



Australian Government

Australian Government response to the

Joint Select Committee on Implementation of the
National Redress Scheme First Interim Report

*First Interim Report of the Joint Select Committee on Implementation of the
National Redress Scheme April 2020*

September 2021

Acknowledgement

The Australian Government would like to thank all those individuals and organisations who participated in this Inquiry, both in person and through written submissions. The evidence from survivors, their advocates, experts in the field and other stakeholders has provided the Government with important insights into how to continue to improve the delivery of the National Redress Scheme (the Scheme) for people who have experienced institutional child sexual abuse.

Commitment

The Australian Government welcomes the *First Interim Report of the Joint Select Committee on Implementation of the National Redress Scheme April 2020*.

Evidence to the Inquiry shows that there is a clear imperative to improve the delivery of the Scheme, particularly its interaction with survivors throughout the application process.

Since the Scheme began, the Government has put in place a range of measures to improve the application process, including increasing the number of Independent Decision Makers (IDMs) to address the backlog of applications, identifying process improvements and improving quality assurance practices.

Further improvements will be embedded and enhanced in response to the legislated second anniversary review of the National Redress Scheme (the Review). The Review had regard to the evidence given to this Inquiry and the Joint Select Committee's recommendations.

The interim Australian Government response to the Review was publicly released on 23 June 2021 and sets out the Government's commitments and actions being taken to address the issues identified. This includes an investment of over \$80 million over four years in the 2021-22 Budget to support implementation of a range of recommendations. The interim response is available on the Scheme's website.

This builds on the additional \$104.6 million across four years that was invested in the Scheme as part of the 2020-21 Budget, further delivering on the Australian Government's commitment to continually improve the Scheme for survivors. This investment is improving and stabilising operations and better supporting survivors to ensure the Scheme meets their expectations.

A key focus for the Scheme has been to clear the backlog of actionable applications lodged in the first year of the Scheme. The Scheme has progressed all actionable applications from this period and is on a sustainable path of operation going forward.

As at 10 September 2021, 11,909 applications have been received from survivors of institutional child sexual abuse. Of these 5,210 applications are on hand and 6,307 applications have been finalised. 6,237 payments have been made to survivors, totalling approximately \$531.9 million, with an average payment of \$85,283. There are 624 offers of redress with survivors for consideration.

As at Declaration 8, signed by the Minister on 10 September 2021, 526 non-government institutions covering over 69,000 sites across Australia such as churches, schools, homes, charities and community groups, are participating.

The Australian Government has also put in place financial consequences for institutions who refuse to join the Scheme, including being restricted from accessing future Commonwealth grant funding and the possible loss of charitable status and the associated tax concessions and benefits.

Many of the Committee's key recommendations are being considered under action proposed in response to the Review. An initial legislative package in response to the Review – the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021* – received Royal Assent on 13 September 2021. Relevant measures are detailed further below.

The Government is continuing to work with state and territory governments, survivors, institutions and other Scheme stakeholders on other related Review recommendations. The Government remains wholly committed to the effective operation of the Scheme in support of people who have experienced institutional child sexual abuse.

Introduction

On 11 September 2019, the Joint Select Committee on Implementation of the National Redress Scheme was agreed by the Senate following amendments by the House of Representatives.

The Committee was tasked with inquiring into and reporting on:

- a) the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors; and
- b) any matter in relation to the Royal Commission's redress related recommendations referred to the Committee by a resolution of either House of the Parliament.

On 1 May 2020, the Committee released its interim report. The report made 14 recommendations across a range of policy and service delivery issues in regards to the Scheme and covered the following themes.

- Engagement of survivors
- The legislated second anniversary review of the Scheme
- Application process
- Redress payments
- Access to counselling and psychological care
- Direct personal responses
- Non-government institutions
- Funder of last resort provisions
- The Scheme's response to coronavirus.

Recommendations made by the Committee

Recommendation 1: *The Committee recommends the National Redress Scheme make a more concerted effort to engage with survivors and survivor groups. Specifically:*

- *ensure the National Redress Scheme Survivor Roundtable is convened at a minimum of three times a year; and*

- *ensure the second anniversary legislated review formally engages with survivors and survivor groups at the beginning of the review process, throughout the review and at its conclusion.*

The Government **supports** this recommendation.

Due to the impact of the coronavirus pandemic and related restrictions, face-to-face meetings of the Scheme's governance and consultation meetings were temporarily suspended. Meetings of the National Redress Scheme Survivors' Round Table have now been reconvened, with meetings having taken place in March and June 2021. Planning is being guided by expert health advice and may occur via video conference, subject to participant views.

As part of the legislated second anniversary review (the Review), comprehensive consultation was undertaken with survivors and their advocacy and support groups. This ensured that survivors' views and experiences of the Scheme informed the Review, as required under s192(2)(m) of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Act).

The Review received 222 written submissions and surveys of stakeholders received responses from 320 survivors, 78 support services and advocates, and 103 institutions. The Independent Reviewer also hosted 81 stakeholder consultations. Survivors and other Scheme stakeholders will continue to be consulted on implementation issues coming out of the Review.

Recommendation 2: *The Committee recommends that when establishing the second anniversary review mechanism, the Minister for Social Services, ensure that:*

- *the reviewer should be a reputable person familiar with the operation of other redress schemes in the Australian and/or international context;*
- *the review includes survivors or their representatives as members of the review panel;*
- *the review should regularly consult with survivors and survivor advocacy groups throughout the review;*
- *the reviewer should provide ongoing advice and recommendations to the Minister to ensure recalibration of the National Redress Scheme during the review;*
- *the review should actively consider design elements which exist in other domestic or international redress schemes that would be of benefit to survivors, even if they are not entirely consistent with recommendations of the Royal Commission into Institutional Child Sexual Abuse; and*
- *the reviewer should provide their final report to the Minister by 30 January 2021.*

The Government **supports** this recommendation in part.

Section 192 of the Act sets out the key requirements of the Review and how it is to be conducted. Minister Ruston announced the appointment of Ms Robyn Kruk AO as the Independent Reviewer on 17 June 2020. Ms Kruk is a person of high standing familiar with redress schemes and survivor and advocacy groups. The Review did not utilise a review panel.

The Review sought the views of key stakeholders throughout the process. This involved the public submission process; surveys; interviews; 'deep dive' consultancies into specific issues; and interviews with survivors, support groups, institutions, stakeholders and advocacy groups from across the redress spectrum.

The final report of the Review was provided to the Minister at the end of March 2021, and following consultation with state and territory governments, the Review was publicly released alongside the Australian Government's interim response to the Review on 23 June 2021.

Recommendation 3: *The Committee recommends that the second anniversary review examine the following areas for reform as a high priority:*

- *Publishing the Assessment Framework Policy Guidelines to assist survivors prepare their application;*
- *Providing each applicant with an individualised application flowchart, which maps out the next steps and approximate timeframes, to keep survivors and their nominees better informed about the progress of their application;*
- *Establishing a more formal practice of regular updates to applicants;*
- *Creating a direct complaint avenue for survivors, their nominees, support groups, and their advocates;*
- *Streamline applicant and decision making processes to ensure faster processing times;*
- *Implement measures to provide greater consistency for survivors engaging in the National Redress Scheme; and*
- *Reviewing guidelines and processes to guarantee the consistent and appropriate use of nominees.*

The Government **notes** this recommendation.

The Review considered all aspects of the Scheme as required by section 192 of the Act which set out its terms of reference. Further, it had regard to the recommendations of: this Committee; the previous Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse; and the Royal Commission's Redress and civil litigation report.

The Australian Government announced its interim response to the Review on 23 June 2021, and committed more than \$80 million over four years in the 2021-22 Budget to support implementation of the first tranche of action in response to Review's recommendations.

Action is underway on a number of the elements of the Committee's recommendation. As part of its response to the Review, the Government is supporting further survivor-focused improvements to the Scheme including:

- improvements to application forms and processes;
- more personalised and meaningful engagement with survivors in the early stages of applying for redress and throughout the process;
- working to improve guidance and training for Independent Decision Makers and Scheme staff to support consistency of high quality decisions and the integrity of the Scheme, and
- continuing to improve the existing Scheme complaint mechanisms.

Recommendation 4: *The Committee recommends the removal of the requirement for a Statutory Declaration to accompany each application for redress, as is currently required under section 19(2)(d) of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018.*

The Government **supports** this recommendation.

As outlined in its interim response to the Review, the Australian Government supports the formal removal of the statutory declaration requirement from the application form. This is more trauma-informed and streamlined than the previous arrangement.

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*, which received Royal Assent on 13 September 2021, removes the requirement for redress applications to include a statutory declaration.

Due to the impact of the coronavirus pandemic and social restrictions, the Minister for Families and Social Services made the *Coronavirus Economic Response Package (Modifications—National Redress Scheme for Institutional Child Sexual Abuse) Determination 2020* under sub-item 1(2) of Schedule 5 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*. The Determination temporarily dis-applied the requirement for a statutory declaration to be signed and witnessed from 1 March 2020 to 31 December 2020, in response to circumstances relating to coronavirus.

Recommendation 5: *Committee recommends that:*

- *The practice of indexation of prior payments be removed; and*
- *Until the removal of indexation is implemented, the practice of indexing prior payments is amended so that indexation is applied up until the date of application submission, rather than the date of payment offer.*

The Government **notes** this recommendation.

The Review considered this issue and made an equivalent recommendation.

Adjusting relevant prior payments for inflation and deducting them from the redress payment was a recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse.

The *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*, which received Royal Assent on 13 September 2021, changes the date of calculation of indexation to the date of application. This creates a fairer outcome for applicants with prior payments.

Removing indexation in its entirety would constitute a significant change to the Scheme's design and the basis on which institutions have agreed to participate. This would require agreement by all jurisdictions.

Recommendation 6: *The Committee recommends that the second anniversary review examine the following areas for reform as a high priority:*

- *The provision of additional information in the final determination and offer provided to a survivor;*
- *Appropriateness of the requirement for survivors to sign a deed of release when accepting redress payments, restricting any future compensation claim through civil courts;*
- *Appropriateness of indexing prior payments; and*
- *Appropriateness of the current cap and matrix for calculating redress payments.*

The Government **notes** this recommendation.

The Review considered these issues and recommended a range of changes. The Australian Government's interim response to the Review details the actions proposed in response to related recommendations. The documentation provided to applicants with their redress offer has been amended and now provides applicants more information regarding the reasons for the determination, as well as clearer information about the next steps regarding the offer and where to get support. The Review did not recommend changes to the maximum redress payment, nor to the requirement for survivors to sign a deed of release when accepting redress payments.

Recommendation 7: *The Committee recommends that the second anniversary review examine the following areas for reform as a high priority:*

- *Increasing access to counselling and psychological care services, including specialist financial counselling, for survivors who intend to apply for the scheme, and throughout the application process;*
- *Expanding the provision of out-of-hours support and counselling services;*
- *Expanding the provision of culturally sensitive services with a particular emphasis on the needs of First Nation's people; and*
- *Removing any caps or limits on counselling and psychological care services for survivors.*

The Government **notes** this recommendation.

The Review considered these issues and recommended a range of changes. The Australian Government's interim response to the Review details actions proposed in response to its recommendations. Progressing changes to counselling and psychological care services will require agreement by all jurisdictions. The Australian Government will further consider this recommendation, in consultation with state and territory governments, survivors, institutions and other Scheme stakeholders

Of the 40 Redress Support Services, including knowmore legal services, nine are Aboriginal Community Controlled organisations specifically catering for Indigenous clients. An additional investment of \$73.1 million was made through the 2020-21 Budget to ensure free and confidential Redress Support Services will continue to be available to support survivors through their Redress journey. This includes funding to address service gaps and provide additional specialist services for specific cohorts, such as First Nations' people.

Recommendation 8: *The Committee recommends that the second anniversary review examine options to facilitate and better support survivors to seek a direct personal response as a high priority.*

The Government **supports** this recommendation.

The Review considered this issue and made an equivalent recommendation. The Australian Government's interim response to the Review outlines that Australian Government is working with state and territory governments to consider implementing this action as a priority, in consultation with survivors, institutions and other Scheme stakeholders.

Direct Personal Response is an important but underutilised element of redress, and redress Ministers have identified it as a key priority for 2021. Improving the mechanisms available for survivors to access a Direct Personal Response will increase uptake and quality.

Recommendation 9: *The Committee recommends that the second anniversary review of the National Redress Scheme should examine the reasons for the relatively low rate of applications for redress, including:*

- *The role of law reform in states and territories in opening alternate avenues to justice for survivors via the civil courts;*
- *The extent to which survivors are discouraged from accessing the National Redress Scheme as a result of the application process; and*
- *Whether the application process causes undue harm to survivors through retraumatisation.*

The Government **notes** this recommendation.

The Review considered these issues and recommended improvements to the application process and engagement with survivors. As outlined in its interim response to the Review (and as highlighted under Recommendation 3 above), the Australian Government is working to implement these actions as a priority.

Recommendation 10: *The Committee recommends that:*

- *In advance of 30 June 2020, the National Redress Scheme obtain a written statement from each institution which has not yet joined the National Redress Scheme, but has been named in applications, detailing their intention and timeline for joining the National Redress Scheme.*
- *Where an institution discloses it is unable to join the National Redress Scheme by 30 June 2020, the written statement should provide:*
 - *detailed reasons for the delay;*
 - *include a list of all officers; and*
 - *details of the date the institution expects or intends to join the Scheme.*
- *Where an institution discloses that it has no intention to join the National Redress Scheme by 30 June 2020, the written statement should provide:*
 - *detailed reasons for their decision;*
 - *include a list of all officers;*
 - *details of all financial benefits accrued by means of charitable status and/or any other sources of public funding or concessions they receive.*

A full list of institutions unable to join the scheme by 30 June 2020 and those who have declined to join the National Redress Scheme should be published on the National Redress Scheme website one week prior to 30 June 2020, and include the written statement provided by the institution to the National Redress Scheme.

The Government **supports** this recommendation in part.

Redress Ministers agreed to the approach outlined in the Ministers' Redress Scheme Governance Board Communiqué of 28 April 2020 at <https://www.dss.gov.au/about-the-department/news/61811>.

Under this approach, institutions that have been named in applications to the Scheme and/or in the Royal Commission into Institutional Responses to Child Sexual Abuse were required to provide a letter of intent to join the Scheme. Organisations that failed to provide this commitment by 30 June 2020 have been publicly named on the Scheme's website.

Where the Scheme receives an application that names a previously unnamed non-participating institution, the institution will have six months from their first engagement with the Scheme to join before being publicly named and financial consequences will apply.

The consequences for institutions that fail to join the Scheme are:

- being restricted from accessing future Commonwealth grant funding, and
- possible loss of charitable status and the associated tax concessions and benefits.

Where an institution subsequently joins the Scheme, they will be able to access Commonwealth grant funding and reapply for charity status.

These financial consequences will work alongside the public naming of institutions that refuse to join the Scheme and aim to encourage participation in the Scheme.

Where an institution declines to join the Scheme, the department is seeking reasons for their decision to enable information to be provided to applicants.

Recommendation 11: *The Committee recommends that the Minister for Social Services convene the Ministers' Redress Scheme Governance Board by 30 June 2020 to review decisions given by institutions declining to join the National Redress Scheme and to determine and advise what initiatives will be undertaken by the relevant Commonwealth, state, and territory governments to remove their charitable status and/or other concessions or sources of public funding.*

The Government **supports** this recommendation in principle.

The Ministers' Redress Scheme Governance Board convened a meeting on 8 July 2020 to consider those institutions that have failed to provide a commitment to join the Scheme and what appropriate levers governments may wish to consider further.

Ministers agreed that institutions that failed to fulfil their moral obligation to join the Scheme would be subject to consequences. Ministers supported the Commonwealth's decision to make these institutions ineligible for future Australian Government grant funding and to explore revoking favourable taxation treatment, including withdrawal of charitable status. As outlined at Recommendation 10 above, financial consequences for institutions have now been implemented.

Recommendation 12: *The Committee recommends the Redress Scheme Governance Board expand the circumstances in which the funder of last resort provision applies so that the relevant participating jurisdiction/s act as the funder of last resort where:*

- *the institution responsible for the abuse is now a defunct institution; and*
- *the defunct institution would not have fallen under the operations of an existing institution.*

The Government **supports** this recommendation.

The Review considered this issue and made an equivalent recommendation. As outlined in its interim response to the Review, the Australian Government supports expanding Funder of Last Resort provisions to encompass defunct institutions where there is no equal government responsibility for abuse and existing institutions that do not have the financial capacity to participate in the Scheme. This will increase access to redress, in line with the intent of the Scheme. This proposal does not cover existing institutions that have the capacity to join but choose not to.

The Australian Government is working with state and territory governments to consider implementing these actions as a priority, in consultation with survivors, institutions and other Scheme stakeholders, however note this requires approval from states and territories.

Recommendation 13: *The Committee recommends the National Redress Scheme closely monitor its operations during the COVID-19 pandemic to ensure that the National Redress Scheme is as responsive as possible to the increased levels of anxiety, and the more limited access to counselling and psychological care services that is available to survivors.*

The Government **supports** this recommendation.

The Government continues to draw on expert health advice to inform its response to the coronavirus pandemic and adjust the Scheme's processes accordingly.

The department continues to prioritise the processing of redress applications and delivering outcomes for survivors.

Redress support services continue to be available for their clients, including via online and telephone based platforms. The department is in regular contact with redress support services and other stakeholders to seek to minimise any disruption caused by the pandemic and related restrictions.

As outlined at Recommendation 4 above, temporary arrangements were put in place from 1 March 2020 to 31 December 2020, to enable applications to be lodged and processed where the statutory declaration was unable to be signed due to the coronavirus restrictions. The statutory declaration requirement has been removed through the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*, which received Royal Assent on 13 September 2021.

Recommendation 14: *The Committee recommends that the second anniversary review investigate the appropriateness of the use of advance payments for survivors who are especially vulnerable as a high priority.*

The Government **supports** this recommendation.

As outlined in its interim response to the Review, the Australian Government supports this measure. The *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2021*, which received Royal Assent on 13 September 2021, introduces advance payments for elderly survivors and terminally ill survivors.

The Scheme will identify eligible applicants for the payment after receiving a valid redress application, or at any time during the application process, and will then offer the advance payment to the survivor.