

# National Redress Scheme

For people who have experienced institutional child sexual abuse

## FACT SHEET

## DISCLOSING PROTECTED INFORMATION IN CIVIL LEGAL PROCEEDINGS

This factsheet focuses on 'protected information' as defined by the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (**the Redress Act**). It outlines the protections in the Redress Act in relation to civil proceedings (including informal legal claims) arising from historic cases of institutional child sexual abuse.

Sensitive information is routinely acquired through the operation of the National Redress Scheme (**the Scheme**). Ensuring the protection of a person's information is one way the Scheme can avoid further harming or traumatising survivors and is supported by provisions in the Redress Act.

### What is protected information?

'Protected information' is relevantly defined in sub-section 92(2) to include information about a person or institution that:

- was provided to, or obtained by, an officer of the scheme for the purposes of the scheme; and
- is or was held in the records of the Department of Social Services or the Human Services Department (now known as Services Australia).

Part 4-3 of the Redress Act limits the circumstances in which a person may obtain, record, use or disclose protected information.

### Examples of protected information include:

- a submitted redress application or information contained within an application;
- the identity of, or any other information about, a person, perpetrator or institution alleged to be responsible for abuse;
- the information accompanying a request for information (RFI);
- an institution's response to a RFI;
- a person's redress offer or determination; and
- information about whether a redress payment has been offered or paid, and the amount.

## **Can protected information be disclosed in civil proceedings? Can protected information be used as evidence in civil proceedings?**

No. Protected information can only be obtained, recorded, used or disclosed if authorised by the Redress Act. Protected Information is defined broadly as information about a person or institution that was obtained by an officer for the Scheme for the purposes of the Scheme. Use in civil proceedings is not authorised by the Redress Act.

In addition, unless for the purpose of giving effect to the Redress Act:

- section 37 of the Redress Act specifies Scheme documents are not admissible as evidence in civil proceedings; and
- section 105 of the Redress Act, specifies that a person must not be required to disclose protected information in civil proceedings.

Giving effect to the Redress Act includes disclosing information in civil proceedings:

- for judicial review of a decision made under the Act; and
- under or arising out of section 28 of the Redress Act (providing false or misleading documents or information to an officer of the Scheme)

The Explanatory Memorandum to the Redress Act states *the objects of the Scheme are to provide an avenue for a payment that acknowledges a wrong that might otherwise be pursued through civil litigation. The Scheme would be undermined if it were able to be used as a form of discovery in court proceedings.*

## **What happens if the protected information provisions are breached?**

It is an offence to access, record, disclose, use, solicit disclosure of, or offer to disclose protected information without authorisation under sections 99 – 101 of the Redress Act. The penalty is imprisonment for 2 years, 120 penalty units or both. This penalty is considered to be an appropriate deterrent against unauthorised recording, disclosure or use of protected information and recognises the sensitivity of information held by the Scheme.

If you need further information, please contact the National Redress Scheme:

- Email: [RedressPolicy@dss.gov.au](mailto:RedressPolicy@dss.gov.au)

## **How can I get support and more information?**

Free, confidential specialist support services are available before, during and after the application process.

To find out **how to apply** and connect with a free **Redress Support Service**, please go to **[nationalredress.gov.au](http://nationalredress.gov.au)** or call the National Redress Scheme on **1800 737 377** Monday to Friday 8am to 5pm AET, excluding public holidays – charges may apply.

For immediate support, contact:

- Beyond Blue 1300 22 4636
- Lifeline 13 11 14
- 1800 Respect 1800 737 732
- Suicide Call Back Service 1300 659 467
- Mensline 1300 78 99 78
- In an emergency call Triple Zero (000)