



## Ordinary Council Meeting

### Attachments

**Tuesday, 28 April 2020 at 3.30pm**

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## Jean Kni2ht

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**From:** Keith Jones  
**Sent:** Tuesday, 17 March 2020 7:56 AM  
**To:** Jean Knight  
**Subject:** FW: Opportunities for Partnerships between BBBAC & Shire of Dalwallinu  
  
**Importance:** High

FYI and Council?

Regards

**Keith Jones**  
*Deputy Chief Executive Officer*

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F: (08) 96611097  
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Shire of  
**Dalwallinu**  
*Pim: & of wheat and wattle*

58 Johnston Street, PO Box 141  
DALWALLINU WA 6609

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**From:** Carol Dowling [mailto:[carol.dowling@curtin.edu.au](mailto:carol.dowling@curtin.edu.au)]  
**Sent:** Monday, 16 March 2020 10:15 PM  
**To:** Keith Jones <[dceo@dalwallinu.wa.gov.au](mailto:dceo@dalwallinu.wa.gov.au)>  
**Cc:** Ashley Bell <[ninghanstation2@bigpond.com](mailto:ninghanstation2@bigpond.com)>; Beverley Slater <[Badimia@outlook.com](mailto:Badimia@outlook.com)>; crbynder <[crbynder@gmail.com](mailto:crbynder@gmail.com)> <[crbynder@gmail.com](mailto:crbynder@gmail.com)>; Darryl Fogarty <[sfo44332@bigpond.net.au](mailto:sfo44332@bigpond.net.au)>; Gloria Fogarty <[glorfogarty@gmail.com](mailto:glorfogarty@gmail.com)>; Olivia Slater <[slater.olivia@gmail.com](mailto:slater.olivia@gmail.com)>  
**Subject:** Opportunities for Partnerships between BBBAC & Shire of Dalwallinu  
**Importance:** High

Hi Keith

Thank you for meeting us last Thursday with your colleagues. It was an incredibly positive meeting and I would like to extend to you this email as a formal approach to the Shire of Dalwallinu from our organisation.

As Chair of the Badimia Bandi Barna Aboriginal Corporation (BBBAC), the peak representative body for all Badimia people, I would like to outline some of the concepts and ideas we discussed together.

### ***What we offer as a corporation:***

- **Badimia cultural input and guidance:** this includes cultural information for tourism, welcome to country, youth justice reinvestment, artistic support for town murals and specific knowledge about Dalwallinu's cultural significance

- **Ranger Program:** Our corporation will be employing two Rangers shortly with the strong possibility of employing more Rangers throughout Badimia country. We envision these Rangers can offer specific support with conservation and land management matters specifically informed by Badimia cultural practices and knowledge. These Rangers will be formally trained through TAFE.
- **Employment for local Badimia people:** Our corporation has been offered preferred tender status by mine villages for onsite employment in landscaping, maintenance, catering, laundry, administration and retail. For example, Northern Rise have approached BBBAC to provide support in businesses we run for this specific purpose.

*What we request from the Shire:*

- **A temporary office space:** Currently BBBAC has no base and we believe that Dalwallinu would be ideal to establish an office.
- **Assistance in sourcing funding for a CEO:** BBBAC is made up of a board of volunteer elders and professional people who are all Badimia people. As our organisation has been operating for nearly two years, our board believes it is time to employ a CEO to manage a growing number of projects and programs. We envision the CEO would also assist in sources future funding for businesses and employment programs for Badimia people.
- **Work contracts for Badimia people:** Following our discussion, road rehabilitation and carbon farming were discussed as a potential project for employment of local Badimia people. We also hope there would be other projects our organisation could manage for the Shire in a fee for service basis.

BBBAC looks forward to hearing from the Shire of Dalwallinu council about the above items and looks forward to forging a strong partnership going into the future.

Thank you for this opportunity to correspond with you and look forward to what the council thinks.

Kind regards

**Dr Carol Dowling**  
 ADA(AIS), BA(AIS), MA(I RD) , Phd( SocSci )  
**Chairperson**

**Badimia Bandi Barna**

• N I C: 11tkm (K N B I I)



Department of **Planning,  
Lands and Heritage**

## **DEPARTMENT OF PLANNING, LANDS AND HERITAGE (Department) CONTRACT OF SALE**

The Purchaser offers to purchase the Land for an estate in fee simple at the Purchase Price and on the other terms set out in the particulars below and subject to the conditions set out below.

### **PARTICULARS**

#### **Description of Land**

DISTRICT/TOWNSITE	LOT/LOC No.	CLT	VOLUME	FOLIO
Dalwallinu	Lot 572 on Diagram 35838	LR	3141	93

NUMBER AND STREET	TOWN/CITY	POSTCODE
16 Sawyer Ave	Dalwallinu	6609

#### **Purchaser's Details**

<b>FULL NAME</b> (including ABN if applicable)  * Shire of Dalwallinu		
<b>ADDRESS:</b>  * PO Box 141 DALWALLINU WA 6609		
If more than one purchaser: <input type="checkbox"/> joint tenants <input type="checkbox"/> tenants in common (in equal shares unless otherwise stated).		

#### **Vendor's Agent (If not the Department)**

--

<b>Purchase Price</b>	<b>GST</b>	<b>Total</b>
\$ 68181.82	\$ 6818.18	GST \$ 75,000.00
payable is: (Please tick appropriate box)		
<input checked="" type="checkbox"/> calculated under the Margin Scheme (if this box is selected the Purchaser and the Vendor agree that for the purposes of the GST Act, the supply of the Land is made under the Margin Scheme);		
<input checked="" type="checkbox"/> calculated at 10% of the Purchase Price; or		
<input checked="" type="checkbox"/> not applicable.		

#### **Purchaser's Conveyancer**

* NAME	
* ADDRESS	
* TELEPHONE NO.	FACSIMILE NO.

## CONDITIONS

1. Acceptance of this offer will be sufficiently communicated to the Purchaser if verbal or written notification is given by the Department to the Purchaser that the acceptance has been signed by, or on behalf of, the Vendor.
2. The Department of Planning, Lands and Heritage Conditions for the Sale of Crown Land (the "Conditions") annexed to this Contract shall be incorporated into and form part this Contract to the extent that the Conditions are not varied by or inconsistent with the express conditions below.
3. For the purposes of clause 15.1(a)(i) of the Conditions the party to whom notices for the Vendor should be given is: Manager Goldfields Esperance and Wheatbelt, Land Use Management and the fax number is: (08) 6552 4417 .
4. At the date of this contract, the Department is the Department of Planning, Lands and Heritage of level 2, 140 William Street, Perth WA 6000.

For express conditions varying the Conditions please see Schedule 1 attached to this Contract.

The Common Seal of **The Shire of Dalwallinu** )

was hereunto affixed by authority of )  
a resolution of the Council in the presence of: )

---

Shire President

---

Print Full Name

---

Chief Executive Officer

---

Print Full Name

The Minister for Lands acting for and on behalf of the State of Western Australia accepts the above offer in accordance with the Conditions.

**SIGNED** by an authorised officer for and on behalf of the Minister for Lands by delegated authority under section 9 of the *Land Administration Act 1997*.

---

(Signature)

---

(Signature)

---

(Print full name)

---

(Print full name)

\_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Date

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(Classification level, Position number  
Must be level 6 or above and Full Title)  
(Division)  
Department of Planning, Lands and Heritage

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Classification level, Position title  
(Division)  
Department of Planning , Lands and Heritage

A copy of the Conditions has been received by the Purchaser/s.

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Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## 3.14 Financial Hardship

### Policy

#### Scope

This policy applies to:

- Outstanding rates and service charges as at the date of adoption of this policy; and
- Rates and service charges levied for the 2020-2021 financial year.

It is a reasonable community expectation, as we deal with the effects of the pandemic that those with the capacity to pay rates will continue to do so. For this reason the Policy is not intended to provide rate relief to ratepayers who are not able to evidence financial hardship and the statutory provisions of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996* will apply.

#### Statement

##### *Payment Difficulties, hardship and vulnerability*

Payment difficulties, or short term financial hardship occur when a change in a person's circumstances result in an inability to pay a rates or service charge debt.

Financial hardship occurs when a person is unable to pay rates and service charges without affecting their ability to meet their basic living needs, or the basic living needs of their dependants. The Shire of Dalwallinu recognises the likelihood that COVID19 may increase the occurrence of payment difficulties, financial hardship and vulnerability in our community. This policy is intended to apply to all ratepayers experiencing financial hardship regardless of their status, be they a property owner, tenant, business owner etc.

##### *Anticipated Financial Hardship due to COVID19*

We recognise that many ratepayers are already experiencing financial hardship due to COVID19. We respect and anticipate the probability that additional financial difficulties will arise when their rates are received.

We will write to ratepayers at the time their account falls into arrears, to advise them of the terms of this policy and encourage eligible ratepayers to apply for hardship consideration. Where possible and

appropriate, we will also provide contact information for a recognised financial counsellor and/or other relevant support services.

#### *Financial Hardship Criteria*

While evidence of hardship will be required, we recognise that not all circumstances are alike. We will take a flexible approach to a range of individual circumstances including, but not limited to, the following situations:

- Recent unemployment or under-employment
- Sickness or recovery from sickness
- Low income or loss of income
- Unanticipated circumstances such as caring for and supporting extended family

Ratepayers are encouraged to provide any information about their individual circumstances that may be relevant for assessment. This may include demonstrating a capacity to make some payment and where possible, entering into a payment proposal. We will consider all circumstances, applying the principles of fairness, integrity and confidentiality whilst complying with our statutory responsibilities.

#### *Payment Arrangements*

Payment arrangements facilitated in accordance with Section 6.49 of the Act are of an agreed frequency and amount. These arrangements will consider the following:

- that a ratepayer has made a genuine effort to meet rate and service charge obligations in the past;
- the payment arrangement will establish a known end date that is realistic and achievable;
- the ratepayer will be responsible for informing the Shire of Dalwallinu of any change in circumstance that jeopardises the agreed payment schedule.

In the case of severe financial hardship, we reserve the right to consider waiving additional charges or interest (excluding the late payment interest applicable to the Emergency Services Levy).

#### *Interest Charges*

A ratepayer that meets the financial hardship criteria and enters into a payment arrangement may request a suspension or waiver of interest charges. Applications will be assessed on a case by case basis.

### *Deferment of Rates*

Deferment of rates may apply for ratepayers who have a Pensioner Card, State Concession Card or Seniors Card and Commonwealth Seniors Health Care Card registered on their property. The deferred rates balance:

- remains as a debt on the property until paid;
- becomes payable in full upon the passing of the pensioner or if the property is sold or if the pensioner ceases to reside in the property;
- may be paid at any time, BUT the concession will not apply when the rates debt is subsequently paid (deferral forfeits the right to any concession entitlement); and
- does not incur penalty interest charges.

### *Debt recovery*

We will suspend our debt recovery processes whilst negotiating a suitable payment arrangement with a debtor. Where a debtor is unable to make payments in accordance with the agreed payment plan and the debtor advises us and makes an alternative plan before defaulting on the 3<sup>rd</sup> due payment, then we will continue to suspend debt recovery processes.

Where a ratepayer has not reasonably adhered to the agreed payment plan, then for any rates and service Charge debts that remain outstanding on 1 July 2021, we will offer the ratepayer one further opportunity of adhering to a payment plan that will clear the total debt by the end of the 2021-2022 financial year.

Rates and service charge debts that remain outstanding at the end of the 2021-2022 financial year, will then be subject to rates debt recovery procedures prescribed in the *Local Government Act 1995*.

### *Review*

We will establish a mechanism for review of decisions made under this policy, and advise the applicant of their right to seek review and the procedure to be followed.

### *Communication and Confidentiality*

We will maintain confidential communications at all times and we undertake to communicate with a nominated support person or third party at your request.

We will advise ratepayers of this policy and its application, when communicating in any format (i.e written or verbal) with a ratepayer that has an outstanding rates or service charge debt.

We recognise that applicants for hardship consideration may be experiencing additional stressors, and may have complex needs. We will provide additional time to respond to communication and will communicate in alternative formats where appropriate. We will ensure all communication with applicants is clear and respectful.

**Objective** To give effect to our commitment to support the whole community to meet the unprecedented challenges arising from the COVID19 epidemic, the Shire of Dalwallinu recognises that these challenges may result in financial hardship for our ratepayers.

This Policy is intended to ensure that we offer fair, equitable, consistent and dignified support to ratepayers suffering hardship, while treating all members of the community with respect and understanding at this difficult time.

Person Responsible	Chief Executive Officer
History	New Policy April 2020

**Discussion Paper**  
**Elected Member Representation**

This discussion paper is to review the Elected member representation to ensure they best meet the governance requirements of the Shire of Dalwallinu.

In 2009 the wards were abolished and Elected Member representation was reduced from ten (10) members to nine (9) members.

At the Ordinary Council Meeting held 23 June 2009, a recommendation was put to Council:

*'That Council remove ward boundaries and reduce the number of Councillors to seven (7) to be applied from the Local Government Elections in 2009 (subject to endorsement by the Local Government Advisory Board)*

***LOST 3/6'***

*'That Council remove ward boundaries and reduce the number of Councillors to nine (9) to be applied from the Local Government Elections in 2009 (subject to endorsement by the Local Government Advisory Board)*

***CARRIED BY ABSOLUTE MAJORITY 7/2'***

Since 2009 there has been little interest in Council nominations for the elections which are held every two years, unless it is an extraordinary election. (See table below)

<b>Election Date</b>	<b>No. of Vacancies</b>	<b>No. of Nominations</b>
May 2020	1	0
October 2019	4	5
October 2017	5	6
June 2016	1	2
October 2015	4	5
October 2013	5	5
October 2011	5	6
July 2010	1	1
October 2009	5	5
October 2007	4	4

**Advantages of reducing Councillor numbers:**

1. The decision making process may be more effective and efficient if the number of elected members is reduced. There is more scope for team spirit and co-operation amongst a smaller number of people;
2. The cost of maintaining elected members would be reduced. Budgeted costs for attendance fees in 2019-2020 were \$45,239. The attendance fees would be reduced by approximately \$5,026 if numbers were reduced by one (1);

3. A reduction in the number of elected members may result in an increased commitment and interest and participation in Council's affairs by elected members generally;
4. Fewer elected members are more readily identifiable to the community;
5. The increase in the ratio of Councillors to Electors is not significant (1:90 to 1:116);
6. Fewer positions on Council may lead to greater interest in elections with contested elections and those elected obtaining a greater level of support from the community;
7. There is a state wide trend in reductions in the number of elected members and many local governments have found that fewer elected members has improved their decision making process.

**Disadvantages of reducing Councillor numbers:**

1. A reduction may limit diversity around the table;
2. There is potential for dominance in a Council by a particular interest group;
3. A smaller number of elected members may lead to an increased workload and may lessen effectiveness.

A comparison of Elected Member representation has been undertaken on neighbouring and similar Local Governments, see table below.

LGA	Population	No. Electors	No. EM	Electors per EM	Population per EM
Ravensthorpe	1,733	1,080	5	216	347
Wongan Ballidu	1,331	923	6	154	222
Boddington	1,844	1,146	6	191	307
Exmouth	2,728	1,600	6	267	455
Meekatharra	1,067	336	7	48	152
Yilgarn	1,202	643	7	92	172
York	3,606	2,660	7	380	515
Coorow	1,036	743	8	93	130
Nannup	1,328	1,030	8	129	166
Chapman Valley	1,422	979	8	122	178
Kojonup	1,985	1,274	8	159	248
Gnowangerup	1,215	744	9	83	135
Lake Grace	1,268	898	9	100	141
<b>Dalwallinu</b>	<b>1,429</b>	<b>810</b>	<b>9</b>	<b>90</b>	<b>159</b>
Boypup Brook	1,701	1,199	9	133	189
Beverley	1,745	1,330	9	148	194
Moora	2,428	1,640	9	182	270
<b>Dalwallinu</b>	<b>1,429</b>	<b>810</b>	<b>7</b>	<b>116</b>	<b>204</b>

EM – Elected Member

The October 2021 election will see five (5) vacancies. Given that the extraordinary election did not attract one (1) nomination it may be difficult to attract enough nominations to force an election or even fill the vacancies unopposed.

## **PROCESS**

- Council resolves to undertake the review;
- The review is to be advertised for public submissions;
- The community are to be given at least six (6) weeks to make a submission;
- Council to consider all submissions and relevant factors and makes a decision;
- Council submits a report to the Local Government Advisory Board for its consideration;
- If a change is proposed, the Board submits a recommendation to the Minister for Local Government.

## **TIMEFRAME**

The timeframe for the completion of the administrative process is usually within three (3) months from when a proposal is considered by the Board, however it can vary.

If a local government expects changes to be in place in time for an ordinary election, it must submit its report to the Board by the **end of January** in the year of the ordinary election.

An agenda item will be included in the Agenda for discussion at next weeks briefing.

Jean Knight

**CHIEF EXECUTIVE OFFICER**

15 April 2020



# **National Redress Scheme for Institutional Child Sexual Abuse**

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**Department of Local Government, Sport  
and Cultural Industries**

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Information Paper

3 February 2020

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# 1. SUMMARY - WA LOCAL GOVERNMENT: ROYAL COMMISSION AND REDRESS

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The Western Australian Government (the State), through the Department of Local Government, Sport and Cultural Industries (DLGSC), has been consulting 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 (the 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.

Following this initial consultation and feedback gathered, the State Government considered a range of options regarding WA local government participation in the Scheme and reached a final position in December 2019.

DLGSC, supported by the Departments of Justice and Premier and Cabinet, will again engage with WA local governments in early 2020, to inform of the:

- State's decision and the implications for the sector (see [Section 4](#));
- Support (financial and administrative) to be provided by the State; and
- Considerations and actions needed to prepare for participation in the Scheme from 1 July 2020 (see [Section 5](#)).

DLGSC's second phase of engagement with WA local governments is summarised in the table below:

Description and Action	Agency	Timeline
Distribution of Information Paper to WA Local Governments	DLGSC	3 February 2020
WALGA hosted webinar	DLGSC / DPC	18 February 2020
Metro and Country Zone meetings	WA LG's / DLGSC	19 to 24 February 2020
State Council meeting – Finalisation of Participation arrangements	WALGA	4 March 2020
WALGA hosted webinar – Participation arrangements	DLGSC/ DPC	Mid-March 2020

Further information about the Royal Commission is available at [Appendix A](#) and the National Redress Scheme at [Appendix B](#) of this Information Paper.

The information in this Paper may contain material that is confronting and distressing. If you require support, please [click on this link](#) to a list of available support services.

## 2. CURRENT SITUATION - WA LOCAL GOVERNMENT PARTICIPATION IN THE NATIONAL REDRESS SCHEME

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The WA Parliament passed the legislation required to allow for the Government and WA based non-government institutions to participate in the National Redress Scheme. The *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (WA) took effect on 21 November 2018.

The WA Government commenced participating in the Scheme from 1 January 2019.

The State Government's Redress Coordination Unit within the Office of the Commissioner for Victims of Crime, Department of Justice:

- Acts as the State Government's single point of contact with the Scheme;
- Coordinates information from State Government agencies to the Scheme; and
- Coordinates the delivery of Direct Personal Responses (DPR) to redress recipients (at their request) by responsible State Government agencies to redress recipients.

### CURRENT TREATMENT OF WA LOCAL GOVERNMENTS IN THE SCHEME

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>

There are several considerations for the State Government and Local Governments (both individually and collectively) about joining the Scheme.

The State Government considers a range of factors relating to organisations or bodies participation in the Scheme, before their inclusion in the declaration as a State Government institution. These factors include the capability and capacity of the agencies or organisations to:

- Respond to requests for information from the State Government's Redress Coordination Unit within prescribed timeframes;
- Financially contribute to the redress payment made by the Scheme on behalf of the agency or body; and
- Comply with the obligations of participating in the Scheme and the Commonwealth legislation.

A decision was made at the time of joining the Scheme to exclude WA 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.

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

### 3. CONSULTATION TO DATE WITH WA LOCAL GOVERNMENT SECTOR

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The Department of Local Government, Sport and Cultural Industries (DLGSC) has been leading an information and consultation process with the WA local government sector about the Scheme. The Departments of Justice and Premier and Cabinet (DPC) have been supporting DLGSC in the process, which aimed to:

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

DLGSC distributed an initial *Information and Discussion Paper* in early January 2019 to WA local governments, the WA Local Government Association (WALGA), Local Government Professionals WA (LG Pro) and the Local Government Insurance Scheme (LGIS). Between March and May 2019, DLGSC completed consultations that reached 115 out of 137 WA local governments and involved:

- an online webinar to 35 local governments, predominantly from regional and remote areas;
- presentations at 12 WALGA Zone and LG Pro meetings; and
- responses to email and telephone enquiries from individual local governments.

It was apparent from the consultations that the local government sector had, at the time, a very low level of awareness of the Scheme prior to the consultations occurring, and that little to no discussion had occurred within the sector or individual local governments about the Scheme. 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 Update (April 2019) – National Redress Scheme

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

## WALGA State Council Resolution

The WALGA State Council meeting of 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.*

It is understood that this recommendation was made with knowledge that it is ultimately a State Government decision as to whether:

- Local governments can participate in the Scheme as part of the State's Government's declaration; and
- The State Government will fund local government redress liability.

## 4. WA GOVERNMENT DECISION - FUTURE PARTICIPATION OF WA LOCAL GOVERNMENTS IN THE NATIONAL REDRESS SCHEME

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Following the initial consultation process, a range of options for local government participation in the Scheme were identified by the State Government including:

1. WA Local governments be **excluded** from the State Government's declaration of participating institutions.

This means that: local governments may choose not to join the Scheme; or join the Scheme individually or as group(s), making the necessary arrangements with the Commonwealth and self-managing / self-funding all aspects of participation in the Scheme.

2. WA Local governments be **included** in the State Government's declaration of participating institutions.

There were three sub-options for ways local government participation as a State Government institution could be accommodated:

- a. Local governments cover all requirements and costs associated with their participation;
- b. The State Government covers payments to the survivor arising from local governments' participation, with costs other than payments to the survivor (including counselling, legal and administrative costs) being funded by local governments; or
- c. An arrangement is entered into whereby the State Government and local governments share the requirements and costs associated with redress – for example, on a capacity to pay and deliver basis.

The State Government considered the above options and resolved via the Community Safety and Family Support Cabinet Sub-Committee (December 2019) to:

- Note the consultations undertaken to date with the WA local government sector about the National Redress Scheme;
- Note the options for WA local government participation in the Scheme;
- Agree to local governments participating in the Scheme as State Government institutions, with the State Government covering payments to the survivor; and
- Agree to the 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.

## KEY ASPECTS OF THE STATE'S DECISION

For clarity, the State's decision that means the following financial responsibilities are to be divided between the State Government and the individual local government that has a Redress application submitted, and then subsequently accepted by the Scheme Operator as a Redress claim.

### State Government

The State Government will cover the following:

- 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); and
- Trained staff to coordinate and facilitate a Direct Personal Response or DPR (Apology) to the survivor if requested (on a fee for service basis with costs covered by the individual local government – see below).

### Individual Local Government

The individual local government will be responsible for:

- Costs associated with gathering their own (internal) information if requested in a Redress application;
- Providing the State with the necessary information to participate in the Scheme; and
- Costs associated the delivery of a DPR (based on a standard service fee, plus travel and accommodation depending on the survivor's circumstance). \*

\* note – The State's decision includes that all DPR's will be coordinated and facilitated by the Redress Coordination Unit (Department of Justice) on every occasion, if a DPR is requested by the survivor.

This decision was made on the basis that:

- 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.
- The demonstration of leadership by the State Government, as it will be supporting the local government sector to participate in the Scheme and recognising the WALGA State Council resolution of 3 July 2019, is consistent with the local government sector's preferred approach.
- Contributes to a nationally consistent approach to the participation of local governments in the Scheme, and particularly aligns with the New South Wales, Victorian and Tasmanian Governments' arrangements. This provides opportunity for the State Government to draw on lessons learned through other jurisdictions' processes.
- Ensures a consistent and quality facilitation of a DPR (by the State) if requested by the survivor.
- State Government financial support for any local government redress claims does not imply State Government responsibility for any civil litigation against local governments.

Noting the State's decision, a range of matters need to be considered and arrangements put in place to facilitate local governments participating with the State Government's declaration and meeting the requirements of the Scheme. Those arrangements will:

- provide for a consistent response to the Scheme by WA Government institutions, and for WA survivors accessing the Scheme; and
- mitigate concerns raised by local governments during consultations about complying with the processes and requirements of the Scheme.

## 5. CONSIDERATIONS FOR WA LOCAL GOVERNMENTS

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Following the State's decision, a range of matters need to be considered by each local government and in some cases, actions taken in preparation for participating in the Scheme, these include:

### CONFIDENTIALITY

- Information about applicants and alleged abusers included in RFIs (Requests for Information) is sensitive and confidential and is considered protected information under *The National Redress Act*, with severe penalties for disclosing protected information.
- Individual local governments will need to consider and determine appropriate processes to be put in place and staff members designated to ensure information remains confidential.

### APPLICATION PROCESSING / STAFFING

- The timeframes for responding to an RFI are set in *The Act* and are 3 weeks for priority application and 7 weeks for non-priority applications. This RFI process will be supported by the State (DLGSC and the Redress Coordination Unit).
- Careful consideration should be given to determining which position will be responsible for receiving applications and responding to RFIs, due to the potentially confronting content of people's statement of abuse.
- Support mechanisms should be in place for these staff members, including access to EAP (Employee Assistance Program) or other appropriate support.
- The need for the appointed position and person(s) to have a level of seniority in order to understand the magnitude of the undertaking and to manage the potential conflicts of interest.
- The responsible position(s) or function(s) would benefit from being kept confidential in addition to the identity of the person appointed to it.

### RECORD KEEPING

- 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 of the *State Records Act 2000*.
- Consider secure storage of information whilst the RFI is being responded to.

## REDRESS DECISIONS

- Decisions regarding redress applicant eligibility and responsible institution(s) are made by Independent Decision Makers, based on the information received by the applicant and any RFI responses. The State government does not have any influence on the decision made.
- There is no right of appeal.

## MEMORIALS

- Survivors (individuals and / or groups) from within individual communities may ask about the installation of memorials. The State Government's view is to only consider memorialising groups, however locally, this is a decision of an individual local government.

## 6. NEXT STEPS – PREPARATION FOR WA LOCAL GOVERNMENT PARTICIPATION IN THE SCHEME

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In addition to the second-phase information process outlined in section 1, the State will develop:

1. A Memorandum of Understanding (MOU) - to be executed between the State and WALGA following the (WALGA) State Council meeting on 4 March 2020.

The MOU will capture the overall principles of WA local governments participating in the Scheme as State Government institutions and being part of the State's declaration; and

2. Template Service Agreement – that will be executed on an 'as needed' basis between the State and an individual local government, if a redress application is received.

DLGSC and the Department of Justice will work with WALGA / LGPro and all local governments to prepare for participation in the Scheme including:

- Identifying appropriate positions, staff and processes to fulfil requests for information;
- Ensuring local governments have delegated authority to an officer to execute a service agreement with the State if needed;

The State will prepare a template Council report, where all WA local governments will be asked to delegate authority to an appropriate officer in advance, able to execute a service agreement if required. This is necessary as priority requests for information under the Scheme, are in a shorter turnaround time than Council meeting cycles and therefore, cannot be undertaken at the time.

- Ensuring local government have established appropriate processes and can fulfil Scheme obligations (particularly in terms of confidentiality, record keeping etc); and
- Gathering the necessary facility and service information from all individual local governments to commence participation in the Scheme. This information will be provided to the Commonwealth, loaded into the Scheme database and used to facilitate an individual local government's participation in the National Redress Scheme.

# ACKNOWLEDGEMENTS

The contents of this Information and Discussion Paper includes extracts from the following identified sources. Information has been extracted and summarised to focus on key aspects applicable to the Department of Local Government, Sport and Cultural Industries' key stakeholders and funded bodies:

- The Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report.

To access a full version of the Royal Commission's Findings and the Final Report, please follow the link at <https://www.childabuseroyalcommission.gov.au/>

- Western Australian State Government response to the Royal Commission (27 June 2018).

To access a full version of the State Government's detailed response and full report, please follow the link at

[https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Royal-Commission/Pages/The-WA-Government-Response-to-Recommendations-\(June-2018\).aspx](https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Royal-Commission/Pages/The-WA-Government-Response-to-Recommendations-(June-2018).aspx)

- More information on the National Redress Scheme can be found at [www.nationalredress.gov.au](http://www.nationalredress.gov.au).
- The full National Redress Scheme - Participant and Cost Estimate (July 2015) Report at <https://www.dlgsc.wa.gov.au/resources/publications/Pages/Child-Abuse-Royal-Commission.aspx>

## FOR MORE INFORMATION

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## APPENDIX A

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### ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE – FURTHER INFORMATION

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was established in January 2013, to investigate systemic failures of public and private institutions<sup>2</sup> to protect children from child sexual abuse, report abuse, and respond to child sexual abuse. The Royal Commission's Terms of Reference required it to identify what institutions should do better to protect children in the future, as well as what should be done to:

- achieve best practice in reporting and responding to reports of child sexual abuse;
- eliminate impediments in responding to sexual abuse; and
- address the impact of past and future institutional child sexual abuse.

The Western Australian Government (State Government) strongly supported the work of the Royal Commission through the five years of inquiry, presenting detailed evidence and submissions and participating in public hearings, case studies and roundtables.

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 Final Report (Final Report) of the Royal Commission into Institutional Responses to Child Sexual Abuse incorporated the findings and recommendations of the previously released reports and was handed down on 15 December 2017. To access a full version of the Royal Commission's Findings and the Final Report, follow the link at <https://www.childabuseroyalcommission.gov.au/>

The Royal Commission made 409 recommendations to prevent and respond to institutional child sexual abuse through reform to policy, legislation, administration, and institutional structures. These recommendations are directed to Australian governments and institutions, and non-government institutions. One specific recommendation was directed at Local Government, while many others will directly or indirectly impact on the organisations that Local Government works with and supports within the community.

Of the 409 recommendations, 310 are applicable to the Western Australian State Government and the broader WA community.

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<sup>2</sup> \* For clarity in this Paper, the term 'Institution' means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), however described, and:

- Includes for example, an entity or group of entities (including an entity or group of entities that no longer exist) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families
- Does not include the family.

# THE WESTERN AUSTRALIAN GOVERNMENT RESPONSE TO THE ROYAL COMMISSION

The State Government examined the 310 applicable recommendations and provided a comprehensive and considered response, taking into account the systems and protections the State Government has already implemented. The State Government has accepted or accepted in principle over 90 per cent of the 310 applicable recommendations.

The State Government's response was released on 27 June 2018 fulfilling the Royal Commission recommendation 17.1, that all governments should issue a formal response within six months of the Final Report's release, indicating whether recommendations are accepted; accepted in principle; not accepted; or will require further consideration. The WA Government's response to the Royal Commission recommendations can be accessed at:

<http://www.dpc.wa.gov.au/childabuseroyalcommission>

The State Government has committed to working on the recommendations with the Commonwealth Government, other states and territories, local government, non-government institutions (including religious institutions) and community organisations.

The State Government's overall approach to implementation of reforms is focused on:

- Stronger Prevention (including Safer Institutions and Supportive Legislation)
  - Create an environment where children's safety and wellbeing are the centre of thought, values and actions;
  - Places emphasis on genuine engagement with and valuing of children;
  - Creates conditions that reduce the likelihood of harm to children and young people.
- Reliable Responses (including Effective Reporting)
  - Creates conditions that increase the likelihood of identifying any harm;
  - Responds to any concerns, disclosures, allegations or suspicions of harm.
- Supported Survivors (including Redress).

Many of the recommendations of the Royal Commission have already been addressed through past work of the State Government, and others working in the Western Australian community to create safe environments for children. This work is acknowledged and where appropriate, will be built upon when implementing reforms and initiatives that respond to the Royal Commission's recommendations.

## APPENDIX B

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### NATIONAL REDRESS SCHEME - FURTHER INFORMATION

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

The National Redress Scheme (the Scheme):

- Acknowledges that many children were sexually abused in Australian institutions;
- Recognises the suffering they endured because of this abuse;
- Holds institutions accountable for this abuse; and
- Helps people who have experienced institutional child sexual abuse gain access to counselling and psychological services, a direct personal response, and a redress-payment.

The National Redress Scheme involves:

- People who have experienced institutional child sexual abuse who can apply for redress;
- The National Redress Scheme team — Commonwealth Government staff who help promote the Scheme and process applications;
- Redress Support Services — free, confidential emotional support and legal and financial counselling for people thinking about or applying to the Scheme;
- Participating Institutions that have agreed to provide redress to people who experienced institutional child sexual abuse; and
- Independent Decision Makers who will consider applications and make recommendations and conduct reviews.

The National Redress Scheme formally commenced operation on 1 July 2018 and offers eligible applicants three elements of redress:

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

Importantly, the Scheme also provides survivors with community based supports, including application assistance; financial support services; and independent legal advice. The Scheme is administered by the Commonwealth Government on behalf of all participating governments, and government and non-government institutions, who contribute on a 'responsible entity pays' basis.

Institutions that agree to join the Scheme are required to adhere to the legislative requirements set out in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

More information on the Scheme can be found at [www.nationalredress.gov.au](http://www.nationalredress.gov.au) or the [National Redress Guide](#).

## SURVIVORS IN THE COMMUNITY

Throughout the five years of its inquiry, the Royal Commission heard detailed evidence and submissions, and held many public and private hearings, case studies and roundtables. Most notably, the Royal Commission heard directly from survivors of historical abuse.

The Royal Commission reported that survivors came from diverse backgrounds and had many different experiences. Factors such as gender, age, education, culture, sexuality or disability had affected their vulnerability and the institutions response to abuse.

The Royal Commission, however, did not report on the specific circumstances of individuals with the details of survivors protected; the circumstances of where and within which institutions their abuse occurred is also protected and therefore unknown. Further, survivors within the WA community may have chosen to not disclose their abuse to the Royal Commission.

Accordingly, it is not known exactly how many survivors were abused within Western Australian institutions, including within Local Government contexts. Within this context of survivors in the community, who may or may not be known, consideration needs to be given to how all institutions, including local governments, can fulfil the Royal Commission's recommendation in relation to redress.

The Royal Commission's *Redress and Civil Litigation (September 2015)* Report recommended the establishment of a single national redress scheme to recognise the harm suffered by survivors of institutional child sexual abuse. This report also recommended that Governments around Australia remove the limitation periods that applied to civil claims based on child sexual abuse, and consequently prevented survivors – in most cases – pursuing compensation through the courts.

As a result of reforms made in response to these recommendations, WA survivors now have the following options to receive recognition of their abuse:

1. Pursing civil court action(s) against the perpetrator and/or the responsible institution. The *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* (WA) took effect on 1 July 2018, removing the limitation periods that previously prevented persons who had experienced historical child sexual abuse from commencing civil action.
2. Applying to the National Redress Scheme, which provides eligible applicants with a monetary payment, funds to access counselling and an apology. Note, to receive redress the responsible institution(s) will need to have joined the Scheme.

## TREATMENT OF LOCAL GOVERNMENTS BY OTHER JURISDICTIONS

At the time of the State Government joining the Scheme, only two jurisdictions had made a decision about the treatment of local governments. All jurisdictions have since agreed to include local governments within their respective declarations, with the exception of South Australia (SA). The SA Government is still considering their approach.

It is understood that all jurisdictions, with the exception of SA, are either covering the redress liability associated with local government participation in the Scheme or entering into a cost sharing arrangement. The table below provides a summary of other jurisdictions' positions.

Jurisdiction	Position
Commonwealth	<ul style="list-style-type: none"><li>• No responsibility for local governments.</li><li>• The Commonwealth Government has indicated preference for a jurisdiction to take a consistent approach to the participation of local governments in the Scheme.</li></ul>
Australian Capital Territory (ACT)	<ul style="list-style-type: none"><li>• ACT has no municipalities, and the ACT Government is responsible for local government functions.</li><li>• ACT has therefore not been required to explore the issue of local government participation in the Scheme.</li></ul>
New South Wales (NSW)	<ul style="list-style-type: none"><li>• In December 2018, the NSW Government decided to include local councils as NSW Government institutions and to cover their redress liability.</li><li>• The NSW Office for Local Government is leading communications with local councils about this decision.</li><li>• NSW's declaration of participating institutions will be amended once preparation for local council participation is complete.</li></ul>
Northern Territory (NT)	<ul style="list-style-type: none"><li>• The NT Government has consulted all of the Territory's local governments, including individually visiting each local government.</li><li>• NT is in the process of amending Territory's declaration of participating institutions to include local governments.</li></ul>
Queensland	<ul style="list-style-type: none"><li>• Queensland is finalising a memorandum of understanding (MOU) with the Local Government Association of Queensland to enable councils to participate in the Scheme as State institutions.</li><li>• The MOU includes financial arrangements that give regard to individual councils' financial capacity to pay for redress.</li></ul>
South Australia (SA)	<ul style="list-style-type: none"><li>• Local governments are not currently included in the SA Government's declaration</li><li>• The SA Government is still considering its approach to local governments.</li></ul>
Tasmania	<ul style="list-style-type: none"><li>• Local Governments have agreed to participate in the Scheme and will be included as a state institution in the Tasmanian Government's declaration.</li><li>• A MOU with local governments is being finalised, ahead of amending Tasmania's declaration.</li></ul>
Victoria	<ul style="list-style-type: none"><li>• The Victorian Government's declaration includes local governments.</li><li>• The Victorian Government is covering local governments' redress liability.</li></ul>
Western Australia (WA)	<ul style="list-style-type: none"><li>• The WA Government has excluded local governments from its declaration, pending consultation with the local government sector.</li></ul>

## TIMEFRAME TO JOIN THE SCHEME

Institutions can join the Scheme within the first two years of its commencement. This means that institutions can join the Scheme up to and including 30 June 2020 (the second anniversary date of the Scheme). The Commonwealth Minister for Social Services may also provide an extension to this period to allow an institution to join the Scheme after this time. However, it is preferred that as many institutions as possible join the Scheme within the first two years to give certainty to survivors applying to the Scheme about whether the institution/s in which they experienced abuse will be participating.

If an institution has not joined the Scheme, they are not a participating institution. However, this will not prevent a person from applying for redress. In this circumstance, a person's application cannot be assessed until the relevant institution/s has joined the Scheme. The Scheme will contact the person to inform them of their options to either withdraw or hold their application. The Scheme will also contact the responsible institution/s to provide information to aid the institution/s to consider joining the Scheme.

## THE SCHEME'S STANDARD OF PROOF

The Royal Commission recommended that 'reasonable likelihood' should be the standard of proof for determining eligibility for redress. For the purposes of the Scheme, 'reasonable likelihood' means the chance of the person being eligible is real and is not fanciful or remote and is more than merely plausible.

When considering a redress application, the Scheme Operator must consider whether it is reasonably likely that a person experienced sexual abuse as a child, and that a participating institution is responsible for an alleged abuser/s having contact with them as a child. In considering whether there was reasonable likelihood, all the information available must be taken into account.

Where a participating institution does not hold a record (i.e. historical information), the Scheme Operator will not be precluded from determining a person's entitlement to redress. The information to be considered by the Scheme Operator includes:

- The information contained in the application form (or any supplementary information provided by a person by way of statutory declaration);
- Any documentation a person provided in support of their application;
- The information provided by the relevant participating institution/s in response to a Request for Information from the Operator, including any supporting documentation provided; and
- Any other information available including from Scheme holdings (for example where the Scheme has built up a picture of relevant information about the same institution during the relevant period, or the same abuser).

It should be noted that the 'reasonable likelihood' standard of proof applied by the Scheme is of a lower threshold (or a lower standard of proof) than the common law standard of proof applied in civil litigation – the 'balance of probabilities'. Please see 11.7 of the Royal Commission's *Redress and Civil Litigation Report (2015)* for additional information on the difference between the two.

## MAXIMUM PAYMENT AND SHARED RESPONSIBILITY

The amount of redress payment a person can receive depends on a person's individual circumstances, specifically the type of abuse the person experienced.

A person may only make one application for redress. The maximum redress payment payable under the scheme to an applicant is \$150,000 in total.

The payment of redress is made by the institution(s) found responsible for exposing the individual to the circumstances that led to the abuse.

There may be instances where one or more institutions are found to be jointly responsible for the redress payment to a person, and instances where a person may have experienced abuse in one or more different institutions. In such situations, the redress payable by an institution will be apportioned in accordance with the Scheme's assessment framework - see <https://www.legislation.gov.au/Details/F2018L00969> and method statement - see <http://guides.dss.gov.au/national-redress-guide/4/1/1>

Prior payments made by the responsible institution for the abuse to the applicant (e.g. ex-gratia payments) will be taken into account and deducted from the institutions' redress responsibility.

## EFFECT OF AN APPLICANT ACCEPTING AN OFFER OF REDRESS

Accepting an offer of redress has the effect of releasing the responsible participating institution/s 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 agrees to not bring or continue any civil claims against the responsible participating institution/s in relation to any abuse within the scope of the Scheme.

If a responsible participating institution/s is a member of a participating group, the person will be releasing the other associated institutions and officials within that group from any civil liability for instances of sexual abuse and related non-sexual abuse of the person that is within the scope of the Scheme.

Accepting an offer of redress also has the effect of preventing a responsible participating institution from being liable to contribute to damages that are payable to the person in civil proceedings (where the contribution is to another institution or person).

In accepting the offer of redress, a person will also be consenting to allow the participating institution/s or official/s to disclose the person's acceptance of redress offer in the event that a civil claim is made. The Scheme must provide a copy of the person's acceptance of offer to each responsible institution for their records once received.

Note – the acceptance of an offer of redress does not exclude the pursuance or continuance of criminal proceedings against the abuser(s).

**THIS DEED OF LEASE** is made the First day of June 2020

**BETWEEN**

**SHIRE OF DALWALLINU** of PO Box 141, Dalwallinu, Western Australia (the "**Lessor**")

**AND**

**DALWALLINU SPORTS CLUB** of PO Box 100, Dalwallinu, Western Australia (the "**Lessee**")

**RECITALS**

- A. The Lessor is registered as the proprietor of the Land.
- B. This Lease has been entered into under and in accordance with section 3.58 of the *Local Government Act 1995*.
- C. The Lessor has agreed to lease and the Lessee has to agree to take a lease of the Premises upon the terms and conditions contained in this deed.

**THE PARTIES AGREE** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Lease, unless the contrary intention appears, the following expressions shall have the following meanings:

**"Act"** includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority including, without limitation, the Lessor;

**"Annexure 1"** means Annexure 1 of this Lease;

**"Annexure 2"** means Annexure 2 of this Lease;

**"Date of Commencement"** means the date mentioned in Schedule 1;

**"Dispute"** means a dispute referred to in clause 6.1;

**"Encumbrances"** means:

- (a) all mortgages, charges, writs, warrants, caveats (and the claims stated in any caveat) and any other right or interest of any third party affecting the Land or any part of the Land;
- (b) all reservations (if any), existing easements and restrictive covenants contained in the Crown Grant of the Land or referred to in or registered as an encumbrance on the Certificate of Title to the Land; and

- (c) all easements, restrictive covenants and encroachments (if any) affecting the Land or any part of the Land whether or not they are noted on the Certificate of Title to the Land,

and includes, without limitation, the encumbrances (if any) described in Schedule 1;

**"fixtures and fittings"** includes the items mentioned in Schedule 2;

**"Land"** means the land mentioned in Schedule 1;

**"Lessee"** means the Lessee and includes, where not repugnant to the context, the employees and agents of the Lessee;

**"Lessee's Covenants"** means each and every covenant contained or implied in this Lease to be observed or performed by the Lessee;

**"Lessor"** means the Lessor and includes, where not repugnant to the context, the employees and agents of the Lessor;

**"Lessor's Chattels"** means the chattels the property of the Lessor held at the Premises as specified in Schedule 3;

**"Lessor's Powers"** means each and every right, power and remedy exercisable by the Lessor under this Lease;

**"Outgoings"** means the charges mentioned in clause 3.3;

**"Premises"** means the premises mentioned in Schedule 1 and includes, where not repugnant to the context, any part of it;

**"Rent"** means the rent mentioned in Schedule 1 and any agreed variation of the rent determined in accordance with the provisions of this Lease from time to time;

**"Schedule 1"** means Schedule 1 of this Lease;

**"Schedule 2"** means Schedule 2 of this Lease;

**"Term"** means the term of this Lease mentioned in Schedule 1, including any renewal or extension of the term;

**"this Lease"** means this lease including any schedules and annexures; and

**"Tobacco Product"** means tobacco, a cigarette or a cigar or any other product the main, or a substantial ingredient of which is tobacco and which is designed for human consumption or use.

## 1.2 **Interpretation**

In this Deed:

- (a) headings are for convenience only and do not affect the interpretation or construction of this Lease; and

unless the context indicates the contrary intention:

- (b) every covenant or agreement expressed or implied in this Lease in which more than one person covenants or agrees shall bind each person jointly and severally;
- (c) a reference to any party shall mean and include a reference to that party and the party's successors, personal representatives and transferees and a reference to a corporation or body includes a reference to the corporation or body's successors and assigns;
- (d) words importing the singular include the plural (and vice versa) and words denoting individuals include corporations (and vice versa);
- (e) a reference to a clause, a subclause, a paragraph, a schedule or an annexure is a reference to a clause, a subclause, a paragraph, a schedule or an annexure of this Lease;
- (f) a reference to any Act or to any section or provision thereof includes a reference to that Act, section or provision as amended, replaced, varied or substituted from time to time; and
- (g) where any act, matter or thing is to be done under this Lease on a Saturday or Sunday, then that act, matter or thing may be done on the Monday immediately following the relevant Saturday or Sunday or in the event of a public holiday in Western Australia the act, matter or thing may be done on the working weekday immediately following that public holiday.

## **2. OPERATIVE PART**

The Lessor LEASES to the Lessee and the Lessee takes on lease the Premises, subject to the Encumbrances, from the Date of Commencement for the Term at the Rent and subject to and upon the covenants, conditions and stipulations contained in this Lease.

## **3. LESSEE'S COVENANTS**

The Lessee covenants with the Lessor:

### **3.1 Rent**

To pay the Rent (free from all deductions) in the manner and at the times mentioned in Schedule 1 to the Lessor at its address or as the Lessor may in writing from time to time direct.

### **3.2 Interest on overdue money**

Without prejudice to the rights, powers and remedies of the Lessor that are otherwise provided for under this Lease, to pay to the Lessor on demand interest on any money that is due but unpaid for seven (7) days by the Lessee to the Lessor on any account whatsoever under this Lease. Interest shall be calculated from the due date for the payment of the money in respect of which the interest is chargeable until payment of that money in full. For the purpose of this subclause "**interest**" means 6% per annum calculated daily and capitalised on the last day of each calendar month.

### 3.3 **Outgoings**

To duly and punctually pay all electricity gas and telephone charges which now or during the Term shall be charged upon or in respect of the Premises or be payable by the owner or occupier in respect of the Premises upon the days or times when they become due and payable.

### 3.4 **Other liabilities**

To the extent permissible at law, to pay upon demand to the Lessor by way of reimbursement an amount equal to any money paid or outlaid by the Lessor in respect of any liability imposed on the Lessee under this Lease.

### 3.5 **Cost of Lease**

To pay the Lessor's reasonable and proper costs (including solicitors' costs) and all duties, fees, charges and expenses of and incidental to the instructions for and the preparation and completion of this Lease and all stamp duty payable on this Lease; and the Lessor's reasonable and proper costs (including solicitor's costs) in respect to any renewal of the Term, and any application for the consent of the Lessor and of or incidental to any and every breach or default by the Lessee under this Lease and in or incidental to the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lessor under or by virtue of this Lease and the reasonable fees of all professional consultants reasonably and properly incurred by the Lessor in consequence of or in connection with any breach or default by the Lessee under this Lease.

### 3.6 **Maintain and repair Premises**

#### (a) **Generally**

During the Term and for so long as the Lessee remains in possession or occupation of the Premises, to maintain, replace, repair, clean and keep the Premises clean and in good and substantial repair, order and condition having regard to the age of the Premises at the Date of Commencement PROVIDED THAT:

- (i) this subclause shall not impose on the Lessee any obligation in respect of damage by earthquake, aircraft, riot, civil commotion, fire, flood, lightning, storm, tempest and reasonable wear and tear, act of God and war unless the damage is caused by the neglect, default or misconduct of the Lessee or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or its employees, agents, contractors or invitees;
- (ii) this subclause shall not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair except when rendered necessary by any act, neglect, default or omission on the part of the Lessee or its employees, agents, contractors or invitees or by the Lessee's particular use or occupancy of the Premises;
- (iii) all electric globes and fluorescent tubes in the Premises which may be damaged, broken or fail for any reason shall be replaced by the Lessee at its expense; and

(iv) the expression "**reasonable wear and tear**" shall not include excessive wear to carpets or other floor coverings in the Premises

**(b) Fixtures, fittings, plant and equipment**

To repair and make good any damage (regardless of how minor) which may be caused to the Premises at any time by the installation or removal by the Lessee of any fixtures, fittings, plant or equipment supplied and fitted by the Lessee or on behalf of the Lessee. Any areas of the Premises that are affected in any way by the removal or installation of such fixtures, fittings, plant or equipment must be placed in a state of repair and condition as if the installation and the removal of the relevant fixtures, fittings, plant or equipment had never taken place. This obligation shall include, without limitation, an obligation on the Lessee to place all walls, floors, ceilings, carpets, skirting boards, plasterwork, paintwork and wallpaper in a state that is aesthetically consistent with the immediate surrounding areas and the rest of the Premises.

**(c) Paint and decorate**

During the last three (3) months of the Term or upon any sooner determination of this Lease to properly paint and varnish with at least two coats of good quality paint and varnish (in colours approved by the Lessor in writing) those parts of the Premises as are now painted and varnished or are usually painted and varnished and to properly re-decorate in any other fashion (with suitable materials of good quality approved of by the Lessor in writing) all parts of the Premises that have been previously or are usually decorated. The Lessor shall not unreasonably withhold any approval required under this paragraph.

**(d) Carpets**

That any carpet replaced by the Lessee or installed by the Lessee shall immediately become and shall remain the property of the Lessor.

**3.7 Use of Premises**

**(a) Generally**

Not to use or permit the Premises to be used as the residence or sleeping place of any person or for auction sales but to use the Premises only for the purpose mentioned in Schedule 1 and for no other purpose whatsoever.

**(b) Offensive activities**

Not to do, exercise or carry on or allow any person to do, exercise or carry on in the Premises any noxious, noisome or offensive act, trade, business, occupation or calling or any act, matter or thing whatsoever which may cause nuisance, damage or disturbance to the Lessor or occupier of any building in the neighbourhood.

**(c) Birds, animals**

Not to keep any birds or animals in or about the Premises.

(d) **Lavatories etc.**

Not to use or allow to be used the lavatories, toilets, sinks and drainage and other plumbing facilities in the Premises for any purposes other than for which they were constructed or provided.

(e) **Chemicals etc.**

Not to use or allow to be used any chemicals or inflammable gases, fluids or substances on the Premises except where reasonably necessary in the normal course of the use of the Premises for the purpose mentioned in paragraph (a).

(f) **Signs**

Not, without the prior written consent of the Lessor (which consent shall not be unreasonably withheld), to construct, display, affix or exhibit on or to the exterior or interior of the Premises any signs, lights, embellishments, advertisements, names or notices visible from outside the Premises.

(g) **Removal of rubbish**

To keep the Premises free from dirt and rubbish and to store and keep all trade waste, trash and garbage in proper receptacles.

(h) **Floor overloading**

Not to do or allow anything to be done on the Premises which would result in excessive stress, strain or floor loading to any part of the Premises except to those parts of the Premises designated in writing by the Lessor.

(i) **Pest control**

To take all reasonable precautions to keep the Premises free of rodents, vermin, insects, pests, birds and animals.

(j) **Not to pollute**

To do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(k) **No smoking**

Not to use or allow the Premises to be used for smoking, holding or otherwise having control over an ignited Tobacco Product.

3.8 **Entry by Lessor and others**

To permit entry to the Premises at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency, when notice shall not be required):

(a) **To inspect**

By the Lessor and its agents and employees to view the state of repair for the purposes of ensuring compliance by the Lessee with all or any of the Lessee's Covenants.

(b) **To repair**

By the Lessor and its agents, employees and contractors with workmen and others and all necessary materials and equipment for the purpose of complying with any request, requirement, notification or order of any authority having jurisdiction or authority over or in respect of the Premises for which the Lessee is not liable under this Lease or for the carrying out of repairs, renovations, maintenance, modifications, extensions, alterations or replacements to the Premises and all plant, machinery and other building equipment within the Premises PROVIDED THAT in the exercise of this right the Lessor shall use its best endeavours not to cause any undue inconvenience to the Lessee.

3.9 **Alterations and installations**

(a) **Generally**

Not to make or allow to be made to the Premises any alterations or external projection or any structural alterations or to cut, maim or injure or allow to be cut, maimed or injured any of the principal structure or walls or any part thereof without the prior written consent of the Lessor PROVIDED THAT such consent shall not be withheld in the case of any structural alterations or additions required to be made to the Premises by the Lessor or any other competent statutory authority by reason of the particular use to which the Premises are put by the Lessee. Any such structural alterations or additions shall be effected at the sole cost of the Lessee to a specification approved in writing by the Lessor prior to the commencement of those structural alterations or additions.

(b) **Carried out in workmanlike manner**

That all buildings, erections, improvements and alterations to be constructed and all works carried out or executed on the Premises by the Lessee shall be constructed, carried out or executed by the Lessee in a proper and workmanlike manner and under the supervision and to the reasonable satisfaction of the Lessor's building surveyor (or such other officer of the Lessor as the Lessor may appoint) and in the event of any dispute the certificate of the building surveyor (or such other officer of the Lessor) shall be final and binding upon the parties.

(c) **Plant and equipment**

Not to make any alterations or additions to any plant, equipment, fixtures or fittings forming part of the Premises (including, without limitation, any airconditioning plant, electrical fittings, plumbing and fire warning or prevention systems) ("**Plant and Equipment Alterations**") without the Lessor's prior written consent (which may be withheld in the Lessor's discretion or given on such terms and conditions as the Lessor considers fit). Any application for consent shall be accompanied by detailed plans and specifications and, if approved by the

Lessor, any works shall be carried out by the Lessee in a proper and workmanlike manner and under the supervision and to the reasonable satisfaction of such officer of the Lessor as the Lessor may appoint, and in the event of any dispute the certificate of the officer shall be final and binding upon the parties.

If any Plant and Equipment Alterations are made by the Lessee at any time then, on the expiry or sooner determination of the Term, the Lessee shall at the Lessor's request, promptly reinstate and restore the Premises as nearly as possible to its original state and shall repair and make good any damage (regardless of how minor) which may be caused to the Premises as a result of the reinstatement and restoration works. This obligation shall include, without limitation, an obligation on the Lessee to place all walls, floors, ceilings, carpets, skirting boards, plasterwork, paintwork and wallpaper in a state that is aesthetically consistent with the immediate surrounding areas and the rest of the Premises.

**(d) Window treatments**

Not without the prior written consent of the Lessor to install any other form of window treatment to the windows of the Premises either in addition to or in replacement of the existing curtains and blinds unless and until they become worn or be damaged in which case the Lessee shall in the event that such wear or damage is caused by reason of the Lessee's own act or omission replace them with curtains and blinds of similar quality, colour and design (unless otherwise agreed by the parties) to the reasonable satisfaction of the Lessor and all replacements shall immediately become and remain the property of the Lessor.

**3.10 To report certain matters to the Lessor**

**(a) Broken glass and equipment**

To immediately report to the Lessor any breakage of glass including plate glass and exterior windows and all damaged or broken heating, lighting or electrical equipment or plumbing installed upon the Premises.

**(b) Defects**

To give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

**(c) Change in office bearers**

Where the Lessee is an incorporated association, to advise the Lessor of the name, address and phone number of the persons then appointed or elected to the position of President, Secretary and Treasurer (or like positions) within the Lessee, as soon as practicable after:

- (i) the Date of Commencement; and
- (ii) any change in those details.

### 3.11 No assignment

Not to assign, license, mortgage, charge or otherwise part with the possession of the Premises or any part of the Premises or in any way dispose of the benefit of this Lease without the prior written consent of the Lessor PROVIDED THAT:

#### (a) Consent not unreasonably withheld to assignment

If the Lessee wishes to assign the whole of the Premises and the benefit of this Lease the Lessor shall not unreasonably withhold its consent to that assignment if:

- (i) the proposed assignee is a respectable, responsible and solvent person (the onus of proof of which shall be upon the Lessee);
- (ii) the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party prepared and completed by the Lessor's solicitors at the reasonable cost of the Lessee in all respects and the covenants and agreements on the part of any assignee shall be deemed to be supplementary to this Lease and shall not in any way relieve the Lessee from its liability under this Lease;
- (iii) all Rent and Outgoings then due or payable shall have been paid and there shall not be any existing unremedied breach of any of the Lessee's Covenants;
- (iv) the assignment contains a covenant by the assignee with the Lessor that the assignee at all times during the continuance of the Term will duly observe and perform all the Lessee's Covenants; and
- (v) the Lessee pays to the Lessor all proper and reasonable costs, charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility and solvency of any proposed assignee;

#### (b) Corporate assignee

If the assignee is a company then it shall be a condition of the Lessor's consent to any deed of assignment that the directors or the substantial shareholders of that company guarantee to the Lessor the observance and performance by the assignee of the Lessee's Covenants.

#### (c) No release of assignor

The covenants and agreements of any assignee shall be deemed to be supplementary to the Lessee's Covenants and shall not in any way relieve or be deemed to relieve the Lessee from the Lessee's Covenants;

**PROVIDED FURTHER THAT** if the Lessee is a corporation any change in the beneficial ownership of a substantial shareholding (within the meaning of Part 6.7 of the *Corporations Law*) in the corporation or any related body corporate within the meaning of section 50 of the *Corporations Law* shall be deemed to be an assignment of the Premises and the benefit of this Lease for the purposes of this subclause;

**AND IT IS EXPRESSLY AGREED AND DECLARED** that sections 80 and 82 of the *Property Law Act 1969* are hereby excluded; and

The Lessee acknowledges and agrees that the failure by either the Lessee or any other relevant party to comply strictly with each of the conditions, stipulations and requirements contained in paragraphs (a) or (b) will constitute reasonable grounds upon which the Lessor may withhold its consent to any assignment of this Lease proposed by the Lessee.

### 3.12 Trust

Not without the prior written consent of the Lessor:

- (a) hold the Lessee's interest in this Lease on trust for any party other than pursuant to the trust (if any) specifically mentioned in Schedule 1; or
- (b) declare a trust of the Lessee's interest in this Lease; or
- (c) vary, amend, alter or revoke the terms contained in any trust deed or add to or vary the beneficiaries of the trust or distribute or join in the distribution of any or all of the capital of the trust or in any other way vest the trust.

Any holding in trust or declaration of trust, amendment, alteration, revocation or distribution contrary to this subclause shall be deemed to be an assignment of the Lease to which all of the provisions of clauses 3.11(b), (b) and (c) shall apply.

### 3.13 Comply with Acts

#### (a) Generally

Notwithstanding anything to the contrary contained or implied in this Lease, to comply with all Acts relating to the Premises or the use of them PROVIDED THAT the Lessee shall not be under any liability in respect of any structural alterations required by any Act other than caused or contributed to by the Lessee's particular use or occupation of the Premises.

#### (b) Fire regulations

In the positioning of partitions or any fixtures or fittings installed by the Lessee on the Premises, to comply with all Acts relating to fire detection and alarm and to pay to the Lessor the reasonable cost of effecting any alterations to the thermal detectors or other fire alarm installations which may be necessary to comply with any Act or any requirements of the Fire & Accident Underwriters' Association, the Insurance Council of Australia and the Fire Brigades Board of Western Australia.

#### (c) Use of Premises

The Lessor gives no warranty as to the use to which the Premises may be or are suitable to be put. The Lessee acknowledges that it has satisfied itself as to the requirements of all Acts in relation to the use of the Premises and enters into this Lease with full knowledge of and subject to any prohibitions under any Act. The

Lessee at its cost shall obtain any necessary consent required pursuant to any Act to enable it to occupy the Premises for the purposes of its business.

### 3.14 **Public risk insurance**

To effect and keep effected in respect of the Premises in the joint names of the Lessor and Lessee adequate public risk insurance (including insurance against the risks referred to in subclause 3.17) for the time being in an amount not less than the amount mentioned in Schedule 1 in respect of any one claim or such higher amount as the Lessor shall from time to time reasonably require with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) and to notify the Lessor of the policy details as soon as practicable after the Date of Commencement and to ensure that the insurance conforms with the reasonable requirements from time to time of the Lessor of which the Lessee is given notice and:

- (a) if required by the Lessor to produce, on demand, a true copy of the policy in respect of public risk insurance to the Lessor and true copies of the receipts for the last premium;
- (b) to deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a true copy of a certificate by the insurer in respect of the public risk insurance and the currency of the policy; and
- (c) not to alter the terms or conditions of the policy without the written approval of the Lessor and to promptly deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of any public risk insurance policy effected by the Lessee pursuant to this subclause.

### 3.15 **Other insurance**

- (a) During the Term to effect and keep effected policies of insurance with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) in the joint names of the Lessor and the Lessee in relation to any risk relating to the Lessor's ownership or interest in the Premises and which shall include (but shall not be limited to) premiums in respect of insurance for fire (including (but not limited to) architects' and other consultants' fees and the cost of demolition and removal of debris), Lessor's fixtures and fittings and plate glass, public risk or liability to the public, fixed shopfronts installed by the Lessor and plate glass, sprinkler leakage and water damage (including (but not limited to) loss of the other amounts payable under clause 3).
- (b) As soon as practicable after the Date of Commencement, to deliver to the Lessor a true copy of a certificate from the Lessee's insurer certifying that the Lessee is insured in the manner specified in paragraph (a) or evidence, to the satisfaction of the Lessor, of the existence of the policies for the insurance specified in paragraph (a), and true copies of the receipts relating to payment of the premiums in relation to such policies.
- (c) If required by the Lessor to produce, on demand, true copies of the policies for the insurance specified in paragraph (a) and true copies of the receipts for the last premiums.

- (d) To deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a true copy of a certificate from the Lessee's insurer certifying that the Lessee is insured in the manner specified in paragraph (a) and stating the period for which it is so insured.
- (e) Not to alter the terms or conditions of the policies for the insurance specified in paragraph (a) without the written approval of the Lessor and to promptly deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of those policies.

Duly and punctually to pay all insurance premiums paid by the Lessor on behalf of itself or the Lessee or on behalf of both of them in relation to any risk relating to the Lessor's ownership or interest in the Premises and which shall include (but shall not be limited to) premiums in respect of insurance for fire (including (but not limited to) architects' and other consultants' fees and the cost of demolition and removal of debris), Lessor's fixtures and fittings and plate glass, public risk or liability to the public, fixed shopfronts installed by the Lessor and plate glass, sprinkler leakage and water damage (including (but not limited to) loss of the other amounts payable under clause 3).

Payment shall be made on or before the respective days or times upon which each amount becomes due or payable PROVIDED THAT the Lessee's liability for these payments shall commence on the Date of Commencement subject to any proportionate payment from the Date of Commencement or to the expiration of the Term.

The Lessor will meet costs of insurance of buildings under this lease as a contribution towards the operation of that building and where a claim has been met by the Lessors insurers the Lessor will cover any excesses applicable on claims for building repairs.

### 3.16 Not to invalidate insurance

Not to do or allow any act, matter or thing upon the Premises or bring or keep anything on the Premises whereby any insurance relating to the Premises may be rendered void or voidable or whereby the rate of premium on such insurance shall be or be liable to be increased and the Lessee shall pay all additional premiums of insurance on the Premises (if any) required on account of the additional or increased risk.

### 3.17 Indemnities

#### (a) Generally

To take and be subject to the same responsibilities in regard to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Premises.

#### (b) Indemnity

To indemnify and keep indemnified the Lessor from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with the loss of life, personal injury, illness and or damage to property arising from or out of any occurrence in or upon or at the Premises or the use of the Premises by the Lessee or any part thereof or to

any person or the property of any person using or entering on or near the Premises howsoever occasioned or occurring (loss, injury, illness, damage or destruction caused or occasioned by any negligent act, default or omission of the Lessor or its servants, agents or contractors excepted).

**(c) Abuse of installations**

To indemnify and keep indemnified the Lessor from and against any and all loss or damage whatsoever occasioned by the neglect, use, mis-use or abuse of:

- (i) water, electricity or gas supplied to the Premises; or
- (ii) installations, fixtures or fittings for water, gas or electricity,

by the Lessee or by any servant, agent, contractor or invitee of the Lessee, and that the Lessee will pay for all damage or injury to the Premises or to the Lessor or to any other person in consequence of any breach or non-observance of the provisions of this paragraph.

**(d) Insurance moneys**

Without prejudice to the generality of paragraph (a) (to the extent that the terms and conditions of any insurances effected by the Lessee or any moneys paid to the Lessor out of insurances effected by the Lessee do not fully indemnify the Lessor from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any of the matters referred to in subparagraphs (i), (ii) and (iii) of this paragraph) to indemnify the Lessor and keep the Lessor indemnified from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any loss or damage to property or death or injury to any person of any nature or kind and however or wherever sustained that:

- (i) is caused or contributed to by the use or occupation of the Premises except to the extent caused or contributed to by the negligence or act, default or omission of the Lessor;
- (ii) results from any act, default or omission by the Lessee under this Lease; or
- (iii) results from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease.

**3.18 Yielding up**

**(a) Peaceably yield up**

Upon the expiration or sooner determination of the Term, to peaceably surrender and yield up to the Lessor the Premises clean and free of rubbish and in a state of repair and condition that is entirely consistent with all of the Lessee's Covenants having been fully complied with.

(b) **Removal of Lessee's fixtures**

At or prior to the determination or termination of the Term to take, remove and carry away from the Premises all signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than airconditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and the Lessee shall on such removal forthwith make good to the satisfaction of the Lessor any damage which may be occasioned by such removal.

(c) **Liquidated damages for failure to remove fixtures, etc.**

Without limiting the Lessee's obligations under paragraphs (a) and (b) in any way, if, after receiving a notice from the Lessor given on or at any time after the determination or termination of the Term demanding that the Lessee remove any sign, fixture, plant, equipment or other article not removed in accordance with paragraph (b) ("**Removal Notice**") the Lessee fails to comply with all of its obligations under paragraph (b) within five (5) days of the date of receipt of the Removal Notice then the Lessee shall pay to the Lessor on the demand an amount equal to the costs which may be properly charged by the Lessor for the bailment of goods from time to time.

(d) **Abandonment of fixtures**

Further or in the alternative to the Lessor's rights and powers under paragraph (c), the Lessor, at any time after the expiration or sooner determination of the Term, may give the Lessee a notice ("**Abandonment Notice**") requiring the Lessee to remove all fixtures, fittings, plant, equipment or other articles not previously removed by the Lessee in accordance with paragraph (b) ("**Remaining Items**"). On the Lessee's receipt of an Abandonment Notice, the Lessee shall have two (2) days within which to remove all Remaining Items and failing removal within that two day period, all Remaining Items still on the Premises or in the Lessor's custody shall be deemed absolutely abandoned by the Lessee and shall automatically become the absolute property of the Lessor and may be sold by the Lessor at any time and without further notice or obligation to the Lessee. The Lessor shall be entitled to keep the proceeds of any sales and those proceeds shall not be taken into account to reduce any arrears, damages or other moneys for which the Lessee may be liable. All reasonable costs incurred by the Lessor in respect of any sale shall be paid by the Lessee on demand.

Nothing shall preclude the Lessor from giving a Removal Notice and recovering the Removal Rent in accordance with paragraph (c) and later giving the Lessee an Abandonment Notice at any time pursuant to this paragraph. The Lessee's obligation to pay the Removal Rent shall cease immediately upon the Lessee's receipt of an Abandonment Notice. Nothing however, shall release the Lessee from liability to pay any Removal Rent that is in arrears on the date that the Lessee receives an Abandonment Notice.

3.19 **Not to lodge caveat or other interest against Title to Land**

(a) **Interpretation**

In this clause, a reference to a Certificate of Title to the Land includes a reference to a Certificate of Crown Land Title if the Land is Crown land.

(b) **No absolute or subject to claim caveat**

Not to lodge an absolute caveat or a subject to claim caveat over the Land or any part of the Land or against the Certificate of Title to the Land to protect the interest of the Lessee and the Lessee IRREVOCABLY APPOINTS the Lessor and every officer and employee of the Lessor for the time being authorised in that behalf by the Lessor jointly and severally, to be the true and lawful attorney for the Lessee in its name and on its behalf to execute and to lodge at the Department of Land Administration a withdrawal of any absolute caveat or subject to claim caveat AND the Lessee RATIFIES AND CONFIRMS and AGREES TO RATIFY AND CONFIRM all that the attorney shall do or cause to be done under or by virtue of this subclause and shall indemnify the Lessor in respect of any loss arising from any act done under or by virtue of this subclause and the Lessee will pay the Lessor's reasonable costs (including solicitors' costs) and expenses of and incidental to the withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Land or the Certificate of Title to the Land as provided by this subclause.

(c) **Not to register dealings**

Not to lodge or cause to be lodged any lease, sublease, mortgage, charge or other dealing against the Certificate of Title to the Land without the prior written consent of the Lessor.

3.20 **Alcohol**

(a) **Consumption of alcohol**

Not to use or allow the Premises to be used for the consumption or sale of alcohol without first obtaining the written consent of the Lessor and the Lessor shall determine any application for its consent in accordance with any alcohol policy of the Lessor from time to time.

(b) **Liquor licence**

That in relation to an application for a licence or permit under the *Liquor Licensing Act 1988* for the Premises it shall:

- (i) not make such an application without first obtaining the written consent of the Lessor and the Lessor shall determine any application for its consent in accordance with its alcohol policy, if any;
- (ii) if a licence or permit is granted to it, comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises clause 3.9 shall apply;
- (iii) if the licence or permit is granted to it, provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit) to the Lessor as soon as practicable after the date of grant; and

- (iv) if the licence or permit is granted to it, indemnify and keep indemnified the Lessor from and against any breach of the *Liquor Licensing Act 1988*, the licence or permit for which it may be liable as the owner of the Premises.

### 3.21 **Incorporated association**

Where the Lessee is an incorporated association, to maintain its incorporation under the *Associations Incorporation Act 2015*.

### 3.22 **Lessor's Chattels**

To ensure that the Lessor's Chattels are maintained on the Premises, used only in accordance with the purpose for which they have been installed or placed in the Premises by the Lessor and to account to the Lessor for the replacement cost of any item of the Lessor's Chattels missing or damaged at the expiration or earlier determination of this Lease.

## 4. LESSOR'S COVENANTS

The Lessor covenants with the Lessee, subject to the Lessee observing and performing the Lessee's Covenants:

### 4.1 **Quiet enjoyment**

That the Lessee shall and may, except as provided in this Lease, peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or any other person lawfully claiming by, from or under the Lessor.

### 4.2 **Rates and taxes**

To pay any local government rates, water and sewerage rates or service charges, land taxes or other taxes or charges payable in respect of the Premises.

### 4.3 **Improvements to the Premises**

To pay to the Lessee an amount equal to the value of any improvements made to the Premises during the Term by the Lessee provided that:-

- (a) such improvements shall not include any maintenance or repair effected under clause 3.6 or 3.8(b) of this Lease;
- (b) such improvements satisfy the terms of clause 3.9 of this Lease;
- (c) shall be valued by a licensed valuer appointed by agreement of the parties or in default of agreement within twenty-one (21) days of the date of expiration or earlier determination of the Term appointed at the request of either party by the President for the time being of the Australian Institute of Land Valuers and Economists (Inc.) who shall be deemed to be acting as an expert and not as an arbitrator and who shall determine the value of the improvements made to the Premises for the purposes of this clause which determination shall be binding upon

the parties and shall be paid by the Lessor to the Lessee within twenty-eight (28) days of the date of receipt of the valuation.

## **5. MUTUAL AGREEMENTS**

The parties agree as follows:

### **5.1 Default by Lessee**

If:

- (a) the Lessee shall breach any of the Lessee's Covenants and the breach shall continue for FOURTEEN (14) DAYS after notice has been served on the Lessee by the Lessor; or
- (b) the Lessee being a company shall enter into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or a receiver or manager or administrator (voluntary or otherwise) is appointed; or
- (c) the Lessee being an incorporated association shall have its incorporation cancelled, be wound up or cease to be an association eligible to be incorporated under the *Associations Incorporation Act 2015*; or
- (d) the Lessee ceases or threatens to cease carrying on business; or
- (e) the Lessee being a natural person shall commit an act of bankruptcy,

then and in any of these cases the Lessor may at any time thereafter and without any notice or demand enter and repossess the Premises and the Term and the estate and interest of the Lessee in the Premises shall immediately determine but without prejudice to any rights of the Lessor under this Lease and at law and without releasing the Lessee from liability in respect of any of the Lessee's Covenants.

Upon re-entry by the Lessor, the Lessor shall, after the Lessee has failed to comply with a written notice to remove its property within three (3) days, have the absolute right to remove any property left in or about the Premises and the Lessee shall indemnify the Lessor from and against all damage to that property and any reasonable costs that may be incurred by the Lessor as a consequence including but not limited to the costs of removal and storage.

### **5.2 Damages for breach of essential term**

The Lessor and the Lessee agree that the covenants by the Lessee contained or implied in:

- (a) subclauses 3.1 and 3.3 to pay the Outgoings at the times and in the manner provided;
- (b) subclause 3.7(a) to use the Premises only for the purpose described in that subclause; and

- (c) subclause 3.11 not to assign, sub-let, license, mortgage, charge or otherwise part with possession of the Premises or any part of the Premises or in any way dispose of the benefit of this Lease except as provided for,

are (subject to the following proviso) essential terms of this Lease and the breach, non-observance or non-performance of any one of those covenants, terms or conditions shall be deemed to be a fundamental breach of the provisions of this Lease on the part of the Lessee PROVIDED THAT the presence of this subclause in this Lease shall not mean or be construed as to meaning that there are no other essential terms in this Lease. Should the Lessor terminate the Term following any such fundamental breach pursuant to subclause 5.1 without prejudice to any other right or remedy of the Lessor contained or implied in this Lease the Lessee covenants with the Lessor (and agrees with the Lessor that this covenant will survive the determination of the Term) that the Lessor shall be entitled to recover from the Lessee as and by way of liquidated damages for the breach the difference between:

- (i) the aggregate of the Outgoings which would have become payable by the Lessee to the Lessor if this Lease had expired by effluxion of time calculated at the rate payable at the date of determination (less a rebate in respect of instalments of Outgoings (calculated as aforesaid) not then accrued or due to be ascertained by applying a rate of 10% per annum to each instalment over the period by which the date for payment is brought forward by this subclause) together with any costs and expenses incurred by the Lessor or which the Lessor reasonably estimates are likely to be incurred by the Lessor as a result of such breach including the cost to the Lessor of re-letting or attempting to re-let the Premises; and
- (ii) the aggregate of the Outgoings which the Lessor by taking proper steps to re-let the Premises shall obtain or could reasonably be expected to obtain by re-letting the Premises after such determination to the date this Lease would have expired by effluxion of time PROVIDED THAT in so doing the Lessor shall not be required or obliged to offer or accept in respect of such re-letting terms, covenants, conditions or stipulations which are the same or similar to the terms, covenants, conditions or stipulations contained or implied in this Lease.

### 5.3 **Destruction of Premises**

If the Premises shall during the Term be destroyed or substantially damaged so as to require rebuilding or reconstruction of the Premises either party may by notice in writing to the other terminate this Lease as from the date of the giving of such notice without prejudice to the Lessor's rights in respect of any antecedent breach of the Lessee's Covenants by the Lessee.

### 5.4 **Lessor may remedy Lessee's default**

If the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has agreed to pay, do or effect, then on each and every occasion the Lessor shall be entitled without prejudice to any rights or powers the Lessor may have, to pay the money or to do or effect the thing by itself as if it were the Lessee and for that purpose the Lessor may enter upon and remain on the Premises for the purpose of doing or effecting any such thing and any moneys expended by the Lessor shall be repayable by the Lessee to the Lessor upon demand.

## 5.5 **Lessor not liable to third parties**

The Lessor shall not be responsible for any loss, damage or injury to any person or property of the Lessee or any other person in or about the Premises unless the same shall arise from the negligence of the Lessor.

## 5.6 **Notices**

Any notice required to be served under this Lease shall be sufficiently served on:

- (a) the Lessee if:
  - (i) left addressed to the Lessee at the Premises; or
  - (ii) forwarded to the Lessee by post to the Premises or to the address of the Lessee mentioned in this Lease; and
- (b) the Lessor if addressed to the Lessor and left at or sent by post to the Lessor's address mentioned in this Lease or such other address as may be notified to the Lessee from time to time,

and any notice sent by post shall be deemed to be given at the time when it ought to have been delivered in due course of post unless the contrary is shown.

## 5.7 **Holding over**

If the Lessee remains in possession of the Premises after the expiration of the Term then the Lessee shall be a monthly tenant of the Lessor at a rent equivalent to the Rent payable by the Lessee at the expiration of the Term and otherwise on the same terms and conditions of this Lease. Any holding over may be determined by either party giving one month's written notice to the other party of its intention to determine the holding over at the expiration of the period of notice or such other date as may be stated in the written notice.

## 5.8 **Waiver**

No waiver by the Lessor of any of the Lessee's Covenants shall operate as a waiver of another breach of the Lessee's Covenants.

## 5.9 **Severance**

In the event of any part of this Lease being or becoming void or unenforceable whether due to the provisions of any Act or otherwise then that part shall be severed from this Lease to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any severance.

## 5.10 **Act by agent**

All acts and things which the Lessor or the Lessee is required or empowered to do under this Lease may be done by the Lessor or the Lessee (as the case may be) or the solicitor, agent, contractor or employee of the Lessor or the Lessee (as the case may be).

## 5.11 **Exercise of powers**

The Lessor may exercise the Lessor's Powers without any proof of default by the Lessee or the continuance of that default or any notice being required (other than as provided in this Lease) and notwithstanding any laches, neglect or previous waiver by the Lessor in respect of any of the Lessee's Covenants or the exercise of any of the Lessor's Powers.

## 5.12 **Non-merger**

The terms or conditions of this Lease or any act, matter or thing done under or by virtue of or in connection with this Lease or any other agreement between the parties to this Lease shall not operate as a merger of any of the rights and remedies of the parties in or under this Lease or in or under any such other agreement all of which shall continue in full force and effect.

## 5.13 **Proper law**

This Lease shall be governed by the law of Western Australia.

## 5.14 **Effect of execution**

This Lease shall be binding upon each person or party who has executed it notwithstanding:

- (a) the failure of any other person named as a party to execute it;
- (b) the avoidance or unenforceability of any part of this Lease; or
- (c) the avoidance or unenforceability of this Lease or any part of this Lease against any signatory or intended signatory.

# 6. DISPUTE RESOLUTION

## 6.1 **Notice of Dispute**

In the event of a dispute between the Lessor and the Lessee concerning this Lease in any way, or concerning the rights and liabilities of the Lessor or the Lessee, the affected party may give the other a written notice setting out the material particulars of the Dispute.

## 6.2 **Appointment of representative**

Each party shall appoint a senior officer, or other person, with authority to negotiate and reach settlement, and the parties' representatives shall personally meet in Bindoon within ten (10) business days of the date of the receipt of the notice calling for such a meeting.

## 6.3 **Best endeavours to resolve Dispute**

The parties' representatives in good faith, and using their best endeavours at all times, shall attempt to resolve the Dispute.

## **7. ARBITRATION**

### **7.1 Notice to arbitrate**

Provided that a party has not given a notice under clause 6.1, or if it has that the Dispute has not been resolved under clause 6.3, then:

- (a) any party to that dispute shall give notice in writing to the other party; and
- (b) at the expiration of seven (7) days, unless the matter is settled in the interim, the Dispute shall be submitted to the arbitration of a single arbitrator who shall be a person appointed by the President of the Institute of Arbitrators (Western Australian Division).

### **7.2 Final decision**

The arbitrator's award shall be final and binding on the parties.

### **7.3 No entitlement to commence an action**

No party is entitled to commence or maintain an action upon a Dispute until the matter in dispute has been referred to and determined by the arbitrator, and then only for the amount or relief to which the arbitrator, by her or his award, finds that party is entitled.

### **7.4 Costs of arbitration**

The costs of the submission, reference or award are in the discretion of the arbitrator.

## **8. RENEWAL OF TERM**

### **8.1 Notice of renewal**

If the Lessee wishes to renew the Term and gives the Lessor written notice not earlier than six (6) calendar months but not later than three (3) calendar months prior to the expiration of the Term and if at the time of giving such notice there is no outstanding breach or non-observance of any of the Lessee's Covenants and if in the meantime the Lessor's right of re-entry has not otherwise arisen, then the Lessor will at the cost of the Lessee grant to the Lessee a renewal of the Term for the further period specified in Schedule 1 and otherwise on the same terms and conditions as are contained or implied in this Lease other than this right of renewal subject always to the provisions of this clause.

### **8.2 Execution of deed of extension of Lease**

Upon the valid exercise of the option to extend this Lease, the Lessee shall, prior to the expiration of the then current Term, execute a deed recording the extension of this Lease. The deed shall be prepared by the Lessor's solicitors in a form approved by the Lessor at the reasonable expense of the Lessee in all respects including payment of all stamp duty and the Lessor's solicitors' reasonable costs and disbursements.]

## 9. WHOLE OF AGREEMENT

The Lessee acknowledges and declares that in entering into this Lease the Lessee has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor in respect to the suitability of the Premises or the finish, facilities, amenities or services on the Premises and that the covenants and provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions whether in respect of the Premises or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement.

## 10. MORATORIUM NEGATIVED

The application to this Lease of any moratorium or other Act whether State or Federal having the effect of extending the Term, reducing or postponing the payment of the Rent hereby reserved or any part of the Rent, or otherwise affecting the operation of the covenants, conditions and stipulations on the part of the Lessee to be performed or observed, or providing for compensation, rights or privileges at the expense of the Lessor in favour of the Lessee or any other person, is hereby expressly excluded and negated.

## 11. GOODS AND SERVICES TAX

### 11.1 Definitions

In this Lease:

**"Basic Consideration"** means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

**"GST"** means any goods and services tax, value added tax, retail turnover tax, consumption tax, or any similar tax, impost or duty introduced or charged by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Date of Commencement, which is or may be levied or becomes payable in connection with the supply of the Premises or any goods, services or other things provided by the Lessor under this Lease;

**"GST Adjustment Rate"** means the amount of any increase in the rate of tax imposed under a GST which is above the GST Rate; and

**"GST Rate"** means 10%, or such other figure equal to the rate of tax imposed on the introduction of GST into Australia.

### 11.2 Lessee must pay

#### (a) GST

If a GST is introduced or applies to impose tax on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Premises or any goods, services or other things supplied under this Lease then, as from the date of any such introduction or application:

- (i) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
  - (ii) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.
- (b) **Increase in GST**

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with subclause 11.2(a)(ii).

### 11.3 **GST invoice**

Where the Basic Consideration is to be increased to account for GST pursuant to subclause 11.2, the Lessor shall in the month in which the Basic Consideration is to be paid, issue an invoice which enables the Lessee to submit a claim for a credit or refund of GST.

## 12. **WESTERN AUSTRALIAN PLANNING COMMISSION CONSENT**

If for any reason this Lease requires by law the consent of the Western Australian Planning Commission then this Lease is made expressly subject to and is conditional upon the granting of the consent of the Western Australian Planning Commission.

## 13. **SPECIAL TERMS**

The special terms covenants and conditions (if any) set out in Schedule 1 shall be deemed to be incorporated in this Lease as if fully set out herein and in the event of there arising any inconsistency with the terms, covenants and conditions contained in this Lease then the terms, covenants and conditions set out in Schedule 1 shall prevail.

## SCHEDULE 1

1. **The Lessee**  
Dalwallinu Sports Club Incorporated  
PO Box 100  
DALWALLINU WA 6609
2. **The Encumbrances**  
Nil.
3. **The Land**  
Portion of reserve no. 15242 (being Dalwallinu Lot 105) as is bounded by lines commencing at the south westerly corner of the existing bowling green thereon running thence one hundred and four point five (104.5) metres easterly along and beyond the present southern boundary of such bowling green thence at right angles eighty three point five (83.5) metres northerly thence at right angles one hundred and four point five (104.5) metres westerly thence at right angles eighty three point five (83.5) metres southerly to the point of commencement containing roughly two (2) acres (0.089 hectares).
4. **The Premises**  
Reserve No.32191 (being Dalwallinu Lot 452) at Dalwallinu on which land are at present erected a clubhouse, parking lot and residence and certain other improvements and includes all carpets and floor coverings, curtains and blinds and other fixtures and fittings belonging to the Lessor therein and all additions or modifications and replacements for the time being.
5. **Date of Commencement**
6. **Term**  
The term of this agreement is for a period of Twenty One (21) years.
7. **Term of renewal**  
NA
8. **Rent**  
\$135 (inc GST) per annum:
  - (a) subject to review on each anniversary of the Date of Commencement of this Lease when the rental shall be increased by a percentage equal to the average percentage increase in the Consumer Price Index (all groups for Perth) ("CPI") over the preceding 12 months, to the intent that if there has been an average percentage decrease in the CPI during the relevant period the annual rental shall remain the same for the succeeding year; and
  - (b) which is payable in advance by equal successive calendar monthly payments on the first day of each month and each year during the Term.

**9. Permitted use of Premises**

Entertainment and social functions, exhibitions, sporting activities, community based events such as meetings, workshops and community group/club activities.

**10. Public risk insurance**

Twenty million dollars (\$20,000,000).

**11. Special terms**

Nil.

**12. Trust**

Nil.

## **SCHEDULE 2**

### **Fixtures and Fittings**

Nil.

**SCHEDULE 3**

**Lessor's Chattels**

Nil.

EXECUTED by the parties as a deed

**THE COMMON SEAL of  
SHIRE OF DALWALLINU**  
was affixed in the presence of:

(Signature of President)

(Signature of Chief Executive Officer)

(Name of President in full)

---

(Name of Chief Executive Officer in full)

**THE COMMON SEAL of )  
DALWALLINU SPORTS CLUB INC )  
was affixed by the authority of a resolution )  
of the Board in the presence of: )**

---

(Signature of authorised sealing officer/Secretary)

(Signature of authorised sealing officer/President)

(Name of authorised sealing officer/Secretary)

(Name of authorised sealing officer/President)]

# **STANDARD LEASE DOCUMENT**

**SHIRE OF DALWALLINU**

("Lessor")

**AND**

**DALWALLINU SPORTS CLUB**

("Lessee")

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