

# **KOOYOORA INDEPENDENT REDRESS SCHEME**

## **for participating institutions**

### **TERMS OF REFERENCE<sup>1</sup>**

**for the Anglican Diocese of Melbourne and the Melbourne Anglican Diocesan Corporation Ltd as the participating institution**

#### **CHAPTER 1 – PRELIMINARY**

##### **PART 1.1 - INTRODUCTION**

###### **Preamble**

1. (1) This Scheme may be known as the Kooyoora Independent Redress Scheme. The Scheme sets out the legal framework for the provision to an eligible survivor, either by agreement or by an adjudicated outcome, of redress comprising any or all of–
  - (a) a redress payment;
  - (b) access to counselling and psychological services; and
  - (c) a direct personal response.
- (2) The Scheme is intended to operate, at the option of a survivor, as either an alternative to other options available to a survivor, such as the National Redress Scheme established by the Commonwealth and State Governments or civil litigation.
- (3) Under the Scheme, the parties (the applicant and any participating respondent institution) may at any time reach agreement on the quantum and nature of redress to be provided to the applicant. If no agreement is reached, the process gives the applicant options on how to proceed, either–
  - (a) adjudication under the National Redress Scheme, if the respondent institution has joined that scheme;
  - (b) referral to an Assessor under the Kooyoora Independent Redress Scheme;
  - (c) withdrawal of the application; or
  - (d) civil litigation.

**Note: The opportunity for resolution of the application for redress by an alternative dispute resolution process is a significant feature of the Scheme that distinguishes it from the National Redress Scheme.**
- (4) The Scheme constitutes a Reviewer to hear and determine an application by a survivor to review a decision of the Assessor.

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- (5) The Scheme is intended to bind an institution which is a legal entity and which by its governing body—
  - (a) has resolved to be bound by these Terms of Reference as a participating institution;
  - (b) has been declared by Kooyoora Ltd to be a participating institution in the Scheme; and
  - (c) has agreed in writing to retain Kooyoora Ltd as the Scheme Corporation and Operator of the Scheme and has agreed on the terms of that retainer including the payment of its fees and disbursements.

### **Commencement, amendment, revocation and termination**

- 2. (1) This Scheme comes into operation on 1 January 2019 and in relation to a participating institution operates until—
  - (a) revoked on 3 months' notice in writing to the Scheme Corporation by the participating institution; or
  - (b) terminated by 3 months written notice in writing of termination by the Scheme Corporation to the participating institution.
- (2) The Operator is not to receive an application for an offer of redress relating to a participating institution that has given notice under subclause (1) after the expiry of that notice period but any application made prior to that expiry must be dealt with in accordance with these Terms of Reference.
- (3) The Operator may by resolution of the Scheme Directors amend the Scheme with effect from the expiration of 30 days from that resolution published on its website provided that—
  - (a) each respondent participating institution to an application consents to the amendment; and
  - (b) the amendment shall not apply to any application for an offer of redress lodged with the Operator prior to or within the expiry of the 30 day period, unless the parties consent in writing to the amendment applying to the application.

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## **PART 1.2 –PROTOCOLS**

### **Making and content of protocols**

- 3. The Scheme Directors may from time to time consider and approve a protocol or protocols in relation to the matters the subject of this Scheme that are not inconsistent with this Scheme.

## **CHAPTER 2 – PROVISION OF REDRESS**

### **PART 2.1 – GUIDING PRINCIPLES**

4. This Part speaks directly to you, the survivor. Through the Scheme, a participating institution must seek to engage in the process with empathy, support and compassion, having regard to your individual circumstances.
5. The following guiding principles and what they mean for you as an applicant inform all stages of your application for an offer of redress under this Scheme—

**(1) Survivor focused**

The Scheme is committed to ensuring that your rights and choices are respected and supported. You are under no obligation to use the Scheme.

The Redress Manager will consult with you, as an applicant, on your priorities and needs and your choices will be at the centre of what the Scheme does. The Scheme will offer you support during the process.

**(2) Trauma-informed**

The approach of the Scheme is trauma-informed, that is to say, it is underpinned by a clear understanding of the nature and impacts of child sexual abuse. It seeks to avoid, as far as possible, further harm or re-traumatization.

**(3) Transforming**

The key objective is by a pastoral and therapeutic approach to treat you with compassion and justice, to enable you to feel validated and live a positive, productive and fulfilled life.

**(4) Independence**

The Scheme has a process under which decision making and oversight is independent of all participating institutions and which is transparent and non adversarial; as an applicant, you will be kept informed during the process.

**(5) The process seeks to avoid the traditional Court approach**

The Assessor is not obliged to, and must not, except in special cases, hold a formal hearing or permit cross examination of witnesses.

**(6) Timeliness**

The Scheme is committed to a timely process, but one that will allow

you the time that you need.

**(7) Accessible**

The Scheme is to be accessible to all survivors.

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## **PART 2.2 – APPLYING FOR REDRESS**

### **Application [s19]<sup>2</sup>**

6. (1) Subject to this Scheme, any person who has suffered harm as a result of alleged abuse and satisfies the governing criteria in clause **11** may at any time apply to the Operator for an offer of redress from each institution named in the application.
- (2) To be valid, the application must:
  - (a) be in the approved form; and
  - (b) contain an agreement to be bound by these Terms of Reference; and
  - (c) specify where the person lives; and
  - (d) include any information, and be accompanied by any documents, required by the Redress Manager; and
  - (e) verify the information included in the application by statutory declaration.
- (3) Subject to clause **8(2)(b)**, Redress Manager is not required to progress an application which is not valid or which seeks an offer of redress from an institution which is not participating in the Scheme.
- (4) The application may be lodged by another person on that person's behalf and with their approval.
- (5) If the applicant alleges that they suffered more than one occasion of abuse or that one or more respondent institutions are responsible, the applicant must set out in the application all such allegations of abuse.
- (6) The applicant may not, except in special circumstances allowed under a protocol approved by the Scheme Directors, submit separate applications in respect of separate occasions of alleged abuse or separate institutions.
- (7) A person under a legal incapacity may apply by their legal guardian for the offer of redress.

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<sup>2</sup> Section numbers in square brackets refer to the National Redress Scheme Act where a corresponding though not identical provision can be found.

- (8) An applicant may with the leave of the Redress Manager at any time prior to referral under clause 24 amend their application to add an institution or to amend the particulars of the application.
- (9) In receiving an application for an offer of redress, the Operator makes no warranty as to the financial or other capacity of a participating institution to meet any liability to a survivor that may accrue to that institution under this Scheme in respect of any redress, counselling or other payment.

**When an application cannot be made [s20]**

- 7. A person cannot make an application for an offer of redress from a participating institution under the Scheme or pursue an application already made if the person:
  - (a) has already made an application for an offer redress under the Scheme, except in special circumstances allowed under a protocol approved by the Scheme Directors; or
  - (b) is actively prosecuting legal proceedings against that institution in a Court<sup>3</sup> for compensation in connection with the abuse that is or may become the subject of an application for an offer of redress or if legal proceedings seeking contribution or indemnity against a participating institution for the payment of compensation or damages in respect of that abuse are on foot; or
  - (c) has applied to the operator of the National Redress Scheme for redress and that application has not been withdrawn or an offer made under that Scheme is still open for acceptance or has been accepted; or
  - (d) has previously by the operation of the National Redress Scheme Act released the institution from any liability in connection with the alleged abuse.

**Note:** Rule 11(1) of the National Redress Scheme Rules cannot by its nature be adopted and operate effectively in these Terms. A participating institution may have more exposure on that account.

**Dismissal of application or notice of application**

- 8. (1) The Redress Manager may at any time either of their own motion or by application by a respondent institution decline an application for an offer of redress in any of the circumstances referred to in clause 7 on first giving the applicant the opportunity to provide submissions why the application should not be declined.
- (2) On receipt of the application or any amended application, the Redress Manager must subject to subclause (1)—
  - (a) deliver on a confidential basis a copy of the application and any supporting material to each relevant respondent participating

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<sup>3</sup> The issue of a Writ, with the plaintiff agreeing on a moratorium on prosecuting the proceedings for a specified period, would not bar the making of an application for redress.

institution; and

- (b) if an institution named in the application is not at that time a participating institution, give notice of the application to that institution and invite them to become a participating institution for the purposes of that application.

### **Withdrawal of application [s22]**

- 9. (1) An applicant may withdraw an application for an offer of redress at any time before a determination is made on the application under these Terms of Reference.
- (2) If the applicant withdraws the application under subclause (1)–
  - (a) the Redress Manager must give each respondent institution written notice that the applicant has withdrawn the application; and
  - (b) for the purposes of the Scheme it is treated as not having been made.

### **When is a person entitled to be provided with redress? [s12]**

- 10. (1) A person can only be provided with redress under the Scheme if the person is entitled to it.
- (2) A person is entitled to redress under the Scheme if:
  - (a) the person applies for an offer of redress under section 6; and
  - (b) the decision maker determines that there is a reasonable likelihood that the person is eligible for redress under the Scheme (see clause 11); and
  - (c) the decision maker approves the application under clause 28; and
  - (d) the Redress Manager makes an offer of redress to the person under clause 63; and
  - (e) the person accepts the offer in accordance with clause 66.
- (3) A person is also entitled to *redress*, or a component of redress, under the Scheme if this Scheme prescribes that the person is entitled to it.
- (4) Despite subsections (2) and (3), a person is not entitled to redress, or a component of redress, under the scheme if this Scheme prescribes that the person is not entitled to it.

**Note:** For cases where this Scheme prescribes that a person is or is not entitled to redress, or a component of redress, under the scheme, see Chapter 5.

**PART 2.3 – ELIGIBILITY****Governing criteria [s15]**

11. (1) The governing criteria for an offer of redress are that—
- (a) an abuser (whether or not identified) committed the alleged abuse whenever;
  - (b) a participating institution is responsible, either alone or with one or more other institutions, for the abuser having contact with the applicant; and
  - (c) as a result of that abuse, the applicant has suffered harm.
- (2) Without limiting the circumstances that might be relevant for determining under subclause (1) whether a participating institution is responsible, the following circumstances are relevant:
- (a) whether the institution was responsible for the day-to-day care or custody of the applicant when the abuse occurred;
  - (b) whether the institution was the legal guardian of the applicant when the abuse occurred;
  - (c) whether the institution was responsible for placing the applicant into the institution in which the abuse occurred;
  - (d) whether the abuser was an official of the institution when the abuse occurred;
  - (e) whether the abuse occurred:
    - (i) on the premises of the institution; or
    - (ii) where activities of the institution took place; or
    - (iii) in connection with the activities of the institution;
  - (f) any other circumstances that are prescribed by the rules, the respondent institution having previously consent in writing to those rules.

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

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**Part 2.4 – RESPONSE OF THE SCHEME****How the Operator is to respond after receipt of the application**

12. (1) As soon as practicable after the Operator receives an application for an

offer of redress, the Redress Manager must—

- (a) acknowledge to the applicant receipt of the application and offer a therapeutic and pastoral response in accordance with the guiding principles in Part 2.1 and the other provisions of this Scheme;
  - (b) seek from the applicant, if it has not already been provided, a report of a qualified psychologist or psychiatrist, setting out the history of all abuse suffered by the applicant, a diagnosis, a prognosis and indicating whether further treatment is required;
  - (c) seek the advice of any case worker who has been appointed for the applicant and any other advice that may be appropriate;
  - (d) subject always to the consent of the applicant, convene at such time as may be appropriate, a settlement conference, mediation or other alternative dispute resolution process, with the applicant and each respondent institution, to facilitate the resolution of the application by consent;<sup>4</sup> and
  - (e) otherwise deal with the application in accordance with this Scheme.<sup>5</sup>
- (2) Only the following may attend the settlement conference, mediation or other alternative dispute resolution process referred to in paragraph (d) of subclause (1)—
- (a) the Redress Manager;
  - (b) the conciliator or mediator or other person facilitating the process;
  - (c) the applicant and any person representing them;
  - (d) a person whom the applicant wishes to have present for the purpose of providing support to him or her, who is approved by the Redress Manager to be present;
  - (e) the representative of the respondent institution and any person representing them; and
  - (f) any other person approved in writing by the Redress Manager.

### **Appointment and role of the case worker**

13. (1) For each person who has applied for an offer of redress, the Redress Manager may with the consent of the applicant or his or her guardian

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<sup>4</sup> It is contemplated that the Redress Manager would arrange either a settlement conference between the parties or a mediation of the matter by a mediator. That mediator could be, with the consent of the parties, one and the same person who would determine the matter as the Assessor if no settlement was reached. The Terms of Reference specifically permit this approach in cl56, adopting as a safeguard, provisions comparable to the scheme of the *Commercial Arbitration Act* 2011, s27D.

<sup>5</sup> The Redress Manager may if permitted under s24 refer the application to Assessor. The Assessor will determine the application under Part 3.3 below.



appoint a case worker.

- (2) The functions of the case worker are—
  - (a) to provide support and pastoral care to the applicant;
  - (b) to advise the Redress Manager at their request on the nature and extent of care and assistance that should be provided to the applicant, in response to any application, within the constraints of this Scheme; and
  - (c) to perform such other functions as may be prescribed by this Scheme or by the Scheme Directors.

**If agreement quantum and nature of redress or facts**

14. (1) The applicant may agree in writing with any respondent institution or institutions on the quantum and nature of redress to be provided.
- (2) Any such agreement will take effect according to its terms, without the need for any referral to the decision maker.
- (3) If no agreement is reached and the application is referred to the decision maker under clause **24**, the applicant may agree with a respondent institution on certain facts relevant to the application and the submission of a statement of those facts to the decision maker.
- (4) The decision maker may in their discretion proceed on the basis of the statement of agreed facts and make such determination as it thinks fit, consistent with this Scheme.

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**PART 2.5 – APPLYING FOR INTERIM CARE AND ASSISTANCE****Application**

15. (1) An applicant for an offer of redress may apply to the Operator for a direction that a respondent institution pay or meet the expense of interim care and assistance.
- (2) Subject to this Scheme, an application may be made at any time and from time to time and must be dealt with in accordance with this Scheme.
- (3) A person under a legal incapacity may apply by their legal guardian under subclause (1) of this clause.
- (4) The interim assistance that may be provided from time to time must reasonably meet the individual circumstances of the applicant and should take into account any or all of the following—
- (a) the immediate needs of the applicant;
  - (b) provision of, and payment for, counselling and other health-related support services on an ongoing and as-needed basis; and
  - (c) other ad-hoc forms of financial and in-kind assistance
- subject always to this Scheme;
- (5) An applicant is not to be taken to have waived any rights or causes of action in respect of the abuse alleged in the application by applying for or accepting the provision of interim care and assistance.

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**PART 2.6 – DETERMINATION OF INTERIM CARE AND ASSISTANCE****Determination by the Redress Manager**

16. (1) Within a reasonable period from receipt of an application for interim care and assistance, the Redress Manager must—
- (a) consider the advice of the case worker from time to time in relation to the applicant if one has been appointed;
  - (b) subject to subclause (2), give each respondent institution the opportunity to make any relevant submissions on whether it should be provisionally responsible for that care and assistance; and

- (c) determine each application for interim care and assistance—
  - (i) in accordance with **section B of schedule 1** and the governing criteria in clause **11(1)**;
  - (ii) based on what is fair and reasonable having regard to the individual circumstances of each applicant; and
  - (iii) specifying provisionally pending the final determination the respondent institution which is responsible to pay or meet the expense of that interim care and assistance.
- (2) In affording procedural fairness, the Redress Manager must not delay the provision of care and assistance to the applicant.
- (3) The Redress Manager may procure counselling and other support services to the family of the applicant in accordance with **section B of schedule 1**, including in circumstances where the applicant may have died prior to any determination of the application.

#### **Level of Proof**

- 17. If on an application for interim care and assistance, the Redress Manager is satisfied on the basis of the available information that there are plausible grounds for concluding that a governing criterion in clause **11(1)** is satisfied, the Redress Manager must treat the governing criterion as satisfied.
- 18. The respondent institution must pay or re-imburse the expense of any interim care and assistance determined from time to time by the Redress Manager pursuant to clause **16**.

## **PART 2.7 – INVESTIGATIONS**

### **The Redress Manager to cause an investigation**

19. (1) The Redress Manager may investigate or cause an investigation to be made of any matters relating to an application for an offer of redress.
- (2) The Redress Manager may by instrument in writing appoint, upon such terms and conditions as they may approve, a competent person to act as their delegate to investigate matters relating to an application.
20. For the purpose of an investigation, the Redress Manager or their delegate may obtain such statutory declarations or written statements, recorded conversations, reports, documents and other material as the Redress Manager or their delegate considers necessary or advisable.

### **Duty to request information from the applicant [s24]**

21. (1) If the Redress Manager has reasonable grounds to believe that an applicant has information that may be relevant to determining the application, then the Redress Manager may request the person to give the information to the Redress Manager.

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

- (2) The request must be made by written notice given to the person.
- (3) The notice must specify:
- (a) the nature of the information that is requested to be given; and
  - (b) how the person is to give the information to the Redress Manager and whether the information must be verified by statutory declaration or another manner specified by the Redress Manager; and
  - (c) the period (**the production period**) within which the person is requested to give the information to the Redress Manager; and
  - (d) that the notice is given under this clause.
- (4) The production period must be at least:
- (a) if the Redress Manager considers the application is urgent—4 weeks; and
  - (b) otherwise—8 weeks;
- beginning on the date of the notice.
- (5) The Redress Manager may, by written notice to the person, extend the production period if the Redress Manager considers it appropriate to do so.

- (6) An extension under subclause (5) may be given:
  - (a) on the Redress Manager’s own initiative; or
  - (b) on a request made by the person under subclause (7).
- (7) The applicant may request the Redress Manager to extend the production period. The request must:
  - (a) be made before the end of the production period; and
  - (b) comply with any requirements prescribed by the rules.

**Duty to request information from institutions and afford procedural fairness**  
**[s25]**

**Participating institutions**

22. (1) If a person has applied for an offer of redress and either:
- (a) the application identifies a particular participating institution as being involved in the abuse of the person; or
  - (b) the Redress Manager has reasonable grounds to believe that a participating institution may be responsible for the abuser having contact with the person—
- then the Redress Manager must—
- (c) request the institution to give any information that may be relevant to the application to the Redress Manager; and
  - (d) give the institution a reasonable opportunity to lodge submissions and any material relevant to the application to the Redress Manager.

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

**Any institutions**

- (2) If a person has applied for an offer of redress and the Redress Manager has reasonable grounds to believe that an institution, whether or not participating, has information that may be relevant to determining the application, then the Redress Manager may request the institution to give the information to the Redress Manager.

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

- (3) The request under subclause (1) or (2) must be made by written notice given to the institution.
- (4) The notice must specify:
  - (a) the nature of the information that is requested to be given; and
  - (b) how the institution is to give the information to the Redress

- Manager and whether the information must be verified by statutory declaration or another manner specified by the Redress Manager; and
- (c) the period (**the production period**) within which the institution is requested to give the information to the Operator; and
  - (d) that the notice is given under this clause.
- (5) The production period must be at least:
- (a) if the Redress Manager considers the application is urgent—4 weeks; and
  - (b) otherwise—8 weeks;
- beginning on the date of the notice.
- (6) The Redress Manager may, by notice to the institution, extend the production period if the Redress Manager considers it appropriate to do so.
- (7) An extension under subclause (6) may be given:
- (a) on the Redress Manager’s own initiative; or
  - (b) on a request made by the institution under subclause (8).
- (8) The institution may request the Redress Manager to extend the production period. The request must:
- (a) be made before the end of the production period; and
  - (b) comply with any requirements prescribed by the rules.

### **Failure of the applicant or institutions to comply with a request [s26]**

23. (1) If:
- (a) under clause **21**, the Redress Manager requests a person who has made an application for an offer of redress to provide further information; and
  - (b) the information requested is not provided in the production period referred to in that clause
- then the Redress Manager is not required to refer the application for determination until the information is provided.
- (2) If:
- (a) under clause **22**, the Redress Manager requests a participating institution to provide information in relation to an application for redress; and
  - (b) the information requested is not provided in the production period referred to in that clause

then the Redress Manager may progress the application and refer the application for determination on the basis of the information that has been obtained by, or provided to, the Redress Manager.

## **CHAPTER 3 – ADJUDICATION IF NO AGREEMENT**

### **PART 3.1 – REFERRAL OF THE APPLICATION TO AN ASSESSOR**

24. (1) After completion of—
- (a) any investigation of an application for an offer of redress in accordance with Part 2.7 of this Scheme; and
  - (b) any alternative dispute resolution process under clause 12(d) without reaching a resolution—
- the Redress Manager must give the applicant notice in writing of the following options available to the applicant, namely within the specified period—
- (c) to consent to the referral of the application to an Assessor for determination under this Scheme so far as each respondent institution is a participating institution;
  - (d) to apply to the National Redress Scheme for determination of the application for redress if a respondent institution is a participating institution under that scheme; and
  - (e) to withdraw the application for an offer of redress under this Scheme and take such action as the applicant may see fit.
- (2) If the applicant provides the written consent referred to in paragraph (c) of subclause 24(1), the Redress Manager must refer the application to an Assessor for determination. *[New s24(2) in the Schedule is substituted for this subclause by way of modification.]*
- (3) If the applicant elects to apply to the National Redress Scheme or fails within the specified period to provide the written consent referred to in paragraph (c), the applicant is to be taken to have withdrawn the application to the Operator.
- (4) The Redress Manager may by instrument in writing delegate all or any of their functions under this clause or the following part to an authorised officer of the Scheme.
- (5) For the purposes of this clause, the specified period is 60 days from the

date of the notice of options referred to above or such further period as the Redress Manager may in writing allow.

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## **PART 3.2 – PROCEDURE FOR REFERRAL**

### **How the Redress Manager to refer matters**

25. (1) The Redress Manager must refer the application to an Assessor by delivering to the Secretary to the Panel a copy of the application and a written report that includes—
- (a) any relevant information or documents; and
  - (b) a statement of any allegations of abuse made against the alleged abuser.
- (2) The report must be signed by the Redress Manager.
- (3) The parties to the application are the applicant and each respondent institution.

### **Documents and materials to be delivered**

26. Within 14 days of the date of the referral of a matter to the Assessor, the Redress Manager must cause to be delivered to the applicant and each respondent institution a copy of the written report.

### **The role of the Scheme Manager on the reference**

27. The Redress Manager may but is not obliged—
- (a) to present to the decision maker—
    - (i) any additional evidence relevant to the application;
    - (ii) any submissions relevant to the application; and
  - (b) to appear by an authorized representative at any hearing of the decision maker to assist them in their enquiry into the application.

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## **PART 3.3 – DETERMINATION OF AN APPLICATION**

### **Determination by the Assessor [s29]**

28. (1) When an application for an offer of redress is referred to an Assessor under clause 24, the Assessor must determine the application as soon



as practicable.

- (2) The Assessor must—
  - (a) determine whether the governing criteria are satisfied;
  - (b) determine in accordance with the following clause:
    - (i) the amount of the redress payment to be offered to the person; and
    - (ii) the amount of each responsible participating institution's share of the redress payment; and
  - (c) determine, in accordance with clause **30**:
    - (i) the amount of the counselling and psychological component of redress to be offered to the person; and
    - (ii) the amount of each responsible institution's share of that component; and
  - (e) determine whether the counselling and psychological component of redress for the person consists of:
    - (i) access to the counselling and psychological services that are provided under the scheme at the expense of the responsible participating institution; or
    - (ii) a counselling and psychological services payment; and
  - (f) if the counselling and psychological component of redress for the person consists of a counselling and psychological services payment—determine that the amount of the payment equals the amount of the counselling and psychological component of redress for the person;
  - (ff) determine the legal costs and disbursements in accordance with **section D of schedule 1** for which each participating institution is responsible; and
  - (g) for a participating institution that was identified in the application and is not covered by a determination under any of the above paragraphs—subject to subclause (4), determine that the participating institution is not responsible for the abuse and therefore not liable for providing redress to the person under the scheme.
- (3) In determining the amount of each responsible participating institution's share of the redress payment or the amount of the counselling and psychological component of redress for the person, the Assessor must determine such share as the Assessor considers just having regard to the extent of the responsibility of that institution for the abuser having contact with the applicant.
- (4) Otherwise, the Assessor must—
  - (a) make a determination not to approve the application; and

- (b) in their absolute discretion make a final determination as to who should be responsible for any interim care and assistance provided to the applicant.

**Working out the amount of redress payment and sharing of costs [s30]**

*Working out amounts*

- 29. (1) This clause sets out how the Assessor must make a determination under clause **28(2)(b)** about:
  - (a) the amount of the redress payment for a person; and
  - (b) the amount of each responsible participating institution’s share of the redress payment.

*Working out share of the costs of redress payment*

- (2) The Assessor must first work out the entitlement of the applicant to a redress payment from responsible participating institutions and the amount that is the institution’s share of the redress payment by using the following method statement:

*Method statement*

Step 1. Apply the matrix in **section E of Schedule 1** to work out the maximum amount of redress payment that could be payable to the person. The maximum amount must not be more than the amount stated in section E of schedule 1 regardless of the number of responsible institutions. The amount worked out is the **maximum amount** of the redress payment that could be payable to the person.

**Note:** The National Assessment Framework declared under the National Redress Act is not used.

Step 2. Work out, in accordance with any requirements prescribed in the **annexure**, the amount that is the responsible institution’s share of the maximum amount. This amount is the **gross liability amount** for the responsible institution.

Step 3. Work out the amount of any payment, including an interim payment under clause **18** (a **relevant prior payment**) that was paid to the person by, or on behalf of, the responsible institution in relation to abuse for which the institution is responsible (but do not include any payment specified in these Terms of Reference 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)<sup>n</sup>

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 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.

*Working out amount of redress payment*

- (3) The Assessor must then work out the total amount of redress payments for the person by adding together the amounts of each responsible institution’s share of the redress payment. The amount may be nil, but it must not exceed the maximum amount of the redress payment.
- (4) For the purposes of step 3, the following payments if not made as interim payments under the Scheme are not relevant prior payments—
  - (a) a payment to cover expenses of medical, dental or other treatment;
  - (b) a payment to cover any other expenses;
  - (c) a payment to the extent that it is not in recognition of:
    - (i) the abuse; or
    - (ii) harm caused by the abuse.
  - (e) a payment under various specified Commonwealth Acts referred to in the National Redress Scheme Rules.

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

**Note 2:** The National Redress Scheme Rules prescribe that certain payments that are paid to a person by or on behalf of a liable institution in relation to abuse for which the liable institution is responsible are not relevant payments for the purposes of step 3 of the method statement in subsection 29(2) of the National Redress Scheme Act: see section 26 of those Rules. They include the following:

- (a) a payment to cover expenses of medical, dental or other treatment;
- (b) a payment to cover any other expenses;
- (c) a payment to the extent that it is not in recognition of:
  - (i) the abuse; or
  - (ii) harm caused by the abuse.
- (d) a payment to the person in relation to non-sexual abuse (to any extent) if the non-sexual abuse is not covered by a set of abuse that also covers sexual abuse of the person.
- (e) a payment under various specified Commonwealth Acts.

**Working out the amount of the counselling and psychological component and sharing of costs [s31]**

30. (1) This clause sets out how the Assessor must make a determination under clause **28(2)(c)** about:
- (a) the amount of the counselling and psychological component of redress for a person; and
  - (b) the amount of each responsible participating institution's share of the costs of that component.
- (2) The Assessor must work out, in accordance with this Scheme including the **Annexure**, the amount that is each responsible institution's share of the costs of the component.

**Note:** Reference to the Assessment Framework of the National Redress Scheme has been deleted.

**Liable institution's share of costs of counselling and psychological component [rule 17]**

31. (1) For the purposes of clause **30**, this clause prescribes how the amount that is a liable institution's share of the cost of the counselling and psychological component of redress for a person is to be worked out.
- (2) The amount of the share must be worked out using the formula in subclause (3) and, if the result of the formula is not a whole number of cents, rounded up to the next whole number of cents.
- (3) The formula is as follows:

Amount of the component times:

The institution's gross liability amount worked out under step 2 of the method statement in subclause **29(2)** of this Scheme for the person

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Total of gross liability amounts of all liable institutions worked out under step 2 of the method statement in subclause **29(2)** of these Terms of Reference for the person.

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**PART 3.4 – APPLICATION FOR REVIEW****Division 2—Review of determinations****Application for review of determination [ss73 and 34]**

32. (1) If:
- (a) a person has made an application for an offer of redress; and
  - (b) the Assessor has made a determination (**the original determination**) on the application under clause 28;

then the person may apply to the Operator for review by the Reviewer of the original determination.

- (2) The application for review must:
- (a) be made within 45 days from date of the determination or such further period as the Redress Manager may in writing allow; and
  - (b) be in the approved form.

***Stay***

33. The application for review shall operate as a stay of the action on any determination required under this Scheme.

**Withdrawal of application for review [s74]**

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

**The review [s75]**

35. (1) If an application is made under clause 32, the Reviewer must review the original determination.
- (2) The Reviewer must:
- (a) reconsider the determination; and
  - (b) make a determination (**the review determination**) doing one of the following:
    - (i) affirming the original determination;
    - (ii) varying the original determination;

- (iii) setting aside the original determination aside and substituting a new determination.

**Reviewer not obliged to hold hearing or admit certain evidence**

36. When reviewing the original determination, the Reviewer must have regard only to the evidence adduced before the Assessor that made the original determination unless the evidence sought to be relied on before the Reviewer—
- (a) could not have been obtained with reasonable diligence for use before the Assessor; and
  - (b) that there is a high probability that the result would have been different had the Assessor admitted it into evidence.

**Date of effect of review determination [s76]**

37. (1) This clause applies if the review determination:
- (a) varies the original determination; or
  - (b) sets aside the original determination and substitutes a new determination.
- (2) The review determination takes effect on the day specified in the review determination.
- (3) From the day the review determination takes effect, the original determination as varied or substituted is taken to be the determination made under clause 28.

**Notice of review determination to applicant [s77]**

38. The Redress Manager must give the applicant written notice of the review determination, together with the reasons.

**Interaction between review and offer of redress [s78]**

39. (1) This clause applies if:
- (a) a person is given an offer of redress under clause 63; and
  - (b) the person applies for review of the original determination.
- (2) If the person accepts or declines the offer in the acceptance period for the offer but before the review has been completed, then the application for review is taken to have been withdrawn immediately before the person accepted or declined the offer.
- (3) If, on review, the original determination is varied or substituted, then the Redress Manager must:
- (a) withdraw the offer and notify the person in writing of that withdrawal; and

- (b) if the determination as varied or substituted approves the application for an offer of redress—give the person a new written offer in accordance with clause **63**.
- (4) If:
  - (a) on review, the original determination is affirmed; and
  - (b) the determination as affirmed approves the application for redress; and
  - (c) the person has been given an offer of redress under clause **63**;then the Redress Manager must extend the acceptance period under subclause **64(2)** for an additional 2 months.

#### **Notices to participating institutions about review [s79]**

40. (1) If:
- (a) a person makes an application for review under clause **32**; or
  - (b) a person withdraws an application for review under subclause **34(1)**; or
  - (c) a review determination is made under subclause **35(2)**
- then the Redress Manager must give each participating institution that was notified under clause **61** written notice of that fact.
- (2) The notice must comply with any requirements prescribed by the rules.

#### **Reviewer to deal with application expeditiously**

41. The Reviewer shall deal with the application as expeditiously as possible and shall consider any further submissions from the applicant, each respondent institution and the Redress Manager, if they choose to file any.

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## **PART 3.5 - PROCEEDINGS OF THE ASSESSOR AND THE REVIEWER**

### **How to conduct proceedings**

42. In these Terms of Reference, a reference to *decision maker* means each of the Assessor and the Reviewer, as the case requires.
43. (1) In connection with an application for redress or the review of any determination on that application, the decision maker—
- (a) must act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case

- without regard to technicalities or legal forms;
- (b) must give the applicant and each respondent institution a reasonable opportunity to adduce any evidence or make any submission relevant to the application;
  - (c) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit;
  - (d) is not obliged to, and except in special cases, must not hold a hearing at which evidence is adduced or submissions heard orally and may proceed wholly or partly on the papers;
  - (e) is not obliged to and, except in special cases, must not give an applicant or respondent institution any reasonable opportunity to examine or cross-examine witnesses.
  - (f) must give reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the applicant, each respondent institution and the Redress Manager; and
  - (g) is not acting as an arbitrator but as an expert assessor.
- (2) Without limiting the discretion of the decision maker, for the purposes of subclause (1)(d) and (e) of this clause, a special case may be a hearing between participating institutions as to their proportionate responsibility for redress on an application provided that by the agreement of those institutions that hearing does not delay the making of a determination and resultant offer of redress in favour of the applicant.

### **The abuser**

44. (1) The decision maker is not to join an abuser as a party to the application.
- (2) A respondent institution may rely on the evidence of an abuser in connection with the application.

### **Powers of the decision maker**

45. Subject to this Scheme and in particular the provisions of the preceding clause, the decision maker —
- (a) may regulate the proceedings of its meetings as they see fit;
  - (b) may conduct its business and any proceedings by video recording or video link, conference telephone or by any electronic means of communication;
  - (c) may inform themselves from the transcript or other record of any court or tribunal or Royal Commission and may adopt any findings, and accept as its own, the record of any court or tribunal or Royal Commission; and



- (d) must give reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the applicant, each respondent institution and the Redress Manager.

### **Hearing in private**

46. Any hearing of the decision maker on or in connection with an application for an offer of redress must be held in private with attendance only by—
- (a) the decision maker;
  - (b) the Secretary to the panel and any person providing transcription services;
  - (c) the Redress Manager and any person representing him or her;
  - (d) the applicant and their representative;
  - (e) a person whom the applicant wishes to have present for the purpose of providing support to him or her, who can reasonably be available and who is approved by the Redress Manager to be present<sup>6</sup>;
  - (f) persons representing a respondent institution; and
  - (g) any witness while giving evidence.

### **Preliminary conference**

47. (1) As soon as practicable, after being constituted, and after inviting each of the parties to propose a provisional timetable for the matter, the decision maker must—
- (a) hold a preliminary conference with the parties in person or by telephone or other means; and
  - (b) by directions set a procedural timetable for the matter.
- (2) The decision maker may at any time extend or vary the procedural timetable.

### **The decision maker may give directions as to documents and conduct of inquiry.**

48. The decision maker may, but is not obliged to, at any time and from time to time, give directions for—
- (a) the inspection by and supply of copies to the applicant, the respondent institution or the Redress Manager of the documents or material relevant to the reference;
  - (b) the service of any material on which a party may wish to rely; and
  - (c) the conduct of its inquiry into the matter.

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<sup>6</sup> To adapt the language of clause 17 of schedule 5 of the *Magistrates' Court Act 1989* (Vic).

**The decision maker may receive written evidence.**

49. Without limiting the meaning and effect of clauses 43 and 44, the decision maker may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statement and may also in its discretion use electronic means such as video recording, video link or conference telephone to receive evidence and submissions.

**The decision maker may rely on decisions of other bodies**

50. In any proceedings before it, where the decision maker is satisfied that the abuser—
- (a) has been convicted by a court within or outside Australia of an offence involving abuse as alleged in the application for redress (“specified conduct”);
  - (b) has been found guilty (without conviction) by a court within or outside Australia of an offence involving the specified conduct;
  - (c) has admitted in proceedings before a court or tribunal within or outside Australia or before a Royal Commission or before the Professional Standards Board or Review Board of a participating institution or equivalent body having engaged in the specified conduct;
  - (d) has been found by a court or tribunal or professional standards board or review board within or outside Australia to have engaged in the specified conduct; or
  - (e) has been disqualified by a court or tribunal within or outside Australia from professional practice on account of the specified conduct,
- then—
- (f) a certificate, reasons for judgment or other record from the court or tribunal or board or Royal Commission (as the case may be) shall be conclusive evidence that the perpetrator engaged in the specified conduct; and
  - (g) no party shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the abuser or denying that the abuser engaged in the specified conduct.
51. A determination of the decision maker is not binding as against a respondent institution except for the purposes of the institution providing redress to the applicant under this Scheme.

52. A determination of the decision maker is not binding as against the abuser.

**Standard of Proof**

53. The standard of proof for the decision maker is that there is a reasonable likelihood that the governing criteria have been met, that is to say, that—

- (a) an abuser (whether or not identified) committed the abuse;
- (b) a participating institution is responsible, either alone or with one or more other institutions, for the abuser having contact with the applicant; and
- (c) as a result of that abuse, the applicant has suffered harm.

**Legal representation**

54. The Redress Manager, the applicant and a respondent institution may each appoint a legal representative to assist them in the process.

**Decision maker not to meet with parties**

55. After an application has been referred to an Assessor or an application for review has been made (as the case may be), the decision maker must not individually meet with either the applicant or a representative of a respondent institution or any one acting on their behalf to the exclusion of the other parties while the matter is in progress.

**Power of Assessor to act as mediator, conciliator or other non-arbitral intermediary**

56. (1) A person may be appointed as the Assessor to determine the application, notwithstanding that the person has acted as a mediator at an alternate dispute resolution process for the application (**mediation proceedings**) if the applicant and each respondent institution have consented in writing to that person so acting.
- (2) Such a person acting as a mediator—
- (a) may communicate with the parties collectively or separately; and
  - (b) must treat information obtained by the person from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees.
- (3) If the applicant and each respondent institution have consented in writing consent under subclause (1), no objection may be taken to the conduct of subsequent proceedings by Assessor solely on the ground that he or she has acted previously as a mediator in accordance with this clause.
- (4) If confidential information is obtained from a party during mediation proceedings as referred to in subclause (2)(b) and the mediation proceedings terminate, the Assessor must, before conducting subsequent proceedings in relation to the application, disclose to all other parties to the proceedings so much of the information as the Assessor considers material to the proceedings.
- (5) In this clause, a reference to a *mediator* includes a reference to a

conciliator or other non-arbitral intermediary between parties.

### **Disclosure and material personal interest**

57. The decision maker must without delay disclose in writing any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, as they arise, to the Convenor and the parties unless he or she has already informed them of the circumstances.
58. (1) Where a decision maker has a material personal interest or other conflict of interest in a matter before it, the decision maker shall be disqualified from participating in the matter.
- (2) The opinion of the Convenor of the panel or the Deputy Convenor in the case of the Convenor's unavailability, as to whether a decision maker has a material personal interest or other conflict of interest in a matter shall be conclusive and final and binding.

### **The determination and recommendation to be provided to Redress Manager**

59. (1) Subject to this clause, the decision maker must cause a copy of the determination together with reasons (whether under clauses **28** or **35** to be provided to the Redress Manager.
- (2) The decision maker must ensure that the determination and recommendations together with reasons are anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of—
- (a) the applicant;
  - (b) any witness;
  - (c) the abuser (whether as a witness or otherwise).
- (3) If, to be effective, a recommendation must identify a person referred to in the preceding subclause, the decision maker may communicate confidentially the name of that person to a person referred to in subclause (1).

### **Notice of determination to applicant [s34]**

60. (1) If the Assessor makes a determination under clause **28** on an application for redress, the Redress Manager must give the applicant written notice of the determination stating:
- (a) whether or not the application has been approved;
  - (b) the reasons for the determination; and
  - (c) that the person may apply under clause **32** for review of the determination within the period allowed by the Scheme.
- (2) If the application has been approved, the notice must include the

offer of redress to the person under clause **63**.

- (3) The notice must also:
- (a) specify the day by which the person may apply for review of the determination pursuant to clause **32**; and
  - (b) comply with any matters prescribed by the rules.

**Notice of determination to participating institutions [s35]**

61. (1) If:
- (a) the Assessor makes a determination under clause **28** in relation to a person; and
  - (b) a participating institution is specified in the determination;
- then the Redress Manager must give the institution written notice of the determination in accordance with subclause (2).
- (2) The notice must state:
- (a) whether or not the application has been approved; and
  - (b) if the Assessor determined under paragraph **28(2)(b)** that the institution is responsible for the abuse and therefore liable for providing redress to the person under the scheme:
    - (i) that fact; and
    - (ii) the amount of the redress payment for the person; and
    - (iii) the amount of the institution's share of the costs of that payment; and
    - (iv) the amount of the counselling and psychological component of redress for the person; and
    - (v) the amount of the institution's share of the costs of that component; and
  - (c) if the Assessor determined under paragraph **28(2)(h)** that the institution is not responsible for the abuse and therefore not liable for providing redress to the person under the scheme—that fact; and
  - (d) the reasons for the determination; and
  - (e) the day by which the applicant may apply under clause **32** for review of the determination.
- (3) The notice must also comply with any requirements prescribed by the rules.
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## **PART 3.6 – EFFECT OF DETERMINATION**

### **Effect of determination [s36]**

62. (1) In making application under this Scheme, the applicant agrees and acknowledges that a determination by a decision maker under the Scheme has effect only for the purposes of the Scheme.
- (2) In particular, a determination under the Scheme that an institution:
- (a) is, or is not, responsible for the abuse of a person; or
  - (b) is, or is not, liable to provide redress to a person;
- is not to be relied on by any applicant or respondent institution as an admission or issue or judgment estoppel in civil proceedings.
- Note:** The determination is an administrative decision that is made by the decision maker on the basis of whether they consider there to be a reasonable likelihood that the person is eligible for redress. It is not a judicial decision made by a tribunal in civil on the basis of a higher standard of proof.
- (3) However, a determination under the Scheme that an institution is responsible for abuse of a person may result in the imposition of a civil liability on the institution to make payments under the Scheme for that redress upon acceptance by the applicant of an offer of redress on behalf of that institution made under the Scheme.

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## **CHAPTER 4 – IMPLEMENTATION**

### **PART 4.1 – OFFER OF REDRESS**

#### **Offer of redress [s39]**

63. If the decision maker approves a person's application for the offer of redress, the Redress Manager must give the person a single written offer of redress<sup>7</sup> that:
- (a) is given on behalf of the responsible participating institution and if more than one such institution, on behalf of all of the responsible participating institutions; and
  - (aa) explains the 3 components of redress (i.e. redress payment, access to the counselling and psychological component of redress for the person, and direct personal response); and

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<sup>7</sup> The Redress Manager must give the applicant the offer with the notice of the determination: clause 60(2).

- (b) specifies the total amount of the redress payment payable to the applicant by the responsible participating institution and if more than one institution is responsible, the proportion of that total amount payable by each responsible participating institution; and
- (c) specifies whether the counselling and psychological component of redress for the person consists of:
  - (i) access to the counselling and psychological services that are provided under the scheme; or
  - (ii) the counselling and psychological services payment; and
- (d) if the counselling and psychological component of redress for the person consists of the counselling and psychological services payment—specifies the amount of that payment; and
- (e) specifies each participating institution determined by the decision maker under clause **28(2)(b)** to be responsible for the abuse and therefore liable for providing redress to the person under the Scheme;
- (f) specify the legal costs and disbursements of the applicant determined in accordance with **section D of schedule 1** that each responsible participating institution will pay to the applicant;  
(f) and (g) of the Redress Scheme Act deleted; and
- (h) specifies the participating institutions that were identified in the person’s application but determined by the decision maker under paragraph **28(2)(h)** not to be responsible for the person’s abuse and therefore not liable for providing redress to the person under the Scheme; and
- (j) states the date of the offer; and
- (k) specifies the acceptance period for the offer (see clause **64**); and
- (l) gives information about the opportunity for the person to access legal advice about whether to accept the offer; and
- (m) gives information about other services available to the person under the Scheme to help the person to decide whether to accept the offer; and
- (n) explains how to accept or decline the offer, should the person decide to do so; and
- (o) informs the person that the offer expires at the end of the acceptance period; and
- (p) explains the effect of clause **62** (which is about the release from civil liability of the responsible institutions and their officials) should the person accept the offer and receive the redress payment; and
- (q) informs the person that the person does not have to accept the offer and that, by doing nothing, the offer is taken to be declined at the end of the acceptance period; and
- (r) informs the person that the person will not be able to make another

application for redress under the Scheme, whether or not the offer is accepted; and

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

#### **Acceptance period for offers of redress [s40]**

64. (1) The **acceptance period** for an offer of redress to a person is the period determined by the Redress Manager, which must be at least 6 months, starting on the date of the offer.
- (2) Before the end of the acceptance period, the Redress Manager may, by written notice to the person, extend the acceptance period if the Redress Manager considers there are exceptional circumstances that justify the extension.
- (3) An extension under subclause (2) may be given:
- (a) on the Redress Manager's own initiative; or
  - (b) on a request made by the person under subclause (4).
- (4) The person may request the Redress Manager to extend the acceptance period. The request must comply with any requirements prescribed by the rules.
- (5) If the Redress Manager extends the period, the **acceptance period** is the original period as extended by the Redress Manager.

#### **Notice of offer to participating institutions [s41]**

65. (1) If:
- (a) the Redress Manager gives an offer of redress under clause **63**; and
  - (b) a participating institution or person referred to in paragraph **63(e)** is specified in the offer;
- then the Redress Manager must give the institution or person written notice of the offer.
- (2) The notice must:
- (a) state the acceptance period for the offer; and
  - (b) comply with any requirements prescribed by the rules.



**PART 4.2 – ACCEPTANCE OR DECLINING OF OFFER OF REDRESS****Accepting the offer of redress [s42]**

66. (1) A person may accept an offer of redress by complying with this clause.
- (2) The person must give the Redress Manager a document (**the acceptance document**) that:
- (a) is in a form approved by the Scheme Directors;
  - (aa) certifies, as required by the form, one or more of the matters specified in the form; and
  - (aaa) is signed by a legal practitioner for the applicant, as applicable in relation to the matters certified;
  - (b) states that the person accepts the offer; and
  - (c) states that, upon receipt of the redress payment, the person releases and forever discharges each of the following institutions and officials (a released institution or official) from all civil liability for abuse of the person that is within the scope of the scheme:
    - (i) each participating institution that is determined by the decision maker under paragraph 28(2)(b) to be responsible for the abuse of the person;
    - (ii) all officials of that responsible institution (other than an official who is an abuser of the person); and
  - (d) states that, upon receipt of the redress payment, the person foregoes any entitlement to be paid damages by a released institution or official if the released institution or official were joined as a party to civil proceedings brought or continued by the person against another party in relation to abuse of the person that is within the scope of the scheme; and
  - (e) states that, upon receipt of the redress payment, the person will not, whether as an individual, a representative party or a member of a group, bring or continue any civil claim against a released institution or official in relation to abuse of the person that is within the scope of the scheme; and
  - (f) states the components of redress that the person wishes to receive; and
  - (g) if the person wishes to receive a direct personal response—specifies each participating institution that the person wishes to receive a direct personal response from; and
  - (h) acknowledges that the person understands the effect of accepting the offer; and
  - (i) is signed by the person; and

- (j) complies with any requirements prescribed by the rules.
- (3) The person must give the Redress Manager the acceptance document:
  - (a) before the end of the acceptance period; and
  - (b) in the manner (if any) prescribed by the rules.
- (4) Rules made for the purposes of paragraph (2)(j) must not require the person to enter into a confidentiality agreement.

**Effect of acceptance on civil liability [s43]**

67. If a person accepts an offer of redress in accordance with clause 66, then, at the time the person gives the acceptance, subject to receipt of the redress payment pursuant to clause 71, the person is taken to have agreed with the applicable participating institution as follows:
- (a) the person releases and forever discharges every released institution or official from civil liability for abuse of the person that is within the scope of the Scheme; and
  - (b) the person must not (whether as an individual, a representative party or a member of a group) bring or continue civil proceedings against a released institution or official in relation to that abuse; and
  - (c) the release and discharge of civil liability of a released institution or official for that abuse does not:
    - (i) release or discharge another institution or person from civil liability for that abuse; and
    - (ii) prevent the person (whether as an individual, a representative party or a member of a group) from bringing or continuing civil proceedings against another institution or person in relation to that abuse; and
  - (d) if a released institution or official would, apart from this clause, be liable to make a contribution to another participating institution in relation to damages payable to the person in civil proceedings brought or continued by the person (whether as an individual, a representative party or a member of a group) against the other institution or person in relation to that abuse, then:
    - (i) the released institution or official is released and forever discharged from liability to make that contribution; and
    - (ii) the amount of damages payable to the person in those proceedings is reduced by the amount of that contribution.
- Note:** The National Redress Scheme Act offers a broader release here to participating institutions.

**Notice to participating institutions that the offer is accepted [s44]**

68. (1) If a person accepts an offer of redress in accordance with clause 66, then the Redress Manager must give each institution that was notified

under clause **65** about the offer written notice of:

- (a) the person's acceptance of the offer; and
  - (b) the components of redress that the person wishes to receive (including whether the person wishes to receive a direct personal response from the institution); and
  - (c) any matters prescribed by the rules.
- (2) The notice must be accompanied by a copy of the person's acceptance document.

### **Declining the offer of redress [s45]**

#### **Declining by taking positive action**

69. (1) A person may decline an offer of redress by giving the Redress Manager, before the end of the acceptance period, a document that:
- (a) is in the approved form; and
  - (b) states that the person declines the offer; and
  - (c) acknowledges that the person understands the effect of declining the offer (including that the person will not be able to make another application for redress under the scheme); and
  - (d) is signed by the person; and
  - (e) complies with any requirements prescribed by the rules.

#### **Declining by not accepting in the acceptance period**

- (2) A person is taken to have declined an offer of redress if the person does not accept the offer in accordance with clause **66** before the end of the acceptance period.
- (3) Subclause (2) does not apply if:
- (a) the person has applied for review under clause **32** of the decision maker's determination on the person's application for redress; and
  - (b) the review has not been completed at the end of the acceptance period.

### **Notice to participating institutions that the offer is declined [s46]**

70. (1) If a person declines an offer of redress in accordance with clause **69**, then the Redress Manager must give each institution that was notified under clause **65** of the offer written notice that the person has declined the offer.
- (2) The notice must comply with any requirements prescribed by the rules.

### **PART 4.3 – THE REDRESS PAYMENT**

#### **The responsible participating institution must pay the redress payment [s48]**

71. (1) If:
- (a) a person is entitled to redress under the Scheme (see clause 10); and
  - (b) the person stated in the acceptance document under clause 66 that the person wishes to be paid the redress payment
- then the responsible participating institution must pay the redress payment to the person within 30 days from the date of the written notice under clause 68.
- (2) The rules may prescribe matters relating to the payment of redress payments.
  - (3) The Operator has no responsibility to make any redress payment to a person entitled to redress under the Scheme.

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### **PART 4.4**

#### **COUNSELLING AND PSYCHOLOGICAL COMPONENT OF REDRESS**

#### **The responsible participating institution must enable access to the counselling and psychological component of redress [s51]**

72. (1) This clause applies if:
- (a) a person is entitled to redress under the Scheme (see clause 10); and
  - (b) the person stated in the acceptance document under clause 66 that the person wishes to access the counselling and psychological component of redress.
- (2) Each responsible participating institution must, as soon as practicable, pay for or provide the counselling and psychological services to the person.
  - (3) The Operator has no responsibility to pay for or provide the counselling and psychological services to a person entitled to the same under the Scheme.

## **PART 4.5 – DIRECT PERSONAL RESPONSE**

### **Direct personal response from responsible institutions [s54]**

73. (1) If a participating institution is given a notice under clause 68 that notifies the institution that a person wishes to be given a direct personal response from the institution, then the institution must take reasonable steps to provide the person with a direct personal response.
- (2) A **direct personal response** from a participating institution to a person is any one or more of the following:
- (a) an apology or a statement of acknowledgement or regret;
  - (b) an acknowledgement of the impact of the abuse on the person;
  - (c) an assurance as to the steps the institution has taken, or will take, to prevent abuse occurring again;
  - (d) an opportunity for the person to meet with a senior official of the institution.
- (3) When providing a direct personal response, the participating institution must take into account the direct personal response framework declared by the Minister under the National Redress Act.

### **General principles guiding provision of direct personal responses [s56]**

74. (1) A participating institution should offer and provide on request by a survivor:
- (a) meaningful recognition of the institution’s responsibility by way of a statement of apology, acknowledgement or regret; and
  - (b) an assurance as to steps taken to protect against further abuse.
- (2) Engagement between a survivor and a participating institution should occur only if, and to the extent that, a survivor wishes it.
- (3) A participating institution should make clear what they are willing to offer and provide by way of a direct personal response to survivors. Institutions should ensure that they are able to provide the direct personal response that they offer to survivors.
- (4) In offering direct personal responses, a participating institution should be responsive to survivors’ needs.

- (5) A participating institution that already offers a broader range of direct personal responses to survivors and others should consider continuing to offer those forms of direct personal response.
- (6) A direct personal response should be delivered by people who have received training about the nature and impact of child sexual abuse and the needs of survivors, including cultural awareness and sensitivity training where relevant.
- (7) A participating institution should welcome feedback from survivors about the direct personal responses the institution offers and provides.

**CHAPTER 5****SPECIAL RULES TO DEAL WITH EXCEPTIONAL CASES****Division 1—Simplified outline of this Part**

This Chapter deals with a number of special cases to provide exemptions to the general rules of entitlement to redress in Chapter 2 (particularly clause 12).

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

**Division 2—Death of person before acceptance of redress offer****Person dies before determination is made on application for redress [s58]**

75. (1) This clause applies if:
- (a) a person makes an application for an offer of redress under clause 6; and
  - (b) the person dies before a determination on the application is made under clause 28.
- (2) The Redress Manager must continue to deal with the application as if the person had not died.
- (3) If the decision maker approves the application under paragraph 28(2)(a), then the decision maker must:
- (a) determine, under paragraph 28(2)(b), each participating institution that is responsible for the abuse; and
  - (b) determine, under paragraph 28(2)(c):
    - (i) the amount of the redress payment for the person; and
    - (ii) the amount of each responsible institution's share of the costs of the redress payment.
- (4) The redress payment for the person is payable in accordance with clause 77.
- (5) The rules may prescribe matters relating to the giving of notices to a person or a participating institution in relation to the operation of this clause.

**Person dies before offer of redress is accepted, declined or withdrawn [s59]**

76. (1) This clause applies if:
- (a) a person makes an application for redress under clause 6; and
  - (b) the decision maker makes a determination under clause 28 approving the application; and
  - (c) the Redress Manager gives the person an offer of redress under clause 63; and
  - (d) the person dies before the offer is accepted, declined or withdrawn.
- (2) The offer is taken to be withdrawn immediately after the person dies.
- (3) If, before the person died:
- (a) the person had not made an application under clause 32 for review of the determination; or
  - (b) the person had made such an application but the review had been completed;
- then the redress payment for the person is payable in accordance with clause 77.
- (4) If, before the person died:
- (a) the person had made an application under clause 32 for review of the determination; and
  - (b) the review had not been completed;
- then:
- (c) the application for review continues as if the person had not died; and
  - (d) if the review determination approves the person's application for redress—the redress payment for the person specified in the review determination is payable in accordance with clause 77.
- (5) The rules may prescribe matters relating to the giving of notices to a person or a participating institution in relation to the operation of this clause.

**Entitlement to redress payment [s60]**

77. (1) This clause applies if under subclause 75(4) or 76(3) or paragraph 76(4)(d) a redress payment for a deceased person is payable in accordance with this clause.
- (2) The Redress Manager must determine who should be paid the redress payment and give notice in writing to the responsible participating institution.



- (3) The responsible participating institution must pay the redress payment to that person or those persons as soon as practicable.
- (4) In determining who should be paid the redress payment, the Redress Manager may consider the people who are entitled to the property of the deceased person under:
  - (a) the deceased person's will; and
  - (b) the law relating to the disposition of the property of deceased persons.
- (4) The responsible participating institution may pay the redress payment without requiring:
  - (a) production of probate of the will of the deceased person; or
  - (b) letters of administration of the estate of the deceased person.
- (5) The rules may prescribe matters relating to the payment of redress payments under this clause.

## **CHAPTER 6 – ASSESSORS**

### **Establishment of Assessors**

78. There shall be Assessors constituted and appointed in accordance with the provisions of this Part.

### **Function of the Assessor**

79. Subject to the provisions of this Scheme the functions of the Assessor are to enquire into and determine an application for redress in accordance with this Scheme.

### **Panel of independent decision makers**

80. The Assessor for a particular application shall be appointed from a panel of independent decision makers comprising a Convenor and a Deputy Convenor appointed by the Scheme Directors and at least 3 further members, all having appropriate skill and experience.

### **Appointment of members of the Panel**

81. (1) The members of the panel shall be appointed by the Scheme Corporation by resolution of the Scheme Directors after consultation with the Convenor.
- (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.

### **Filling vacancies in the Panel**

82. Any vacancy in the membership of the panel shall be filled by the Scheme Directors.

### **Appointing an Assessor**

83. (1) The Assessor for an application shall be determined by the Convenor or, if there is a vacancy in the office of convenor, by the Deputy Convenor.
- (2) The Assessor shall be chosen by the Convenor from the panel.
84. An Assessor agrees in accepting the appointment to abide by the provisions of this Scheme.

**Statement of availability, impartiality and independence**

85. (1) Before appointment, a prospective Assessor must sign a statement of availability, impartiality and independence in any form prescribed by the Scheme Directors.
- (2) The prospective Assessor must disclose in writing to the Convenor any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

**Secretary to the Panel**

86. There may be a secretary to the Panel who shall be appointed by the Convenor on such terms and conditions as may be determined from time to time by the Convenor.

**Separately constituted Assessors may sit simultaneously**

87. Assessors, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

**Assessor's proceedings valid despite vacancies etc**

88. An act or proceeding of an Assessor is not invalid by reason only of a vacancy in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of the Assessor, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

**CHAPTER 7****REVIEWERS****Establishment of Reviewers**

89. There shall be Reviewers constituted and appointed in accordance with the provisions of this Part.

**Function of the Reviewers**

90. Subject to the provisions of this Scheme the functions of the Reviewer are to enquire into and determine an application for review of any decision of the Assessor under clause 32(1).

**Reviewer appointed from the panel**

91. The Reviewer in a particular application shall be appointed from the panel of independent decision makers.

**Appointing a Reviewer**

92. (1) The Reviewer for any matter shall be appointed by the Convenor or, if there is a vacancy in the office of Convenor or if that person made the original determination, by the Deputy Convenor.
- (2) For the purpose of any application to a Reviewer, the Reviewer shall be a person appointed from the Panel.
93. A Reviewer agrees in acting as Reviewer to abide by the provisions of this Scheme.

**Statement of availability, impartiality and independence**

94. (1) Before appointment, the prospective Reviewer must sign a statement of availability, impartiality and independence in any form prescribed by the Scheme Directors.
- (2) The prospective Reviewer must disclose in writing to the Convenor or Deputy Convenor any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

**Separately constituted Reviewers may sit simultaneously**

95. Reviewers, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

**Reviewer's proceedings valid despite vacancies etc**

96. An act or proceeding of Reviewer is not invalid by reason only of a vacancy in the membership of the panel and, notwithstanding the subsequent discovery of

a defect in the nomination or appointment of members of the panel or the Reviewer, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

## CHAPTER 8

### CONFIDENTIALITY AND PUBLICATION

#### Duty of confidentiality [s93]

97. (1) Subject to the provisions of this Scheme, the office holders of the Scheme, a participating institution or a person employed or engaged on work related to the affairs of the Scheme generally or the Redress Manager, an Assessor or Reviewer must not divulge information that comes to their knowledge by virtue of that office or position or engagement (**protected information**) except—
- (a) in the course of carrying out the duties of that office or position or engagement under the Scheme including but not limited to the purpose of enabling a participating institution by itself or its appointed person or body –
    - (i) complying with a request under clause 22 to provide information; and
    - (ii) providing a direct personal response to a person under clause 73; or
  - (b) with the consent of the person or institution to whom the information relates; or
  - (c) for the purpose of sharing the information with the holders of any office or position or engagement under any regime of a participating institution in accordance with the legislation or rules of that institution for disciplinary or professional standards procedures or employment processes related to the safety or wellbeing of children; or
  - (d) in any proceedings before a tribunal or professional standards board constituted under that regime; or
  - (e) as may be required by law; or
  - (f) to a participating institution to disclose to any insurer or insurance broker of the participating institution where the information may give rise to or be relevant to a claim for indemnity by the participating institution against the insurer or is relevant to obtaining or continuing insurance cover; or
  - (g) where the person believes on reasonable grounds that it is

necessary to prevent or lessen a serious threat to an individual's life, health or safety.

- (2) Before the person discloses information that relates to a person who has applied for redress, the person must have regard to the impact the disclosure might have on that person.
- (3) A person may use protected information to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular person or institution.

### **Scheme Manager to report annually to Scheme Directors and each participating institution [187]**

98. (1) Without disclosing the identity of any applicant, the Redress Manager must through the Executive Director of the Scheme Corporation report annually to the Scheme Directors on the operation of the Scheme for that calendar year.
- (2) The Redress Manager must through the Executive Director of the Scheme Corporation report annually to each participating institution on the operation of the Scheme for that calendar year so far as they relate to that participating institution.

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## **CHAPTER 9 - MISCELLANEOUS**

### **PART 9.1 – INDEMNITY**

#### **Indemnification of those with functions under the Scheme**

99. For each matter in which a participating institution is a respondent or more than one participating institution is a respondent, the participating institution and if more than one, the participating institutions jointly and severally will indemnify and keep indemnified the Scheme Corporation and—
  - (a) each office holder of the Scheme and any delegate of that person;
  - (b) any carer appointed under this Scheme or any protocol;
  - (c) the Redress Manager;
  - (d) any delegate of the Redress Manager;
  - (e) an Assessor;
  - (f) the secretary to the Panel;
  - (g) a Reviewer;

for and against any act or omission respectively by them in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Scheme.

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## **PART 9.2 – PROCEDURE FOR GRIEVANCE ABOUT PROCESS**

100. (1) Any grievance about the operation of this Scheme or any protocol approved under it may in the first instance after determination of the application and the conclusion of the process be addressed in writing to the Grievance Officer appointed by the Scheme Directors.
- (2) The Grievance Officer must consider the grievance and forward the same to the Redress Manager and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Grievance Officer may allow.
- (3) The Grievance Officer must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.
101. (1) If the person aggrieved about the operation of this Scheme or any protocol approved under it remains so after receiving the response from the Grievance Officer, that person may address their grievance in writing to the Redress Scheme Ombudsman appointed by the Scheme Directors.
- (2) The Redress Scheme Ombudsman must consider the grievance and forward the same to the Redress Manager and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Redress Scheme Ombudsman may allow.
- (3) The Redress Scheme Ombudsman must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.

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## **PART 9.3 – RULES AND FORMS**

### **Rules**

102. The Scheme Directors may, in writing, make rules prescribing matters:
- (a) required or permitted by these Terms of Reference to be prescribed by

the rules; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to these Terms of Reference.

### **Approved forms**

103. The Scheme Directors may, in writing, approve one or more forms for the purposes of a provision of these Terms of Reference that provides for something to be done in an approved form.

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## **CHAPTER 10**

### **THE DICTIONARY [s 6]**

103. (1) In this Scheme, unless the context otherwise requires, the following expressions have the meanings given them below—

***abuse:*** has the applicable meaning in schedule 1.

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

***acceptance document:*** see subclause 66(2).

***acceptance period:*** see clause 64.

***application for an offer of redress:*** an application to the Scheme for the offer of a redress from one or more participating institutions and ***apply for an offer of redress*** has a corresponding meaning;

***approved form:*** means a form approved under clause 100.

***Assessor:*** means an Assessor appointed under Chapter 6 of this Scheme;

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

***component*** of redress means any of the 3 components of redress referred to in subclause 63(a).

***counselling and psychological component*** of redress:

- (a) the counselling and psychological services payment; or  
(b) access to counselling and psychological services under the scheme.

***counselling and psychological services payment:*** a payment payable under subclause 74

***decision maker:*** has the meaning in clause 42.

***direct personal response:*** see subclause 54(2).

***direct personal response framework:*** see subclause 75(2).

***eligible:*** see clause 11.



***entitled:*** see clause 10.

***medical*** includes psychiatric, psychological and other areas of health practice;

***institution:*** any body, entity, group of persons or organisation (whether or not incorporated), but does not include a family or an individual.

***maximum amount:*** see step 1 of the method statement in subclause 29(2) and schedule 1.

***National Redress Scheme:*** the National Redress Scheme for Institutional Child Abuse established under s8 of the National Redress Scheme for Institutional Child Abuse Act 2018 (Cth).

***National Redress Scheme Act:*** the National Redress Scheme for Institutional Child Abuse Act 2018 (Cth).

***National Redress Scheme Operator:*** see the definition of ***Operator***.

***National Redress Scheme Rules:*** the rules made by the Minister under clause 179 of the National Redress Scheme Act.

***officer of the scheme:***

- (a) a person in the Scheme Corporation performing duties, or exercising powers or functions, under or in relation to this Scheme (including the Redress Manager); or
- (b) an independent decision-maker; or
- (c) a person prescribed by the rules.

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

***Operator*** (short for Kooyoora Independent Scheme Operator): means the Scheme Corporation.

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

***participating institution:*** a legal entity which -

- (a) has agreed to be bound by these Terms of Reference as a participating institution; and
- (b) has agreed in writing with the Scheme Corporation on the payment of its fees and disbursements to operate the Scheme so far it relates to that participating institution; and
- (c) the Scheme Corporation has declared the entity to be a participating institution under the Scheme.

***production period:*** see paragraphs 21(3)(c) and 25(4)(c).

***protected information:*** see subclause 97(2).

***Protocol:*** any protocol approved from time to time by the Scheme Directors under Part 1.4;

***respondent institution:*** a participating institution which is respondent to an application for redress;

***Reviewer:*** a Reviewer appointed under established under Chapter 7 of this Scheme;

***reasonable likelihood,*** in relation to a person being eligible for redress, means the chance of the person being eligible is real, is not fanciful or remote and is more than merely plausible.

***redress:***

- (a) a redress payment of up to the prescribed cap; and
- (b) a counselling and psychological component which, depending on where the person lives (as stated in the person's application for redress), consists of:
  - (i) access to counselling and psychological services provided under the Scheme; or
  - (ii) a payment to enable the person to access counselling and psychological services provided outside of the Scheme; and
- (c) a direct personal response from each of the participating institutions that are determined by the Operator under paragraph 29(2)(b) to be responsible for the abuse of the person.

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

***Redress Manager:*** the person appointed for the purpose by the Scheme Corporation by resolution of the Scheme Directors and includes an acting Redress Manager and any deputy Redress Manager and any officer of the Scheme authorised by the Scheme Directors to act in that capacity and, for the purposes of clauses 21 and 22, includes any delegate of the Redress Manager appointed under this Scheme.

***redress payment:*** a payment payable under clause 71 or 72 or 77.

***Redress Scheme Ombudsman:*** the Redress Scheme Ombudsman appointed by the Scheme Corporation by resolution of the Scheme Directors and includes an acting Redress Scheme Ombudsman;

***released institution or official:*** see paragraph 43(2)(c).

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

***respondent institution:*** a participating institution named in an application for an offer of redress.

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

***responsible institution:*** an institution is a ***responsible institution*** in relation to abuse of a person if the Operator has determined under paragraph 28(2)(b) that the participating institution is responsible for that abuse.

***review determination:*** see paragraph 35(2)(b).

***rules:*** the rules made by the Scheme Directors under clause 99.

***Scheme:*** the Kooyoora Independent Redress Scheme constituted by these Terms of Reference and includes in relation to an application for redress, the Scheme Corporation;

***Scheme Corporation:*** Kooyoora Ltd, a company limited by guarantee retained under these Terms of Reference to administer this Scheme;

***Scheme Directors:*** the board of the Scheme Corporation, acting in accordance with its constitution;

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

**ANNEXURE**

**Sharing of liability for redress components**

**Requirements for working out institution’s gross liability amount**

**Subdivision A—Introduction**

**1. Scope of this Division [Rule 19]**

- (1) For the purposes of step 2 of the redress payment method statement (clause 29(2)), this Schedule prescribes requirements for working out the amount that:
  - (a) is an institution’s share of the maximum amount of redress payment that could be payable to a person; and
  - (b) is worked out under step 1 of that method statement.
- (2) The requirements that apply depend on whether there is only one set of abuse of the person or more than one set of abuse of the person.

**Note:** In the National Redress Scheme, the requirements of Rule 19 are modified by rule 29 if, because of rule 11(2), an institution is not responsible for abuse of a person but one or more other institutions are responsible for the abuse. Rule 29 provides for special rules if an institution is ordered by a court to pay compensation or damages. The modifications apply for working out the amount of every responsible institution’s share (even the share of an institution responsible only for other abuse of the person).

The issue does not arise under this Scheme because the substance of rule 29 has not been adopted because of the bar in clause 7 to continuing an application where legal proceedings in respect of the abuse are on foot and because of the limitations of the Scheme which are binding in contract and not by statute.

**2. What is a *set of abuse*? [rule 20]**

- (1) A *set of abuse* of the person covers all the abuse of the person for which a particular institution is responsible.

**Note 1:** There may be multiple distinct sets of abuse of the person under this subparagraph because it could apply multiple times, each time in relation to a different institution.

**Note 2:** It does not matter whether all the abuse covered by a particular set of abuse under this subsection was by the same abuser or not.

- (2) A *set of abuse* of the person covers all the abuse of the person for which the same institutions are responsible, whether equally or in different proportions.

**Note 1:** There may be multiple distinct sets of abuse of the person under this subsection because it could apply multiple times, each time in relation to a different group of responsible institutions.

**Note 2:** It does not matter whether all the abuse covered by a particular set of abuse under this subsection was by the same abuser or not.

**Subdivision B—Requirement if there is only one set of abuse of person**

**3. Requirement if there is only one set of abuse [Rule 21]**

*General rule*

- (1) If there is only one set of abuse of the person, the amount that is a participating institution’s share of the maximum amount must be worked out according to the proportionate responsibility of that institution.

**Note:** There could be either a single responsible institution (in which case the institution’s share of the maximum amount will be the whole of that amount) or 2 or more responsible participating institutions (all of which will be counted, if they are participating institutions and therefore liable for providing redress to the person under the scheme).

**Subdivision C—Requirements if there are 2 or more sets of abuse of person**

**4. Requirements if there are 2 or more sets of abuse [Rule 22]**

If there are 2 or more sets of abuse of the person, the amount of the share for the institution (the *key institution*) of the maximum amount must be worked out in accordance with this Subdivision.

**5. First, work out notional maximum amount for each set [Rule 23]**

- (1) For each set of abuse of the person, apply the matrix in **Schedule 1** to work out the maximum amount of redress payment that could be payable to the person assuming the only abuse of the person were the abuse covered by that set.

**Note:** This must be done for a set of abuse of the person whether or not the key institution was responsible for abuse covered by that set.

*If 2 or more institutions are equally responsible for abuse covered by set*

- (2) If 2 or more participating institutions are responsible for the abuse covered by a set, calculate the proportion of the maximum amount of redress payment for which they are responsible according to their proportionate responsibility.
- (3) If the amount worked out under subsection (2) for a set is expressed to more than 4 decimal places of a cent, round the amount to 4 decimal places of a cent (rounding upwards if the number in the fifth decimal place is at least 5).

*Notional maximum amount*

- (4) The result of the last of subsections (1), (2) and (3) to apply to a set is the *notional maximum amount* for the set.

**6. Secondly, work out share of maximum amount for each set of abuse for which key institution is responsible [Rule 24]**

- (1) Use the following formula to work out the share, for each set of abuse of the person for which the key institution is responsible, of the maximum amount worked out under step 1 of the redress payment method statement for the person:

**Note 1:** The share must be worked out for a set whether the key institution is solely responsible for the abuse covered by the set or responsible with one or more other participating institutions for that abuse.

**Note 2:** The total of notional maximum amounts for all sets of abuse of the person takes account of every such set, whether or not the key institution was responsible for the abuse covered by the set.

- (2) If the amount worked out under subsection (1) for a set is expressed to more than 4 decimal places of a cent, round the amount to 4 decimal places of a cent (rounding upwards if the number in the fifth decimal place is at least 5).
- (3) The result of the last of subsections (1) and (2) to apply in relation to a set of abuse is the *set of abuse share of maximum amount* for the set.

**7. Thirdly, work out key institution's portion of share of maximum amount for each set of abuse for which key institution is responsible [Rule 25]**

*General rule*

- (1) Use the following formula to work out the key institution's portion of the set of abuse share of maximum amount for each set of abuse of the person for which the key institution is responsible:

The participating institution will be responsible according to the proportionate share of responsibility of that institution.

*Rounding*

- (2) If an amount worked out under subsection (1) is not a whole number of cents, round the amount up to the next whole number of cents.

*If key institution is responsible for abuse covered by multiple sets*

- (3) If the key institution is responsible for abuse of the person covered by 2 or more sets, add up the result of whichever of subsections (1) and (2) is applicable for each of those sets.

*Key institution's gross liability amount*

- (4) The result of the last of subsections (1), (2) and (3) to apply to the key institution is the amount of the institution's share of the maximum amount worked out under step 1 of the redress payment method statement.

**Note:** This is called the gross liability amount for the institution by step 2 of that method statement.

**Division 4—Institution’s share of liability for counselling and psychological component****8. Responsible institution’s share of costs of counselling and psychological component [Rule 27]**

- (1) For the purposes of clause 30(2), this rule prescribes how the amount that is a responsible institution’s share of the costs of the counselling and psychological component of redress for a person is to be worked out.
- (2) The amount of the share must be worked out using the formula in subsection (3) and, if the result of the formula is not a whole number of cents, rounded up to the next whole number of cents.
- (3) The formula is as follows:

$$\text{Amount of the component} \times \frac{\text{The institution’s gross liability amount worked out under step 2 of the redress payment method statement for the person}}{\text{Total of gross liability amounts of all responsible institutions worked out under step 2 of the redress payment method statement for the person}}$$

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**SCHEDULE 1**

The Scheme is committed to providing a holistic response to survivors of institutional child abuse. The Scheme offers the following:

**A. Nature of Abuse covered**

**(1) Mandatory definition for all participating institutions–**

Redress for a person is for the sexual abuse and related non-sexual abuse, of the person that is within the scope of the Scheme, where the following definitions apply–

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

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

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

*physical abuse:* any intentional or reckless act, use of force or threat to use force causing injury to, or involving unwelcome physical contact with, another person but does not include an act or omission committed in circumstances that constitute—

- (a) a lawful justification or excuse to the tort of battery; or
- (b) any other lawful exercise of force;

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

With the consent of the participating institution in a particular case, *abuse* may be extended to cover non-sexual abuse, as defined above, whether or not related to sexual abuse and whether of a child or an adult.

Note: Compare sections 13(1)(b) and 17 of the National Redress Scheme Act.

**(2) Extended definition optional for a participating institution–** ☒

Redress for a person is for abuse of a child, where the following definition of abuse applies–

*abuse:*

- (a) sexual abuse as defined above; or
- (a) non-sexual abuse, as defined above, whether or not related to sexual abuse.

With the consent of the participating institution in a particular case, *abuse* may be extended to cover abuse of an adult;



**B. Interim care and assistance:**

- (1) Immediate support from an independent, experienced support person;
- (2) Counselling for the applicant with the trauma-informed counsellor of the applicant's choosing;
- (3) Other care and assistance services, dependent on individual need and circumstances, as the Redress Manager may determine;
- (4) Counselling and other support services for the family of the applicant up to a cost of \$5,000 in the aggregate or a greater amount with the prior consent of the respondent institution

**C. Redress**

- (1) An adjudicated redress payment not exceeding the maximum of **\$150,000** determined in accordance with the Scheme;  
and
- (2) a counselling and psychological component which consists of either:
  - (i) access to counselling and psychological services provided through the Scheme; or
  - (ii) a payment to enable the person to access counselling and psychological services provided outside of the Scheme  
up to a cost of \$10,000 in the aggregate or a greater amount with the prior consent of the respondent institution; and
- (3) a direct personal response from each of the participating institutions that are determined by the Operator under paragraph 29(2)(b) to be responsible for the abuse of the person.

**D. Modification of Terms of Reference**

Substitute for clause 24(2) which reads –

- (2) If the applicant provides the written consent referred to in paragraph (c) of subclause 24(1), the Redress Manager must refer the application to an Assessor for determination.

the following–

- (2) If the applicant provides the written consent referred to in paragraph (c) of subclause 24(1) **and a participating institution consents in writing to that referral**, the Redress Manager must refer the application to an Assessor for determination as between that applicant and each participating institution that consents.

**E. Allowance for legal representation**

The Scheme will allow at the discretion of the decision maker, and the respondent institution will pay to the applicant’s legal representatives the whole or their proportionate share of the following amounts for legal representation of the applicant including all disbursements –

<b>A.</b>	<b>Claims involving a relatively small amount of legal work or redress of \$30,000 or less</b>	
	<p><b>Stage 1</b> - acting for the applicant in making the application for an offer of redress, taking instructions, any investigation, responding to request from Redress Manager for information, engagement in settlement conference and associated work up to but not including referral to an Assessor; advising on any settlement of the matter and release from liability.</p> <p>Where the decision maker determines that the claim has involved a relatively small amount of legal work, OR the claim is resolved by a redress payment of \$30,000 or less</p> <p>Amount inclusive of all professional costs and disbursements to be agreed by participating institution on joining the scheme –</p> <p>In considering whether costs ought to be paid by this approach, the factors the decision maker may take into account include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) the cost of any medical report provided in support of the claim;</li> <li>(b) whether counsel was briefed for the settlement conference;</li> <li>(c) the complexity of the claim;</li> <li>(d) the extent to which clarification of the applicant’s claim was required;</li> <li>(e) any other factor considered relevant by the decision maker.</li> </ul> <p>If this category applies, no additional costs loading will be payable.</p>	<b>\$7,000</b>
<b>B.</b>	<b>Other claims</b>	
(a)	<b>Stage 1</b> - acting for the applicant in making the application for an offer of redress, taking instructions, any investigation, responding to request from Redress Manager for information,	

	engagement in settlement conference and associated work up to but not including referral to an Assessor; advising on any settlement of the matter and release from liability.  Amount inclusive of all professional costs and disbursements to be agreed by participating institution on joining the scheme –	<b>\$15,000</b>
	Additional allowance where perusal of a wardship file is necessary	<b>\$1,500</b>
	Additional allowance if the decision maker determines there is extensive documentation or complexity:	<b>\$1,000</b>
<b>C.</b>	<b>All claims</b>	
(b)	<b>Stage 2</b> – acting for the applicant in connection with an adjudication by an Assessor including providing any further evidence or submissions – where no hearing, advising on any acceptance of an offer of redress and release from liability.	<b>\$1,500</b>
(c)	<b>Stage 3</b> acting for the applicant in for connection with any review by a Reviewer including making application for review and providing any further submissions or evidence if permitted – where no hearing, advising on any acceptance of an offer of redress and release from liability.	<b>\$1,000</b>

**D. Matrix**

A matrix as recommended by the Royal Commission in its report on redress and civil litigation will be used to guide the assessment of the financial amount, as follows:

- a. Severity of abuse 1-40
- b. Impact of abuse 1-40
- c. Additional Elements 1-20
  - (i) whether the applicant was in state care at the time of the abuse – that is, as a ward of the state or under the guardianship of the relevant Minister or government agency;

- (ii) whether the applicant experienced other forms of abuse in conjunction with the sexual abuse – including physical, emotional or cultural abuse or neglect;
- (iii) whether the applicant was in a ‘closed’ institution or without the support of family or friends at the time of the abuse;
- (iv) whether the applicant was particularly vulnerable to abuse because of his or her disability.

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NOTE

On 28 February 2019, the Archbishop in Council of the Anglican Diocese of Melbourne resolved to approve the above Terms of Reference for the Diocese to replace those of its interim scheme, with effect from 1 March 2019.