



Australian Government
The Treasury

TSY/AU

Incentivising charities to join the Redress Scheme — new governance standard FAQs

Context

Consistent with the Prime Minister's speech to Parliament on 22 October 2020 on the National Redress Scheme for Institutional Child Sexual Abuse (the Redress Scheme), the Commonwealth is placing further sanctions on institutions who continue to refuse to join the Redress Scheme.

A proposed governance standard has been developed, requiring registered charities to take all reasonable steps to join the Redress Scheme if a redress claim has been made, or is likely to be made, against the charity. Consistent with the existing governance standards, the proposed governance standard will be set out in the *Australian Charities and Not-for-profits Commission Regulation 2013*.

Legislative amendments will also be introduced, altering the eligibility criteria for basic religious charities (BRCs) so that BRCs who have a claim against them under the Redress Scheme are required to join the Redress Scheme to retain their BRC status.

What is the National Redress Scheme for Institutional Child Sexual Abuse (Redress Scheme)?

The Redress Scheme commenced on 1 July 2018 and will run for 10 years on the basis that institutions opt-in to the Redress Scheme and the responsible entity pays.

Under the Redress Scheme, eligible child sexual abuse survivors will be provided with: a redress payment of up to \$150,000; counselling and psychological care; and an optional direct personal response from the responsible institution/s.

A person is not eligible for redress unless one or more of the institutions responsible for the sexual abuse is participating in the Redress Scheme (a 'participating institution'). Survivors can apply for redress even if the institution responsible for the abuse has not joined the Redress Scheme, but their application will not progress until that institution joins.

What are the requirements under the proposed governance standard?

The proposed standard will require a registered entity to take reasonable steps to become a participating non-government institution if the entity is, or is likely to be, identified as being involved in the abuse of a person either in an application for redress made under section 19 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*; or in information given in response to a request under section 24 or 25 of that Act.

What are the consequences if a charity does not comply with the governance standard?

Charities that have or are likely to have a claim made against them will be required to take reasonable steps towards joining the Redress Scheme to meet the governance standard. Where the ACNC considers an entity is not taking reasonable steps towards joining the Redress Scheme, the charity would then be subject to a suite of the ACNC's existing enforcement powers, including the revocation of charity registration. Should the ACNC exercise its enforcement power to revoke the

registration of a charity, this would result in the entity no longer being eligible for a range of Commonwealth benefits and concessions, including tax concessions.

Why is the Government making this new governance standard?

This governance standard acts to incentivise charities that may have been responsible for past institutional child sexual abuse, to participate in the Redress Scheme. This is consistent with the public's expectation that generous support from the Commonwealth by way of charitable benefits and concessions should not be provided to these institutions who fail to join the Redress Scheme.

The issue of institutions failing to join the Redress Scheme was recognised in a report by the Joint Select Committee overseeing the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, *Getting the National Redress Scheme right: An overdue step towards justice*, tabled in Parliament on 2 April 2019.

Recommendation 3 of that report recommended the government consider mechanisms and their efficacy including those available under the *Charities Act 2013*, to penalise all relevant institutions that fail to join the Redress Scheme, including the suspension of all tax concessions for, and the suspension of charitable status of, any institution that could reasonably be expected to participate in the Redress Scheme.

Do all charities have to join the Redress Scheme to meet the proposed standard?

No, only entities who are, or likely to be, identified as being involved in the abuse of a person are required to take reasonable steps to join the Redress Scheme.

When is a charity considered 'likely to be' identified?

Entities considered likely to be identified as being involved in the abuse of a person include those entities who have been named in the Royal Commission into Institutional Responses to Child Sexual Abuse, but have not yet had a claim made against them. Entities may also become aware that an application is likely to be made against them, for example, if they are informed directly by a person that the person is going to make an application for redress, or the person is otherwise involved in litigation with the entity about past abuse. This could occur, for example, in the course of past or present legal proceedings.

Whether an entity is likely to be identified will depend on the facts and information available to the entity. That is, it would not apply to an entity that is not reasonably aware that they may be responsible for past institutional child sexual abuse.

What will a charity need to do to meet the new governance standard?

Relevant entities do not need to be a participating non-government institution in the Redress Scheme to meet the standard at a given time, but relevant entities must be taking all reasonable steps towards becoming a participating non-government institution in order to meet the requirements under the standard.

What about BRCs who are not subject to governance standards and financial reporting?

The Government has introduced legislative amendments into Parliament to amend the definition of a BRC in the ACNC Act. These amendments remove a registered entity's eligibility to be considered a BRC if it has a claim against it under the Redress Scheme, and does not join the Redress Scheme by the relevant time set out in the proposed law. As such, any BRC who has a claim against it but does not join the Redress Scheme by the relevant time will no longer be considered a BRC and will then be subject to all governance and financial reporting standards, including the proposed governance standard.

How many entities are likely to be affected by these changes?

The governance standard will apply to all charities, other than BRCs, but will only be relevant to those charities that have a claim made against them, or are likely to have a claim made against them. The number of affected charities can change as new entities are named. As at October 2020, around 130 charities had been identified as being named in applications under the Redress Scheme, but had not yet joined.

Around 20 of the roughly 130 charities identified as being named in applications under the Redress Scheme who had not yet joined were BRCs.

When will the proposed governance standard apply?

The Regulations will commence the day after the earlier of:

- the day both Houses of the Parliament pass a resolution approving the standard; or
- the last day on which the standard could be disallowed in either House of Parliament.

What is Treasury's role compared to the ACNC and the Department of Social Services (DSS)?

Treasury has worked closely with DSS and the ACNC to provide advice to government on policy issues related to the Redress Scheme and administration of Australia's charity sector, including taxation concessions. Treasury is responsible for providing policy advice and developing laws relating to Australia's charitable sector.

DSS administers the Redress Scheme and works with survivors applying for redress and entities named in claims in order to facilitate access to redress for survivors.

The ACNC is the Government's independent national regulator for charities. Its role includes assessing if registered charities are meeting their obligations under governance standards to ensure entities are entitled to Commonwealth taxation exemptions and concessions that are administered by the Australian Taxation Office.

What are the next steps?

Treasury will review the submissions and feedback from stakeholders on the governance standard, which will inform any potential refinements to ensure it achieves its intended purpose. The Regulations will be progressed for consideration by His Excellency, the Governor-General, early in 2021.