



Our ref: 2023/61

Dr D.J. Honey MLA
Chair, Community Development and Justice Standing Committee
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005
lacdjsc@parliament.wa.gov.au

Dear Dr Honey

**DEPARTMENT OF COMMUNITIES SUBMISSION TO THE INQUIRY INTO
OPTIONS AVAILABLE TO SURVIVORS OF INSTITUTIONAL CHILD SEXUAL
ABUSE IN WESTERN AUSTRALIA WHO ARE SEEKING JUSTICE**

Thank you for the opportunity to provide a submission to the Inquiry into options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice (Inquiry).

The Royal Commission into Institutional Responses to Child Sexual Abuse made recommendations to address and alleviate the impact of past and future child sexual abuse in institutional contexts including ensuring justice for victims and redress. In response to these recommendations, the WA Government, on 1 July 2018, introduced the *Civil Liberty Legislation Amendment (Child Sexual Abuse Actions) Act 2018* (the Act), and has participated in the National Redress Scheme (the Scheme) since 2019.

The Department of Communities (Communities) recognises the importance of having pathways for survivors of child sexual abuse to seek justice and recognition of abuse suffered, and to have access to healing and support services.

Communities' role in justice and redress for victims/survivors of institutional child sexual abuse is twofold:

- supports victims to seek justice, and
- is a defendant in civil litigation claims brought against the State. The State Solicitor's Office acts on behalf of the State Government in all child sexual abuse claims.

Within this context, Communities' submission addresses several areas of the Terms of Reference and provides responses to the questions on instances of claims of child sexual abuse relating to Communities (refer to **Attachment 1**).

It is noted that there are areas of the Terms of Reference or questions that Communities is unable to respond to as they relate to the experience of victims, are the functions of the Australian Government, or relate to the operations and data collected by Department of Justice (Justice).

If you have any further queries, please contact the

[REDACTED]

Yours sincerely

[REDACTED]

Mike Rowe
Director General

28 July 2023



Community Development and Justice Standing Committee – Inquiry into options available to survivors of institutional child sexual abuse in Western Australia

Submission by the Department of Communities - July 2023

As a preface to the Department of Communities' (Communities) submission to the Inquiry into options available to survivors of institutional child sexual abuse in Western Australia (Inquiry) Terms of Reference and additional questions directed to Communities, an outline of the management of the National Redress Scheme (the Scheme) in Western Australia (WA) is provided along with Communities' role in the Scheme and civil claims.

Applications to the Scheme in WA are managed by the Redress Coordination Unit (RCU) which sits within the Office of the Commissioner for Victims of Crime (the Commissioner) in the Department of Justice (Justice). The RCU is a central coordination point for WA applicants, government departments and the National Redress Scheme. It provides information on counselling and psychological services available to survivors and manages Direct Personal Responses to those applicants that request one. As such, Communities notes that Justice has developed a submission to the Committee addressing Terms of Reference and additional questions related to the Scheme.

Outline of Communities role in the Scheme and civil claims

Communities established a National Redress Scheme Unit in January 2019 to respond to Requests for Information (RFIs) arising from the State Government's participation in the Scheme. Communities receives these from the Scheme via Justice's RCU. In liaison with RCU, Communities provides Direct Personal Responses to Scheme applicants who choose to receive a Direct Personal Response.

Communities Civil Claims Team receive and manage child abuse and neglect claims for compensation which involve Communities. Included are child sexual abuse claims that were previously statute barred prior to 1 July 2018 (insured and uninsured claims). All claims are managed in conjunction with the State Solicitor's Office and many involve the Insurance Commission of Western Australia (insured claims).

Response to Terms of Reference

1. The impact of the *Civil Liability Legislation Amendment Act (Child Sexual Abuse Actions) Act 2018* (the Act), including:

a. the experience of survivors who have used the civil litigation process;

Communities is unable to comment on survivors' experience of the civil litigation process as it would be inappropriate to comment on behalf of survivors.

b. the response of government and non-government institutions to civil claims brought by survivors;

Response of government – impact on Communities' resources:

Communities has dedicated additional resources to respond to Request for Information (RFI) and Freedom of Information (FOI) applications. Communities' National Redress Scheme Unit was allocated 7 FTE at its establishment (1x level 6, 5x level 4 and 1x level 3). Since the announcement of the WA Government's participation in the Scheme and changes to the Act in 2018, Communities has received over 4,200 FOI applications. This represents a significant increase from previous years. Potential applicants have been exercising their rights to request information through the FOI process in preparation for lodging their applications either through civil litigation process or through the Scheme. In this context, FOIs are typically received from individuals that plan to assess the information to make a decision on whether to apply to the Scheme or make a civil claim. This has placed additional pressure on resources. There is currently an approximate 6 month wait time for FOI applications.

Communities established a Civil Claims Team to respond to common law claims in a timely, fair, and compassionate manner. Claims are managed in conjunction with the State Solicitor's Office and in many cases the Insurance Commission of Western Australia and are managed based on 'Western Australia Government Whole of Government Guiding Principles for Responding to Civil Litigation Involving Child Sexual Abuse'. Communities also provides restorative justice consultation and apologies to assist in the healing process. Urgent initial psychological support services are available under the State Solicitor's Office guidelines.

c. the efficiency with which courts deal with civil claims;

This falls within the remit of Justice. Communities will not be providing a response.

d. State monitoring and reporting on the progress and impact of the Act.

This falls within the remit of Justice. Communities will not be providing a response.

2. The effectiveness of WA's support of the National Redress Scheme, including:

a. the experience of survivors who have accessed the Scheme;

Communities is unable to comment on survivors' experience accessing the Scheme as it would be inappropriate to comment on behalf of survivors.

b. the response of Government and non-government institutions to the Scheme.

Communities is not the suitable agency to respond to this. Justice is the lead agency in WA for the Scheme.

3. The resourcing and provision of services to support survivors in whichever path they take.

Communities' contracts 13 CSATS and two IHS across Western Australia. In 2023-24 the annual funding level for this portfolio increased to an estimated \$6.1 million after applying an ERO uplift and indexation on service provider contracts.

In addition to core/recurrent funding:

- \$2.7 million over three years (from 2022-2025) has been allocated to pilot two specialist intervention programs for children displaying Harmful Sexual Behaviours.
- \$1.46 million grant funding for a term of 12-months was allocated to the CSATS and IHS portfolio in March 2023, to trial new ways of working. This funding was provided through the National Partnership Agreement for Family, Domestic and Sexual Violence Responses 2021-2023.
- Kimberley Sexual Abuse Prevention and Support Service has been contracted to address a significant service gap for adult and child victims of child sexual abuse in the Kimberley.

Communities is continuing to work on implementation of the Royal Commission, which includes consideration of recommendations related to therapeutic support and services for children and adults who have experienced child sexual abuse.

Communities also established a National Redress Scheme Unit in January 2019 to respond to Requests for Information (RFIs) arising from the State Government's participation in the National Redress Scheme. The Scheme figures remain consistently high and well above those figures projected in 2018. The Scheme has advised that the number of RFIs is likely to remain high for the foreseeable future. The implementation of recommendations from the 'Second Year Review of the National Redress Scheme' are likely to further influence the number of RFIs received.¹ Communities receives approximately 70 per cent of all WA RFIs due to its predecessors having been predominately responsible for the care and placement of persons suffering historical sexual abuse in out-of-home care. Communities is currently meeting the legislated

¹ <https://www.nationalredress.gov.au/document/1386>

timeframes to respond to RFIs under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

In liaison with RCU, Communities is responsible for drafting Direct Personal Responses which are signed by the Director General of Communities. At the request of the applicant, a Direct Personal Response meeting is held between the applicant, a support person if the applicant chooses and an executive leader at Communities who has received training to provide a restorative meeting.

4. Other options to provide justice, resolution and/or compensation to survivors and their families, including lessons from other jurisdictions

Communities is not the suitable agency to respond to this.

Additional information: Impact on insurance for Out-of-Home Care and youth homelessness service providers

Due to an increase in both the number of physical and sexual abuse (PSA) claims and the quantum of claim settlements, a number of insurers notified service providers they would no longer offer PSA insurance cover for Out-of-Home Care (OOHC) claims, resulting in a national market failure of PSA insurance coverage. OOHC and youth homelessness providers advised the Communities that the withdrawal of PSA insurance cover may result in service providers no longer delivering services to vulnerable children and young people.

The State Government has committed to providing temporary indemnity arrangements until 30 June 2024 to OOHC and youth accommodation non-government organisations (NGOs) impacted by the market failure of PSA insurance. This has enabled continued critical service delivery to vulnerable children and young people in the WA community. Communities participates in an Inter-jurisdictional Working Group working towards a national solution, and consultations with key WA stakeholders including representatives on the Physical and Sexual Abuse Non-Government Advisory Group, to ensure the interests of NGO stakeholders are considered and the most suitable long-term solution for the WA context is developed.

Response to additional questions

Communities is unable to respond to questions 1a, 1b, 1c, 1d, 2, 3, 4 and 6 as this data is collected by other agencies. Justice collects data related to the Scheme and the State Solicitor's Office has data related to civil claims brought against the State. Communities is unable to respond to question 5 as this information is not routinely recorded on the Department's information system and is therefore not available.