

1. Summary

Life Without Barriers (LWB) is an experienced and major out-of-home care and disability service provider across all Australian jurisdictions and is committed to improving life outcomes for children and young people and to supporting people with disability.

LWB is a participating institution under the Commonwealth Government's National Redress Scheme (the Scheme) established following the recommendations of the Royal Commission into Institutional Responses into Child Sexual Abuse.

At present, redress applications made by an LWB client outside the Scheme are determined on a case-by-case basis. In most of these cases, the LWB Office of Special Counsel (OSC) considers the matter and reviews client documentation, complaints and other available evidence before recommending the form of redress that ought to be given to the client in an attempt to acknowledge and respond to any harm that has occurred. This document provides a holistic, client-focused, compassionate and just policy on redress applications that are made outside the Scheme. It is applicable to all LWB sectors and programs.

Other LWB policy guidelines related to redress applications are the Redress Applications Under the National Scheme Policy Guideline and the Direct Personal Response Policy Guideline and Procedure.

2. The meaning of terms and words used in this document:

Applicant: A person who has made an application for redress from LWB. This term, or the term 'survivor', is the preferred terminology, rather than 'victim' or 'claimant'.

Balance of probabilities: The civil standard of proof, which is applied in civil litigation. Proof of a fact on the balance of probabilities, requires a determination of whether, it is 'more probable than not' that the facts occurred.

Child: A person under the age of 18 years.

Non-sexual abuse: Includes physical abuse, psychological abuse and neglect.

Reasonable likelihood: The standard of proof applied within LWB when making decisions about an Applicant's eligibility for redress from the organisation. A person is eligible for redress if the chance of the harm, abuse or damage caused to the person having occurred and LWB being responsible for such abuse is real, is not fanciful or remote and is more than merely plausible.

Redress: Redress means to acknowledge and respond to any harm that has occurred, or give payment for something wrong that has been done.

Survivor: A person who has suffered sexual abuse that is within the scope of the Scheme. This term, or the term 'applicant', is the preferred terminology, rather than 'victim' or 'claimant'.

3. Redress outside the Scheme

LWB adopts and supports the application of the objectives and principles in the National Redress Scheme Act in its approach to redress, both under and outside the Scheme. Redress should also be provided by LWB in accordance with our organisational values:



We build relationships

We are people people, relationships come first. Listening helps us understand.



We are imaginative

We are imaginative in our thinking and open to new ideas and ways of doing things.



We are respectful

We are respectful and caring in our dealings. We see the big picture but never lose sight of the detail. We welcome diversity.



We are responsive

We are responsive to needs, determined to get things done and do them well.



We are courageous

We are courageous in our convictions. We stand up for what we believe in.

Redress should be able to offer an Applicant a response that is not solely focused on compensation. Whilst a monetary payment represents a tangible expression of regret for the damage caused, it can in no way make up for the trauma experienced. Redress is about acknowledging the harm caused and supporting those who have been impacted to assist in finding healing.

4. Assessment of redress applications

Consistent with the National Redress Scheme, LWB will use the evidentiary standard of proof of “reasonable likelihood” when assessing a claim for redress outside the Scheme.

Reasonable likelihood simply means that the chance of the harm, abuse or damage caused to the Applicant having occurred and LWB being responsible for such abuse is not far-fetched or fanciful. In determining redress, LWB will not make the Applicant prove things that LWB knows to be true. It is vital to examine LWB records first to see whether the Applicant’s claims have any merit rather than burden an Applicant for that information, which might be re-traumatising.

5. LWB management of redress applications outside the Scheme

Over-arching principles

The LWB approach to making decisions about redress applications must be characterised by fairness, equity and consistency, underpinned by accountability and a commitment to ‘do no further harm’ to survivors of abuse.

The guiding principle of any redress scheme focuses on taking responsibility and healing. As such, a redress claim is different to legal processes that require an applicant to present a case at trial (exposing them to cross examination and medico-legal appointments). A conventional trial is often a highly re-traumatising process and contrary to the fundamental principles of redress, which should be healing in nature.

LWB’s approach to redress applications considers the specific vulnerabilities of applicants, including intellectual or other disabilities, limited education history and low levels of literacy.

Making a redress application

Applications for redress made directly to LWB (outside the Scheme) from current or previous LWB clients must be directed to the LWB Office of Special Counsel (OSC). The OSC (in consultation with other relevant parts of LWB, where appropriate) will consider and determine these applications.

Unless there are exceptional circumstances, the OSC will suggest the applicant obtains legal advice about making the application and before accepting a payment for redress, and will make appropriate referrals to the State Legal Aid Office, a Community Legal Centre, Intellectual Disability Rights Service or a Legal Advocacy Service. As far as possible these referrals will be made to lawyers with experience and expertise in working with people with a disability and other vulnerable cohorts.

Applications do not need to take any particular form but must be in writing and clearly set out the basis of the application. Applications to LWB for redress must be a less complex alternative to seeking legal action and will not be viewed as bureaucratic.

Applications for redress may result the applicant receiving from LWB one, some, or all, of the following:

- monetary payment
- access to counselling and psychological services
- personal response by way of apology and other symbolic gesture.

Monetary payment

In redress theory, a monetary payment is not mere compensation, as it also provides a tangible recognition of the impact of the harm upon an applicant. A payment amount will depend on the severity and impact of the abuse. A payment should be swift, just and fair.

Whether or not the payment will be subject to a deed of release will depend on the individual facts of a matter, and whether the applicant is legally represented or not.

Access to counselling and psychological services

Counselling and psychological care should be considered and provided by accredited practitioners and, where relevant, occur together with other forms or sources of treatment. In some instances, counselling and psychological care may also be provided to family members of applicants where this would support the applicant's treatment.

Access to counselling and psychological services will generally be capped at a certain amount or the number of sessions attended by an applicant.

Personal response by way of apology or other symbolic gesture

A personal response generally involves an applicant re-engaging with LWB through the Chief Executive or another senior representative. This response will typically include an apology, an opportunity to meet with senior LWB representatives and an acknowledgement of the abuse and its impact. We will also offer assurances of steps taken or to be taken to protect against the same conduct occurring again. Personal responses will not be mandatory and may be rejected at the discretion of the applicant.

Exclusion of applicants

LWB management of redress applications will not automatically exclude applicants who themselves have been subjected to abuse, particularly in cases involving sexual abuse. We note that there is no simple picture of a "good" or "deserving" survivor of sexual abuse and recognises that no such distinction should be made between survivors.

Time limits for redress

Unless there are exceptional circumstances, there will be no fixed "closing" date for applications for redress so applications may be lodged at any point in time.

Final approval

Final approval for a redress application lies with the LWB Chief Executive following a pre-approval process by the:

- State program lead
- Special Counsel
- relevant programmatic Executive Director
- Executive Director of Group Risk, Performance and Impact
- Executive Director of Corporate Services and Finance.

6. Related policy, legislation and key documents

Organisational

- LWB Privacy and Confidentiality Policy Guideline
- LWB Our Values
- LWB Direct Personal Response Policy Guideline and Procedure

External

- *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*
- *National Redress Scheme for Institutional Child Sexual Abuse Rules 2018*