker*.
- 14 (4) Subdivision A of Division 3 of Part 2-2 of the *Public Governance,*
15 *Performance and Accountability Act 2013* (which deals with
16 general duties of officials), and any rules made under that Act for
17 the purposes of that Subdivision, apply to an independent
18 decision-maker in the same way as they apply to an official (within
19 the meaning of that Act).
- 20 Note: The duties of officials under the *Public Governance, Performance and*
21 *Accountability Act 2013* include: the duty of care and diligence; the
22 duty to act honestly, in good faith and for a proper purpose; the duties
23 relating to the use of information and position; and the duty to disclose
24 interests.

1 **Division 5—Miscellaneous**

2 **186 Giving agreement**

3 A reference in this Act to the Commonwealth, a participating
4 Territory, an institution or a person agreeing to a matter is a
5 reference to the body or person giving agreement in the way (if
6 any) prescribed by the rules.

7 Note: For example, paragraph 115(3)(c) provides that the Minister must not
8 make a declaration that a non-government institution is a participating
9 institution unless the institution has agreed to participate in the
10 scheme. Under this section, the way the institution gives its agreement
11 must be the way prescribed by the rules (if the rules prescribe a way).

12 **187 Annual report on operation of the scheme**

13 (1) As soon as practicable after the end of each financial year, the
14 Operator must prepare and give an annual report to the Minister,
15 for presentation to the Parliament, on the operation of the scheme
16 during the year.

17 (2) Without limiting subsection (1), the annual report must:
18 (a) include information about any matter prescribed by the rules;
19 and
20 (b) comply with any requirements prescribed by the rules.

21 **188 Approved forms**

22 The Operator may, in writing, approve one or more forms for the
23 purposes of a provision of this Act that provides for something to
24 be done in an approved form.

25 **189 Determinations of the Operator to be in writing**

26 (1) A determination by the Operator under this Act must be in writing.

27 (2) A determination by the Operator under this Act is not a legislative
28 instrument.

1 **190 Civil penalty provisions**

2 *Enforceable civil penalty provisions*

- 3 (1) Each civil penalty provision of this Act is enforceable under Part 4
4 of the Regulatory Powers Act.

5 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
6 be enforced by obtaining an order for a person to pay a pecuniary
7 penalty for the contravention of the provision.

8 *Authorised applicant*

- 9 (2) For the purposes of Part 4 of the Regulatory Powers Act, each of
10 the following persons is an authorised applicant in relation to the
11 civil penalty provisions of this Act:

- 12 (a) the Operator;
13 (b) an SES employee, or an acting SES employee, in the
14 Department or the Human Services Department.

15 *Relevant court*

- 16 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
17 the following courts is a relevant court in relation to the civil
18 penalty provisions of this Act:

- 19 (a) the Federal Court of Australia;
20 (b) the Federal Circuit Court of Australia.

21 *External Territories*

- 22 (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation
23 to the civil penalty provisions of this Act, extends to every external
24 Territory.

25 *The Crown*

- 26 (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation
27 to the civil penalty provisions of this Act, does not make the
28 Crown in right of the Commonwealth, a State or a Territory liable
29 to a pecuniary penalty.

1 **191 Compensation for acquisition of property**

- 2 (1) If the operation of this Act would result in an acquisition of
3 property (within the meaning of paragraph 51(xxxi) of the
4 Constitution) from a person otherwise than on just terms (within
5 the meaning of that paragraph), the Commonwealth is liable to pay
6 a reasonable amount of compensation to the person.
- 7 (2) If the Commonwealth and the person do not agree on the amount
8 of the compensation, the person may institute proceedings in:
9 (a) the Federal Court of Australia; or
10 (b) the Supreme Court of a State or participating Territory;
11 for the recovery from the Commonwealth of such reasonable
12 amount of compensation as the court determines.

13 **192 Review of the scheme**

14 *Second anniversary review*

- 15 (1) The Minister must cause a review of the operation of the scheme to
16 be commenced as soon as possible after:
17 (a) the second anniversary of the scheme start day; or
18 (b) if, before the second anniversary, the rules prescribe a day
19 that is after the second anniversary—that day.
- 20 (2) The second anniversary review must consider the following
21 matters:
22 (a) the extent to which the States, participating Territories and
23 non-government institutions have opted into the scheme,
24 including key facilitators and barriers to opting in;
25 (b) the extent to which survivors who are eligible for redress
26 under the scheme have applied for redress;
27 (c) the extent to which redress has been provided to survivors
28 who are entitled to redress under the scheme;
29 (d) the application, assessment and decision-making process,
30 including user experiences of the process;
31 (e) redress payments;

- 1 (f) access to counselling and psychological services under the
2 scheme;
- 3 (g) the extent to which survivors access direct personal responses
4 under the scheme, including factors influencing the uptake
5 and experiences with the direct personal response process;
- 6 (h) the availability of, and access to, support services under the
7 scheme;
- 8 (i) the implications of the scheme's design for survivors
9 (including Indigenous and child migrant survivors, as well as
10 survivors who are still children or who have a criminal
11 conviction);
- 12 (j) the operation of the scheme's funding arrangements
13 (including a review of the scheme administration element of
14 funding contribution);
- 15 (k) the operation of the funder of last resort provisions;
- 16 (l) the extent to which the scheme has been implemented as
17 proposed in the National Redress Scheme Agreement;
- 18 (m) the views of key stakeholders on the scheme (including
19 representatives from survivor groups, non-government
20 institutions, advocacy groups, support services provider
21 groups, the Independent Advisory Council, the
22 Commonwealth, the States and the Territories);
- 23 (n) the impact and effectiveness of section 37 (which is about the
24 admissibility of certain documents in evidence in civil
25 proceedings);
- 26 (o) the question of whether an institution (the *first institution*)
27 should be responsible for abuse that occurs in connection
28 with another institution merely because the first institution
29 regulates or funds the other institution or the other
30 institution's activities;
- 31 (p) the administration of this Act and the scheme;
- 32 (q) any other matter relevant to the operation of this Act or the
33 scheme.

1 *Eighth anniversary review*

- 2 (3) The Minister must cause a review of the operation of the scheme to
3 be commenced as soon as possible after:
4 (a) the eighth anniversary of the scheme start day; or
5 (b) if, before the eighth anniversary, the rules prescribe a day
6 that is after the eighth anniversary—that day.
- 7 (4) The eighth anniversary review must consider the following
8 matters:
9 (a) the matters referred to in subsection (2);
10 (b) the results of any other review or evaluation conducted in
11 relation to the operation of the scheme.

12 **193 Sunset of the scheme**

- 13 (1) Subject to this section, this Act ceases to have effect at the end of
14 the day (the *scheme sunset day*) that is:
15 (a) the tenth anniversary of the scheme start day; or
16 (b) if, before the tenth anniversary, the rules prescribe a day that
17 is after the tenth anniversary—that day.

18 Note: The fact that the Act ceases to have effect does not affect the operation
19 of section 43 in releasing and discharging an institution or official
20 from civil liability (see section 7 of the *Acts Interpretation Act 1901*).

- 21 (2) Despite subsection (1), at any time before the first anniversary of
22 the scheme sunset day, rules may be made under section 179 for
23 the purposes of subsections (3) and (4) of this section.
- 24 (3) The rules may prescribe matters of a transitional nature (including
25 prescribing any saving or application provisions) relating to this
26 Act ceasing to have effect under subsection (1).
- 27 (4) Without limiting subsection (3), the rules may provide that certain
28 provisions of this Act:
29 (a) continue to apply after the scheme sunset day for the
30 purposes set out in the rules; or
31 (b) continue to apply after the scheme sunset day in a modified
32 way for the purposes set out in the rules.

- 1 Those provisions continue to apply, or continue to apply in the
2 modified way, as set out in the rules.
- 3 (5) Subsection 12(2) (retrospective application of legislative
4 instruments) of the *Legislation Act 2003* does not apply in relation
5 to rules made for the purposes of this section.
- 6 (6) All legislative instruments (including the rules) made under this
7 Act are repealed immediately before the first anniversary of the
8 scheme sunset day.