

Flying Minute

National Redress – Participation of Local Governments (05-086-03-0004 KD)

By Kirstie Davis, Policy Manager Community

That the Memorandum of Understanding relating to the participation by the Local Governments of Western Australia in the National Redress Scheme for Institutional Child Sexual Abuse be endorsed.

RESOLUTION 46.FM/2020

CARRIED

Executive Summary

- State Council resolved in March 2020 that WALGA would commence negotiation of a Memorandum of Understanding and Template Service Agreement with the State Government and endorse by Flying Minute the Memorandum of Understanding prior to execution, in order to uphold requirements to respond within legislative timeframes.
- The MOU reflects legal advice provided to State Government for Local Government to formally join the Scheme in order to receive legal, administrative and financial coverage from the State should a Redress claim be made against a Local Government.
- Clause 4 of the MOU determines that individual Local Governments are not legally bound to the agreement until they provide a resolution passed at their respective Ordinary Council Meetings, and if this is the intention State Government would need to be in receipt of the resolution by 30 June 2020.

Attachment

Memorandum of Understanding

Policy Implications

State Council endorsed in March 2020 that:

1. *Acknowledge 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. *Endorse the negotiation of a Memorandum of Understanding and Template Service Agreement with the State Government, and*
3. *Endorse by Flying Minute the Memorandum of Understanding prior to execution, in order to uphold requirements to respond within legislative timeframes.*

RESOLUTION 14.1/2020 CARRIED

Background

WALGA acknowledges the substantial contribution of the Local Government sector to discuss and hold fast to a unified position on the National Redress Scheme. Furthermore the Association is thankful for the transparent and respectful negotiations with State Government and recognises the significant agreement that has been reached between State and Local Government that will benefit survivors in community. Further, building on

this successful outcome and to ensure a smooth transition Local Governments are requested to be mindful of the timelines and critical actions to prepare for participation in the National Redress Scheme.

The State Government commenced participation in the Scheme on 1 January 2019. A decision was made at the time of joining the Scheme to exclude Local Governments from the State Government's declaration. This was to allow consultation to occur with the Local Government sector about the Scheme, and for fuller consideration to be given to the mechanisms by which the sector could best participate in the Scheme.

A Cabinet Sub-Committee of the State met in December 2019 and resolved to note the consultations of the Local Government sector, to agree to participation of Local Government in the Scheme as State Government institutions covering payments to the survivor, and to commence negotiations with Local Government regarding costs, counselling, legal and administration.

An information paper was distributed to all Local Governments on 3 February 2020 in advance of WALGA Zone meetings to outline decisions and to detail considerations and actions that need to be undertaken by individual Local Governments to prepare for participation in the Scheme.

The State Government has now provided WALGA with a Memorandum of Understanding (MOU) that captures the principles of Western Australian Local Governments participating in the Scheme as State Government institutions and being part of the State's declaration as a necessary document to capture the Local Government sector's best interests.

Comment

The MOU reflects the latest legal advice provided to State Government for Local Government to formally join the Scheme in order to receive legal, social and financial coverage that the State has offered should a Redress claim be made against a Local Government. If Local Governments individually decide not to participate in the Scheme as provided by the MOU, they will not be included in the State's amended declaration, nor afforded the financial and administrative coverage.

Clause 4 of the MOU further states that Local Government will need to inform the State individually of their intention to join. Should a Local Government intend to join the Scheme as outlined in the MOU it will need to pass a formal recommendation by Ordinary Council Meeting and inform State Government of the resolution. A Template Council Report for Local Government has been prepared and will be distributed to all Local Governments should the WALGA State Council endorse the MOU.

State Government acknowledged at a recent National Redress interjurisdictional Minister's meeting that Local Government:

1. Would need to have joined or given written confirmation through formal Council resolution that they intended to join by 30 June 2020
2. An institution that does not give a clear and written statement of intention to join by 30 June 2020 will be publicly identified in accordance with the Scheme's legislation and will be subject to sanctions determined by relevant jurisdictions on a case by case basis
3. Will have to 31 December 2020 to join the Scheme

Further to these instructions, WALGA has received advice from State Government that where the Scheme receives an application that names a Local Government that has not previously joined the Scheme (whether before or after the current deadline), the Local Government will be given six months from the first contact by the Scheme to join the Scheme.

FLYING MINUTE OUTCOMES

Total Invited to Survey: 24

Total Finished Survey: 15

That the Memorandum of Understanding relating to the participation by the Local Governments of Western Australia in the National Redress Scheme for Institutional Child Sexual Abuse be endorsed.

Signature Page

First Name	Last Name	Completed Date
Phillip	Blight	Not Completed
Jenna	Ledgerwood	17/04/2020 at 8:28
Paul	Kelly	Not Completed
Malcolm	Cullen	Not Completed
Cheryl	Cowell	Not Completed
Stephen	Strange	17/04/2020 at 12:37
Chris	Mitchell JP	Completed
Les	Price	15/04/2020 at 22:56
Russ	Fishwick JP	16/04/2020 at 9:09
Karen	Chappel	17/04/2020 at 12:51
Michelle	Rich	Not Completed
Julie	Brown	16/04/2020 at 9:02
Doug	Thompson	17/04/2020 at 11:38
Carol	Adams OAM	17/04/2020 at 11:26
Logan	Howlett JP	17/04/2020 at 10:56
Tony	Dean	14/04/2020 at 17:59
Ken	Seymour	Not Completed
Peter	Long	17/04/2020 at 10:50
Ronnie	Fleay	16/04/2020 at 16:59
Catherine	Ehrhardt	Not Completed
Cate	McCullough	17/04/2020 at 10:06
Mark	Irwin	15/04/2020 at 11:11
Ruth	Butterfield	Not Completed

RESPONSES

Created: 14/04/2020 at 15:21 Results Exported: 17/04/2020 at 5:34

(15) Endorse Recommendation

Jenna Ledgerwood (on: 17/04/2020 at 8:28), Stephen Strange (on: 17/04/2020 at 12:37), Les Price (on: 15/04/2020 at 22:56), Russ Fishwick JP (on: 16/04/2020 at 9:09), Karen Chappel (on: 17/04/2020 at 12:51), Julie Brown (on: 16/04/2020 at 9:02), Doug Thompson (on: 17/04/2020 at 11:38), Carol Adams OAM (on: 17/04/2020 at 11:26), Logan Howlett JP (on: 17/04/2020 at 10:56), Tony Dean (on: 14/04/2020 at 17:59), Peter Long (on: 17/04/2020 at 10:50), Ronnie Fleay (on: 16/04/2020 at 16:59), Cate McCullough (on: 17/04/2020 at 10:06), Mark Irwin (on: 15/04/2020 at 11:11) Cr Chris Mitchell.

(0) Endorse Recommendation subject to comment below

(0) Oppose Recommendation

MEMORANDUM OF UNDERSTANDING

between

The State of Western Australia

and

**The WA Local Government Association
on behalf of the Local Governments of Western Australia**

for

The participation by the Local Governments of Western Australia in
the National Redress Scheme for Institutional Child Sexual Abuse

TABLE OF CONTENTS

1.	DEFINITIONS	4
2.	DURATION OF THE MOU	5
3.	AUTHORISED REPRESENTATIVES.....	5
4.	PARTICIPATION IN THE NATIONAL REDRESS SCHEME	6
5.	ROLE OF THE REDRESS COORDINATION UNIT	6
6.	DIVISION OF COSTS OF PARTICIPATION IN THE NATIONAL REDRESS SCHEME...	6
7.	COMPLIANCE WITH OBLIGATIONS	7
8.	DISPUTE RESOLUTION.....	7
9.	VARIATION	7
10.	NOT BINDING	8
	SCHEDULE 1.....	9
	SIGNATURES.....	10

DATE:

PARTIES

The State of Western Australia (the State)

and

The WA Local Government Association representing all local governments of Western Australia (WALGA)

(Parties)

BACKGROUND

- A The *National Redress Scheme for Institutional Child Sexual Abuse 2018* (Cth) (the Act) established the National Redress Scheme for Institutional Child Sexual Abuse (the National Redress Scheme) whereby victims of child sexual abuse may seek among other things a redress payment and a Direct Personal Response (DPR) from the participating institution responsible for the abuse.
- B WALGA is the peak industry body for the local government sector and advocates on behalf of local governments in Western Australia.
- C WALGA has been representing the local governments of WA in negotiations with the State as to how local governments may participate in the National Redress Scheme.
- D WALGA endorses the State's decision to include all local governments under the State's umbrella in the National Redress Scheme on the basis that the State provides financial assistance to the local governments.
- E WALGA continues to promote awareness of the National Redress Scheme and notes that local governments may wish to join the National Redress Scheme to demonstrate a commitment to the victims of institutional child sexual abuse.
- F The State currently participates in the National Redress Scheme as a "participating State institution" pursuant to section 110 of the Act (Participating State Institution).
- G In order to become a Participating State Institution, section 110 of the Act requires an institution to be a "State institution" as defined in section 111; and a declaration to be in force under section 115(2) of the Act (the State Institution Declaration).
- H The State Institution Declaration currently covers "entities specified in column 2 of Schedule 1 to the *Public Sector Management Act 1994* (WA)" with express exclusion of specific organisations. Item 15 of column 2 of Schedule 1 describes WA local governments. All local governments are currently expressly excluded from the State Institution Declaration.
- I The State recently decided to allow WA local governments to participate in the National Redress Scheme as Participating State Institutions.
- J As set out in this MOU, the State agrees to amend the State Institution Declaration so that local governments can become Participating State Institutions.

- K Upon becoming a Participating State Institution, each local government must comply with the obligations imposed under the National Redress Scheme, in particular, the need to strictly protect the confidentiality of information related to the National Redress Scheme. These obligations are referred to in more detail in clause 7 of this MOU.
- L In negotiations between the State and WALGA, in order to encourage the participation of local governments in the National Redress Scheme, the State has agreed to provide financial assistance as set out in clause 6 of this MOU.
- M The Parties wish to enter into this MOU to record the manner in which WA local governments will participate in the National Redress Scheme, including compliance with obligations imposed under the Act, and the assistance the State of Western Australia will provide to enable that participation.

1. DEFINITIONS

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

Counselling and Psychological Component means:

- (a) the counselling and psychological services payment; or
- (b) access to counselling and psychological services under the National Redress Scheme,

provided pursuant to section 51 of the Act.

DPR means a direct personal response under section 54 of the Act and includes an apology, an acknowledgement of the impact of abuse, an assurance to take steps to prevent further abuse occurring, and an opportunity for a meeting with a senior official.

MOU means this Memorandum of Understanding.

National Redress Scheme means the National Redress Scheme for Institutional Child Sexual Abuse established under the Act.

Participating State Institution means an institution participating in the National Redress Scheme pursuant to section 110 of the Act.

Protected Information means, pursuant to section 92 of the Act:

- (a) information about a person or an institution that:
 - (i) was provided to, or obtained by, an officer of the National Redress Scheme for the purposes of the National Redress Scheme; and
 - (ii) is or was held in the records of the Commonwealth Department administering the Act or the Commonwealth Human Services Department; or
- (b) information to the effect that there is no information about a person, or an institution held in the records of a Department referred to in subparagraph (a)(ii).

RCU means the Redress Coordination Unit of the Office of the Commissioner for Victims of Crime.

Redress Monetary Payment means a payment payable under section 48 or 60 of the Act.

RFI means a request for information made by the Commonwealth Operator of the National Redress Scheme pursuant to section 25 of the Act.

State Institution Declaration means a declaration in force under section 115(2) of the Act where the State has agreed to an institution participating in the National Redress Scheme as a Participating State Institution.

The State means the State of Western Australia.

WALGA means the WA Local Government Association, representing all local governments of Western Australia.

2. DURATION OF THE MOU

This MOU commences on the date on which the last party signed the MOU and will remain in effect until such time as:

- (a) a new MOU is signed;
- (b) the MOU is terminated by mutual arrangement at any time; or
- (c) the MOU is terminated by either Party by notice given in writing to the other Party.

3. AUTHORISED REPRESENTATIVES

- (a) The Parties agree to appoint Authorised Representatives who will be designated as the first point of contact and will be responsible for the administration of this MOU.
- (b) The Authorised Representative will be the person fulfilling the duties of the following positions:

The State	Director Strategic Coordination and Delivery, Planning and Service Delivery, Department of Local Government, Sport and Cultural Industries
WALGA	Executive Manager Strategy Policy and Planning, WALGA

- (c) All notices or requests issued pursuant to this MOU shall be in writing and forwarded by personal delivery, post, facsimile or email, in accordance with the details provided at Schedule 1 of this MOU and be deemed received:
 - (i) if delivered by hand, then upon delivery;
 - (ii) if mailed, then 5 days after mailing;
 - (iii) if sent by facsimile, then on receipt by the sender of a confirmation report; and

- (iv) if emailed, then on receipt by the sender of a confirmation report.
- (d) The Parties agree to maintain updated contact details for the Authorised Representative. The contact details are contained in Schedule 1.

4. PARTICIPATION IN THE NATIONAL REDRESS SCHEME

- (a) Each local government that chooses to participate in the National Redress Scheme as a Participating State Institution in accordance with this MOU must inform the State in writing by 31 May 2020 of the decision of that local government to so participate, unless this date is otherwise extended by the State
- (b) The State will amend the State Institution Declaration to include as Participating State Institutions all local governments who formally decide to participate in the National Redress Scheme in accordance with this MOU.

5. ROLE OF THE REDRESS COORDINATION UNIT

To assist local governments to comply with the Act, the RCU will:

- (a) coordinate all RFIs in relation to local governments, including requesting, collating and sending any relevant information located by the local governments to the Commonwealth Operator of the National Redress Scheme; and
- (b) on every occasion facilitate the DPR between a suitable senior executive of the responsible local government and the person requesting the DPR, where a DPR from a local government has been requested pursuant to section 42 of the Act.

6. DIVISION OF COSTS OF PARTICIPATION IN THE NATIONAL REDRESS SCHEME

Upon the local governments becoming Participating State Institutions,

- (a) the State will, on behalf of a local government:
 - (i) reimburse the Commonwealth the amount of:
 - (A) any Redress Monetary Payments; and
 - (B) any Counselling and Psychological Component, for which that local government is the responsible institution.
 - (i) pay the administrative costs incurred by the RCU in coordinating all RFIs relating to claims against local governments; and
 - (ii) pay the costs relating to the delivery of a DPR not covered by the local government's contribution in paragraph 6(b)(i) below.

- (b) the local governments will:
 - (i) where a DPR is to be given by the local government, pay to the State:
 - (A) a standard service fee of three thousand dollars (\$3000.00) towards the costs associated with the facilitation of the DPR; and
 - (B) any travel, accommodation and associated costs related to the facilitation and receipt of the DPR, for the RCU, the person receiving the DPR and a support person (if required).
 - (C) All costs associated with organising and arranging the DPR, including catering and venue hire.
 - (ii) pay their own staff, administrative, and all associated costs incurred in undertaking the necessary searches of records for relevant information and in complying with confidentiality and record keeping obligations and timeframes.

7. COMPLIANCE WITH OBLIGATIONS

The local governments are responsible for complying with all their obligations under the Act, as well as complying with their obligations under the *State Records Act 2000* (WA) in keeping their own records. These obligations importantly include:

- (a) ensuring the confidentiality of Protected Information in accordance with Division 2 of Part 4-3 of the Act;
- (b) meeting the short timeframes for responding to RFIs set out in section 25 of the Act;
- (c) keeping records secure and confidential in accordance with the *State Records Act 2000*.

8. DISPUTE RESOLUTION

- (a) The Parties are committed to effective communication and decision making in order to achieve the arrangement set out in this MOU as efficiently as possible.
- (b) The Parties agree to settle any differences or disputes that may arise in relation to this MOU by consultation between the Parties' respective Authorised Representatives at first instance. If further consultation is required to assist decision making, or settle any differences arising out of this MOU, this is to be referred to the Director General of the Department for Local Government, Sport and Cultural Industries, or a nominated delegate, and the WALGA Chief Executive Officer.

9. VARIATION

This MOU shall not be altered varied or modified in any respect except by agreement in writing.

10. NOT BINDING

The parties acknowledge and agree that this MOU is not intended to and does not create legally binding relations between the parties and is non justiciable. This clause applies despite any other express or implied provision to the contrary.

SCHEDULE 1

The State	WALGA
<p>Gordon MacMile Director Strategic Coordination and Delivery, Planning and Service Delivery, Department of Local Government, Sport and Cultural Industries 246 Vincent Street Leederville WA 6007</p> <p>or</p> <p>PO Box 8349 Perth Business Centre WA 6849</p> <p>Telephone:(08) 9492 9752</p> <p>Email: Gordon.MacMile@dlgsc.wa.gov.au</p>	<p>Mark Batty Executive Manager Strategy Policy and Planning, WALGA ONE70, Level 1, 170 Railway Parade West Leederville WA 6007</p> <p>or</p> <p>PO Box 1544 West Perth WA 6872</p> <p>Telephone:(08) 9213 2000 Facsimile: (08) 9213 2077</p> <p>Email: mbatty@walga.asn.au</p>

SIGNATURES

In the spirit of cooperation in which this MOU has been entered, the following signatories on behalf of their respective organisations accept the terms and conditions stated in this MOU.

SIGNED for and
on behalf of the

**STATE OF WESTERN
AUSTRALIA**

DIRECTOR GENERAL

**DEPARTMENT OF LOCAL GOVERNMENT, SPORT
AND CULTURAL INDUSTRIES**

Date:.....

SIGNED for and
on behalf of

WALGA

WALGA REPRESENTATIVE

Date:.....