

# **COUNCIL MEETING STANDARD REPORT – NATIONAL REDRESS SCHEME (PARTICIPATION OF WA LOCAL GOVERNMENTS)**

**Ward:** (All Wards) (Chief Executive Office)

**Disclosure of Interest:**

N/A

**Authorised Officer:** [Type here]

## **KEY ISSUES**

This item is for the [Insert specific local government] to:

- Note the background information and the WA Government's decision in relation to the National Redress Scheme;
- Note the key considerations and administrative arrangements for the [Insert specific local government] to participate in the National Redress Scheme;
- Formally endorse the [Insert specific local government]'s participation as part of the WA Government's declaration in the National Redress Scheme; and
- Grant authority to an appropriate position / officer to execute a service agreement with the State, if a Redress application is received.

## **BACKGROUND**

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) was established in 2013 to investigate failures of public and private institutions to protect children from sexual abuse. The Royal Commission released three reports throughout the inquiry:

- Working with Children Checks (August 2015);
- Redress and Civil Litigation (September 2015); and
- Criminal Justice (August 2017).

The Royal Commission's Final Report (15 December 2017) incorporated findings and recommendations of the three previous reports and contained a total of 409 recommendations, of which 310 are applicable to the Western Australian Government and the broader WA community.

The implications of the Royal Commission's recommendations are twofold: the first is accountability for historical breaches in the duty of care that occurred before 1 July 2018 within any institution; the second is future-facing, ensuring better child safe approaches are implemented holistically moving forward.

The scope of this report addresses only the historical element of institutional child sexual abuse through the National Redress Scheme.

All levels of Australian society (including the WA local government sector and the [Insert specific local government]) will be required to consider leading practice approaches to child safeguarding separately in the future.

### National Redress Scheme

The Royal Commission's *Redress and Civil Litigation (September 2015)* Report recommended the establishment of a single National Redress Scheme (the Scheme) to recognise the harm suffered by survivors of institutional child sexual abuse.

The Scheme acknowledges that children were sexually abused, recognises the suffering endured, holds institutions accountable and helps those who have been abused access counselling, psychological services, an apology and a redress payment.

The Scheme commenced on 1 July 2018, will run for 10 years and offers eligible applicants three elements of Redress:

- A direct personal response (apology) from the responsible institution, if requested;
- Funds to access counselling and psychological care; and
- A monetary payment of up to \$150,000.

All State and Territory Governments and many major non-government organisations and church groups have joined the Scheme.

The WA Parliament has passed the legislation for the Government and WA based non-government organisations to participate in the National Redress Scheme.

The Western Australian Government (the State) started participating in the Scheme from 1 January 2019.

Under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), local governments may be considered a State Government institution.<sup>1</sup>

A decision was made at the time of joining the Scheme to exclude WA local governments from the State Government's participation declaration. This was to allow consultation to occur with the sector about the Scheme, and for fuller consideration of how the WA local government sector could best participate.

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<sup>1</sup> Section 111(1)(b).

## DETAILS

Following extensive consultation, the State Government (December 2019):

- Noted the consultations undertaken to date with the WA local government sector about the National Redress Scheme;
- Noted the options for WA local government participation in the Scheme;
- Agreed to local governments participating in the Scheme as State Government institutions, with the State Government covering payments to the survivor; and
- Agrees to the Department of Local Government, Sport and Cultural Industries (DLGSC) leading further negotiations with the WA local government sector regarding local government funding costs, other than payments to the survivor including counselling, legal and administrative costs.

The following will be covered for local governments participating in the Scheme as a State Government institution and part of the State's declaration:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination of requests for information and record keeping in accordance with the *State Records Act 2000*); and
- Trained staff to coordinate and facilitate a Direct Personal Response (DPR – Apology) to the survivor if requested (on a fee for service basis with costs to be covered by the individual local government – see below for further explanation).

State Government financial support for local government participation in the Scheme, as set out, will ensure that Redress is available to as many WA survivors of institutional child sexual abuse as possible.

Individual local governments participating in the Scheme as a State Government institution, with the State will be responsible for:

- Providing the State with the necessary (facilities and services) information to participate in the Scheme;
- Resources and costs associated with gathering their own (internal) information and providing that information (Request for Information) to the State (if they receive a Redress application); and
- Costs associated with the delivery of a DPR (apology), if requested (based on a standard service fee, plus travel and accommodation depending on the survivor's circumstance). The State's decision includes that all requested DPR's will be coordinated and facilitated by the Redress Coordination Unit – Department of Justice, on every occasion.

The WALGA State Council meeting of 4 March 2020:

1. Acknowledged the State Government's decision to include the participation of Local Governments in the National Redress Scheme as part of the State's declaration;
2. Endorsed the negotiation of a Memorandum of Understanding and Template Service Agreement with the State Government, and
3. Endorsed by Flying Minute the Memorandum of Understanding prior to execution, in order to uphold requirements to respond within legislative timeframes.

The State and WALGA will sign a Memorandum of Understanding to reflect the principles of WA local governments participating in the Scheme as State Government institutions and being part of the State's declaration.

State agencies (led by DLGSC), WALGA and Local Government Professionals WA will support all local governments to prepare to participate in the Scheme from 1 July 2020 (or earlier, subject to completing the necessary arrangements).

The State's decision allows for the WA Government's Scheme participation declaration to be amended to include local governments and this report seeks endorsement of the [Insert specific local government]'s participation in the Scheme.

As an independent entity and for absolute clarity, it is essential that the [Insert specific local government] formally indicates via a decision of Council, the intention to be considered a State Government institution (for the purposes on the National Redress Scheme) and be included in the WA Government's amended participation declaration.

The [Insert specific local government] will not be included in the State's amended declaration, unless it formally decides to be included.

The financial and administrative coverage offered by the State will only be afforded to WA local governments that join the Scheme as a State Government institution, as part of the State's amended declaration.

The option also exists for the [Insert specific local government] to formally decide not to participate in the Scheme (either individually or as part of the State's declaration).

Should the [Insert specific local government] formally decide (via a resolution of Council) not to participate with the State or in the Scheme altogether, considerations for the [Insert specific local government] include:

- Divergence from the Commonwealth, State, WALGA and the broader local government sector's position on the Scheme (noting the Commonwealth's preparedness to name-and-shame non-participating organisations).
- Potential reputational damage at a State, sector and community level.
- Complete removal of the State's coverage of costs and administrative support, with the [Insert specific local government] having full responsibility and liability for any potential claim.
- Acknowledgement that the only remaining method of redress for a victim and survivor would be through civil litigation, with no upper limit, posing a significant financial risk to the [Insert specific local government].

## Considerations for the [Insert specific local government]

Detailed below is a list of considerations for the [Insert specific local government] to participate in the Scheme:

### 1. Executing a Service Agreement

All Royal Commission information is confidential, and it is not known if the [Insert specific local government] will receive a Redress application. A Service Agreement will only be executed if the [Insert specific local government] receives a Redress application.

[Insert specific local government] needs to give authority to an appropriate position / officer to execute a service agreement with the State, if a Redress application is received. Timeframes for responding to a Request for Information are 3 weeks for priority applications and 7 weeks for non-priority applications. A priority application timeframe (3 weeks) will be outside most Council meeting cycles and therefore it is necessary to provide the authorisation to execute an agreement in advance.

### 2. Reporting to Council if / when an application is received

Council will receive a confidential report, notifying when a Redress application has been received. All information in the report will be de-identified but will make Council aware that an application has been received.

### 3. Application Processing / Staffing and Confidentiality

Administratively the [Insert specific local government] will determine:

- Which position(s) will be responsible for receiving applications and responding to Requests for Information;
- Support mechanisms for staff members processing Requests for Information.

The appointed person(s) will have a level of seniority in order to understand the magnitude of the undertaking and to manage the potential conflicts of interest and confidentiality requirements

### 4. Record Keeping

The State Records Office advised (April 2019) all relevant agencies, including Local Governments, of a 'disposal freeze' initiated under the *State Records Act 2000* (the Act) to protect past and current records that may be relevant to actual and alleged incidents of child sexual abuse. The [Insert specific local government]'s record keeping practices as a result, have been modified to ensure the secure protection and retention of relevant records. These records (or part thereof) may be required to be provided to the State's Redress Coordination Unit in relation to a Redress application.

The Redress Coordination Unit (Department of Justice) is the state record holder for Redress and will keep copies of all documentation and RFI responses. Local Governments will be required to keep their own records regarding a Redress application in a confidential and secure manner, and in line with all requirements in *The Act*.

## 5. Redress Decisions

The [Insert specific local government] should note that decisions regarding Redress applicant eligibility and the responsible institution(s), are made by Independent Decision Makers, based on the information received by the applicant and any RFI responses. The State Government and the [Insert specific local government] do not have any influence on the decision made and there is no right of appeal.

## **CONSULTATION**

The State, through the Department of Local Government, Sport and Cultural Industries (DLGSC), consulted with the WA local government sector and other key stakeholders on the Royal Commission into Institutional Responses to Child Sexual Abuse (in 2018) and the National Redress Scheme (in 2019).

The consultation throughout 2019 has focused on the National Redress Scheme with the aim of:

- raising awareness about the Scheme;
- identifying whether WA local governments are considering participating in the Scheme;
- identifying how participation may be facilitated; and
- enabling advice to be provided to Government on the longer-term participation of WA local governments.

Between March and May 2019, DLGSC completed consultations that reached 115 out of 137 WA local governments via:

- Webinars to local governments, predominately in regional and remote areas;
- Presentations at 12 WALGA Zone and Local Government Professional WA meetings;
- Responses to email and telephone enquiries from individual local governments.

It was apparent from the consultations local governments were most commonly concerned about the:

- potential cost of Redress payments;
- availability of historical information;
- capacity of local governments to provide a Direct Personal Response (apology) if requested by Redress recipients;
- process and obligations relating to maintaining confidentiality if Redress applications are received, particularly in small local governments;
- lack of insurance coverage of Redress payments by LGIS, meaning local governments would need to self-fund participation and Redress payments.

LGIS published and distributed an update (April 2019) regarding the considerations and (potential) liability position of the WA local government sector in relation to the National Redress Scheme.

The WALGA State Council meeting on 3 July 2019 recommended that:

1. *WA local government participation in the State's National Redress Scheme declaration with full financial coverage by the State Government, be endorsed in principle, noting that further engagement with the sector will occur in the second half of 2019.*
2. *WALGA continue to promote awareness of the National Redress Scheme and note that local governments may wish to join the Scheme in the future to demonstrate a commitment to the victims of institutional child sexual abuse.*

DLGSC representatives presented at a WALGA hosted webinar on 18 February 2020 and presented at all WALGA Zone meetings in late February 2020.

The State's decision, in particular to cover the costs / payments to the survivor, has taken into account the feedback provided by local governments during the consultation detailed above.

[Local Governments may wish to include additional information / comments regarding their specific involvement in the consultation]

## **ATTACHMENTS**

1. Local Government Information Paper (December 2019).

## **STRATEGIC IMPLICATIONS**

[Insert relevant Council policy or item in the Strategic Plan. If there isn't one, type "Nil"]

## **STATUTORY IMPLICATIONS**

The [Insert specific local government] in agreeing to join the Scheme, is required to adhere to legislative requirements set out in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

Authorisation of an appropriately appointed person to execute a service agreement with the State, if a Redress application is received, will be in accordance with s.9.49A(4) of the *Local Government Act 1995*.

## **FINANCIAL IMPLICATIONS**

The State's decision will cover the following financial costs for local governments:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination or requests for information and record keeping); and
- Trained staff to coordinate and facilitate a Direct Personal Response (DPR – Apology) to the survivor if requested (on a fee for service basis with costs to be covered by the individual local government – see below).

The only financial cost the local government may incur will be the payment of the DPR's, which is on an 'as requested' basis by the survivor. This will be based on the standard service fee of \$3,000 plus travel and accommodation depending on the survivor's circumstances. All requested DPR's will be coordinated and facilitated by the Redress Coordination Unit – Department of Justice.

The State's decision also mitigates a significant financial risk to the local government in terms of waiving rights to future claims. Accepting an offer of redress has the effect of releasing the responsible participating organisation and their officials (other than the abuser/s) from civil liability for instances of sexual abuse and related non-sexual abuse of the person that is within the scope of the Scheme. This means that the person who receives redress through the Scheme, agrees to not bring or continue any civil claims against the responsible participating organisation in relation to any abuse within the scope of the Scheme.

## **VOTING REQUIREMENTS**

Simple Majority

## **RECOMMENDATIONS**

That Council:

- 1) Notes the consultation undertaken and information provided by the Department of Local Government, Sport and Cultural Industries in regarding the National Redress Scheme and the participation of WA local governments;
- 2) Notes that the [Insert specific local government] will not be included in the WA Government's amended participation declaration (and afforded the associated financial and administrative coverage), unless the [Insert specific local government] makes a specific and formal decision to be included;
- 3) Endorses the participation of the [Insert specific local government] in the National Redress Scheme as a State Government institution and included as part of the State Government's declaration;
- 4) Grants authority to [Insert specific position] to execute a service agreement with the State, if a Redress application is received;
- 5) Notes that a confidential report will be provided if a Redress application is received by the [Insert specific local government];