

## 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.

This document outlines LWB's overarching approach as a participating institution under the National Redress Scheme ("the Scheme"), which provides support to people who have experienced institutional child sexual abuse. It is applicable to all LWB sectors and programs.

This document should be read in conjunction with the *National Redress Scheme Overview for Non-Government Institutions* available on the [Scheme's website](#) and the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* ('NRS Act') (available on the [Federal Register of Legislation](#)).

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

**Acceptance document:** A document, in approved form, that is given to the applicant by the Scheme within the acceptance period (determined by the Scheme, and at least six months from the date of offer). The document states that the person accepts the offer of redress and permanently releases the named institutions and officials from all civil liability for the abuse that is within the scope of the Scheme. The document also specifies the types of redress that the person wishes to receive, including which participating institutions the person wishes to receive a Direct Personal Response from.

**Applicant:** A person who has made an application for redress under the Scheme. This term, or the term 'survivor', is the preferred terminology, rather than 'victim' or 'claimant'. For other non-Scheme redress matters, the term 'Applicant' should also be adopted.

**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.

**Child sexual abuse:** Under the Scheme, any act against a child which exposes the child to, or involves the child in, sexual processes beyond the child's understanding or contrary to accepted community standards. Child sexual abuse may include but is not limited to:

- Sexual touching of any part of the body, either clothed or unclothed
- Preparing or encouraging a child to engage in sexual activity
- Sex of any kind with a child
- Persuading or forcing a child to engage in sexual activity
- Sexual acts done by an adult of any gender, to a child of any gender.

**Institution:** Any body, entity, group of persons or organisation (incorporated or not). This term does not include a family or an individual.

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

**Participating non-government institution:** An institution that is or was a non-government institution and there is a Ministerial declaration in force that the institution is/was a participating institution.

**Reasonable likelihood:** The standard of proof applied by Independent Decision Makers making decisions about eligibility under the Scheme. 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. Redress under the Scheme, is for the sexual abuse, and related non-sexual abuse, of the person that is within the scope of the Scheme. It consists of three components:

- (a) A redress payment of up to \$150,000
- (b) A counselling and psychological component. Depending on where the person lives, this may be access to counselling and psychological services provided under the Scheme or a payment (of up to \$5,000) to enable the person to access these services outside the Scheme
- (c) A Direct Personal Response from each of the responsible institutions.

**Responsible institution:** Following an application for redress under the Scheme, if there has been a determination that an institution is responsible for the abuse, that institution is known as a responsible institution. An institution can be held primarily or equally (along with other institution/s) responsible.

An institution is *primarily responsible* for abuse of a person if it is solely or primarily responsible for the abuser having contact with the person. An institution is *equally responsible* for abuse of a person if more than one institutions are approximately equally responsible for the abuser having contact with the person, and no institution is primarily responsible for the abuse of the person.

Relevant circumstances for determining whether an institution is responsible for abuse include, but are not limited to:

- Whether the institution was:
  - responsible for the day-to-day care or custody of the person when the abuse occurred,
  - the legal guardian of the person when the abuse occurred,
  - responsible for placing the person into the institution in which the abuse occurred,
- Whether the abuser was an official of the institution when the abuse occurred,
- Whether the abuse occurred on the premises of the institution, where activities of the institution took place, or in connection with the activities of the institution.

**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. Brief background to the Scheme**

In November 2012, the Australian Government announced the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse ('the Royal Commission'). In December 2017, the Royal Commission's final report contained 409 recommendations. These recommendations proposed reforms to policies, laws, and administrative practices to focus on:

- preventing abuse or, at the least, identifying it as early as possible;
- improving the way perpetrators are investigated, prosecuted and sentenced; and
- improving survivors' access to justice and ongoing support.

In 2015, the Royal Commission released the Redress and Civil Litigation report. A key recommendation of this report was to establish a national redress scheme to provide financial compensation, psychological support and an institutional response for survivors of abuse.

On 4 May 2018, the Council of Australian Governments (COAG) published the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse, the foundation for Commonwealth, State and Territory Governments to collaboratively implement the National Redress Scheme. On 1 July 2018, the NRS Act came into force and the Scheme became operational. The Scheme is set to run for a period of ten years. All Australian governments (Commonwealth, states and territories) have joined the Scheme.

In June 2020, LWB was declared as a participating institution in the Scheme.

### **4. Objectives and principles**

The following objectives are set out in the NRS Act:

- To recognise and alleviate the impact of past institutional child sexual abuse and related abuse, and
- To provide justice for the survivors of that abuse.

The guiding principles of the Scheme include:

- Redress under the Scheme should be survivor focused.
- Redress should be assessed, offered and provided with appropriate regard to:
  - What is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular
  - The cultural needs of survivors
  - The needs of particularly vulnerable survivors.
- Redress should be assessed, offered and provided:
  - to avoid, as far as possible, further harming or traumatising the survivor
  - in a way that protects the integrity of the Scheme.

When dealing with redress matters, the focus should be on respect, engagement, information and support for the person who has been impacted (the Applicant) to find healing and closure, as far as possible from their experiences.

## **5. Main components of the Scheme (for applicants)**

A person is eligible for redress under the Scheme if:<sup>1</sup>

- The person was sexually abused (noting that redress is for sexual abuse, and related non-sexual abuse), and
- The sexual abuse is within the scope of the Scheme. That is the abuse:
  - Occurred when the person was a child, and
  - It occurred inside a participating Australian state, Australian territory or outside Australia, and
  - It occurred before 1 July 2018.
- The maximum amount of redress payment that could be payable would be more than nil (as worked out under the assessment framework, based on the kind of sexual abuse), and
- One or more participating Institutions are responsible for the abuse, and
- The person is an Australian citizen or a permanent resident (within the meaning of the *Australian Citizenship Act 2007*) at the time the person applies for redress.

The Scheme contains three main components providing Redress to eligible applicants. An eligible applicant may accept one or more of the following components at their discretion:

- Access to counselling services
- A monetary payment of up to \$150,000
- A direct personal response from the institution(s) responsible for the abuse.

### **Access to Counselling Services and Psychological Services**

In addition to an eligible applicant's existing entitlements under Medicare or current redress programs within an institution, the Scheme offers referral to state-based counselling services or a monetary payment of up to \$5,000, depending on the type of abuse the person suffered. The process for accessing counselling and psychological treatment varies across Australian states and territories.

Applicants living in ACT, NSW, VIC, NT and TAS will receive state-based services via referral. National Service Standards govern the delivery of these services in line with the Redress Inter-Government Agreement. These standards provide applicants with a minimum of 20 hours of counselling per applicant regardless of value, access to services in rural, remote and regional areas, culturally appropriate treatment, a range of personally tailored delivery options and the availability of sessions over the lifetime of the applicant.

Applicants living in WA and SA will receive a tiered lump sum payment of \$1,250, \$2,500 or \$5,000 to access private counselling services. The amount received will depend on the severity of abuse they suffered.

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<sup>1</sup> Redress Act, s 13.

## 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.

The amount of redress payment for a person is worked out using the set amounts in the following table (cl 5, *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework*):

Amount of redress payment						
	Kind of sexual abuse of the person	Recognition of sexual abuse	Recognition of impact of sexual abuse	Recognition of related non-sexual abuse	Recognition person was institutionally vulnerable	Recognition of extreme circumstances of sexual abuse
1	Penetrative abuse	\$70,000	\$20,000	\$5,000	\$5,000	\$50,000
2	Contact abuse	\$30,000	\$10,000	\$5,000	\$5,000	Nil
3	Exposure abuse	\$5,000	\$5,000	\$5,000	\$5,000	Nil

These payments are determined by the Scheme's Assessment Framework and are non-taxable and exempt from Commonwealth debt recovery, income tests and creditors pending bankruptcy.

Once an eligible person accepts an offer of redress, the responsible institutions(s), its officials (other than an official who is/was an abuser of the person) and its associates will be released from all civil liability for the abuse of the person that is within the scope of the Scheme.

Where an eligible applicant has been sexually abused separately in more than one institution, the total redress payment will be calculated by applying the Assessment Framework to the whole application. Each instance of abuse will further be grouped into sets of abuse and assessed against the Assessment Framework to allow liability to be apportioned across the institutions responsible.

It is important to note that redress payments will generally be altered to reflect prior payments made to an applicant by or on behalf of a participating institution. Such prior payments are defined as payments made by the institution, or on behalf of the institution, in recognition of harm caused by abuse within the scope of the Scheme, or in recognition of the abuse itself. A payment is not relevant where it is not in recognition of the abuse or harm caused, or where it was for non-sexual abuse that was unrelated to sexual abuse. Relevant prior payments will be adjusted for inflation on a flat rate of 1.9% per whole year after the payment was made. Therefore, if LWB makes a redress payment to a person, prior to an application under the Scheme, this will be considered by the Scheme in determining the amount of redress payment.

## Direct Personal Response

A direct personal response (DPR) involves a participating institution acknowledging the harm suffered by an eligible applicant, apologizing for the experiences that applicant has endured and the ongoing impacts, and explaining how the institution has, or is working to, become a child safe environment.

Participating in a DPR is an opportunity for survivors who have experienced institutional child sexual abuse to share their experience of abuse, to the extent they wish to do so, with a representative (senior official) of the institution and to have the representative hear, recognise and acknowledge their story. The institution's representative may apologise on behalf of the institution and explain the steps the institution has taken or will take to prevent abuse happening again in the future. A DPR can be given through a face-to-face meeting between a survivor and a representative of the institution, a written letter or other written engagement with the survivor, or any other method preferred by the survivor and agreed to by the institution.

A DPR is guided by the following principles under the NRS Act:

1. The needs of applicants are central to the process
2. The safety of participants is of paramount concern
3. The DPR will be delivered in line with a trauma-informed practice
4. Participation is voluntary
5. The abuse, and its impact, is not in dispute
6. Confidentiality will be respected
7. Institutions have a duty of care
8. Institutions will take all reasonable steps to deliver a DPR to applicants should one be requested.

Upon opting in to join the Scheme, participating institutions will declare their agreement to meet DPR obligations under the 'Agreement to Participate'. From there, institutions are required to make a DPR available to applicants, take all reasonable steps to arrange a DPR for applicants, request feedback from applicants who have received a DPR from the institution, create and maintain a process for managing DPR complaints and report annually to the Scheme on the institution's DPRs.

For further information, see [LWB National Redress Scheme Direct Personal Response Policy Guideline and Procedure](#).

## 6. LWB management of redress applications under the Scheme

### LWB approach to redress applications under the Scheme

We accept all recommendations made by the Royal Commission about redress matters under the Scheme. As such, we aim to recognise the experiences of survivors, provide all information to eligible applicants in a timely manner and uphold our responsibilities under both the Model Litigant Policy for Civil Litigation and the Guiding Principles for Civil Claims for Child Abuse. We are committed to behaving ethically, fairly and honestly to model best practice in dealing with redress matters. We are also committed to ensuring that the

redress process is less traumatic for survivors of abuse by using a compassionate and consistent approach in dealing with redress claims.

## Request for Information

Under the NRS Act, the Operator of the Scheme must request information from a participating institution where there are reasonable grounds that the institution may be responsible for the abuse. LWB will be issued with a Request for Information ('RFI') through the Scheme's Institutional Portal (PRODA), a platform that allows the secure exchange of information between the Scheme and participating institutions.

Upon receiving an RFI, LWB will be provided with relevant information to progress the RFI. LWB must handle any information provided sensitively as it is considered 'protected information' under the Scheme. This information is necessary to allow us to gather further information and provide it to the Scheme.

LWB may not share protected information related to an RFI (such as applicants' names) with other institutions. LWB may, however, use information received in an RFI to make a mandatory child safety and wellbeing report to the relevant authorities and such reports may mention the applicants' names. LWB may also use information provided by an applicant to undertake disciplinary proceedings against LWB employees who are found to be abusers.

An RFI is comprised of 13 standard questions intended to help assess redress applications under the Scheme. There is no legal requirement for an institution to respond to an RFI, however LWB takes the approach that each RFI should be responded to.

For priority cases, LWB will be given up to four weeks to respond to the RFI. For all other cases LWB will be given up to eight weeks to respond. LWB may request an extension where records cannot be located, or where normal periods of interruption apply (such as holiday periods).

LWB uses a template RFI response form, which addresses standard questions, in addition to providing a supporting bundle of documents for each applicant. The standard questions are:

1. Do you accept the information provided by the applicant in their application about the alleged abuse?
2. Do you have any record of the applicant attending, or undertaking activities in connection with, your institution during the period alleged? If so, please provide details.
3. Do you have any records relating to the applicant's experience of alleged abuse at the institution? If so, what allegations were reported to you? How were the allegations reported to you, by whom and when? Are there any records of any witness/es to the alleged abuse? Please provide details. Have you conducted an investigation into the allegations? Please provide details.
4. Are there any records/details of relevant prior payments made to the applicant in relation to the alleged abuse?
5. Has there been a prior court judgment against your institution in favour of the applicant? Please provide details.

6. Does the applicant have a current common law or other claim for damages / compensation / redress with the institution that has not been resolved? If yes, please provide details.
7. Was your institution responsible for the day-to-day care or custody of the applicant when the alleged abuse occurred? Please provide details.
8. Was your institution the legal guardian of the applicant when the alleged abuse occurred? Please provide details.
9. Was your institution responsible for placing the applicant into the institution in which the alleged abuse occurred? Please provide details.
10. Can you confirm the alleged abuser(s) presence at the location of the abuse at, or around, the time of the alleged abuse? Please provide details; if there are multiple alleged abusers, please indicate the abuser you are referring to in the text box. Was the alleged abuser(s) an official of the institution when the alleged abuse occurred? Please provide details.
11. Did the alleged abuse occur either on the premises of your institution, where activities of your institution took place, or in connect with the activities of your institution? Please provide details.
12. Do you have any information of related complaints of abuse involving the same alleged abusers? Please provide details.
13. Do you have any further information that may be relevant to the applicant's application? Please provide details.

At times there may be a further RFI after the initial RFI is issued. A further RFI will have specific questions in relation to the additional information required.

### **Notification of outcome by the Scheme**

After responding to an RFI, LWB will be notified through the Institutional Portal whether the RFI has been withdrawn, is awaiting preliminary assessment or a determination has been made. A determination may be that an applicant is ineligible, or that the applicant has been offered redress. Any notifications of redress determinations will include a copy of the offer of Redress, including the reasons for the decision. LWB will be advised by the Scheme whether it is primarily or equally responsible for the abuse and liable to provide any redress to the survivor, as well as whether the survivor wishes to receive a DPR from LWB. The notice will further advise the date by which the applicant may apply for a review of the determination.

### **Direct Personal Response**

For further information about the LWB approach to DPRs, see LWB National Redress Scheme Direct Personal Response Policy Guideline and Procedure.



## **7. Related policy, legislation and key documents**

### Organisational

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

### External

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