

DILWORTH REDRESS PROGRAMME TERMS

Overview

1. The Trustees of the Dilworth Trust Board (**Dilworth**) have determined to implement a comprehensive redress programme which includes financial and other forms of redress (**Programme**) for Old Boys who were victims of sexual abuse and profound physical abuse by a representative of Dilworth while a student at Dilworth School (**Survivor**).
2. The Programme will involve a process whereby a Survivor can make a confidential application for redress (**Application**) to an independent panel (**Panel**) who will determine their Application (**Determination**) and make an order for redress (**Redress**). If the Redress is accepted by the Survivor, it will be binding on and given effect to by Dilworth.
3. The intention is to make the process informal for the Survivor and sensitive to their needs. It will aim to provide a speedy process for the Survivor to receive an offer of Redress, including financial redress, without cost and formality and in a way that minimises the stress on them.
4. The Programme will recognise and promote any cultural needs of the Survivor and the principles of Te Tiriti o Waitangi and Tikanga Māori in terms of the process of applying for Redress and in the provision of Redress.
5. The Redress that can be ordered by the Panel may consist of any or all of:
 - (a) access to counselling and psychological services funded by Dilworth;
 - (b) a direct personal response from Dilworth including an apology;
 - (c) a Redress payment; and
 - (d) any other form of personalised response designed to recognise the abuse and its impact.
6. The Determination and offer of Redress will be binding on Dilworth but will not be binding on the Survivor. The Survivor will be free to accept or reject the offer of Redress contained in the Determination.

Eligibility

7. The process and procedures that result in an offer of Redress to a Survivor will be such that the reasonable expectations as to confidentiality and privacy for all who engage in the process are recognised and protected, and that all parties act at all times in a way that is consistent with the Privacy Act 2020.

8. To make an Application for Redress, the Survivor must have been a student of Dilworth School and, while he was a student, suffered:
 - (a) sexual abuse or serious physical abuse by a representative of Dilworth, or a person who had access to the Survivor through a representative of Dilworth; or
 - (b) sexual abuse by another student where a Dilworth representative failed to take reasonable steps to protect against the potential for that abuse, or where the sexual abuse was encouraged or permitted by a Dilworth representative.
9. In recognition of the principles of Tikanga Māori, the family or estate of a deceased Survivor will be able to make a claim for Redress.
10. The standard of proof of these matters will be lower than the civil standard of balance of probabilities. The standard of proof required for the Programme shall be that of a “reasonable likelihood”. However, the starting position is that Survivors should be believed unless there is compelling evidence to the contrary.
11. To allow a Survivor to apply for Redress before the report of the Independent Inquiry is published, a Survivor will be able to either:
 - (a) file their Application and have it determined by the Panel without waiting for the findings of the Independent Inquiry; or
 - (b) file their Application but have it held in abeyance until the Panel has considered the findings of the Independent Inquiry and any new information relevant to the Survivor’s Application.
12. After the Independent Inquiry’s report is published, the Panel may review any Determination made in accordance with clause 11(a) above and make a further offer of Redress to a Survivor if it considers it appropriate to do so in light of the Inquiry’s findings.

Making an Application for Redress

13. A Survivor’s first point of contact will be the Programme’s Administrator, who will be able to be contacted by a publicised email, telephone number or by letter. The Administrator will then instruct one of the Programme’s Redress Facilitators whose role will be to assist a Survivor in making an Application for Redress and to assemble all relevant material for the Panel to consider.
14. The Administrator will be independent of the Panel and Dilworth and will be required to sign a statement as to independence and impartiality as a condition of their appointment.

15. The Redress Facilitator will be independent of the Panel and Dilworth and will be required to sign a statement as to independence and impartiality as a condition of their appointment.
16. The Redress Facilitator will be neutral and will not be an advocate for the Survivor or for Dilworth. Their role will be to help the Survivor to prepare their claim and to provide the Panel with all information necessary for it to consider the Survivor's claim.
17. If the Survivor has engaged in the Inquiry, they will be entitled to have access to, and contact with, the same support person for both the Inquiry and Redress Programme.
18. The Redress Facilitator will recognise the Survivor's needs for empathy and privacy and respect the Survivor's wishes as to how they want to engage in the process. It is expected that the Redress Facilitator may need to travel to meet with the Survivor at a place and time of the Survivor's choice.
19. Dilworth will, where lawfully able to do so, provide the Redress Facilitator on request with all information it has relating to the Survivor and all information relating to the perpetrator(s) of the abuse (including the School's actions in relation to the perpetrator(s)). The information provided by Dilworth will include any privileged information predating 1 January 2018 that relates to the Survivor or the perpetrator of the abuse. In providing that information Dilworth will waive privilege in that information for the purpose of the Panel's consideration of the Survivor's Application, but for no other purpose. The Redress Facilitator may ask Dilworth to provide further information that may be relevant to the claim. Dilworth shall comply with such a request promptly.
20. The Redress Facilitator will assist the Survivor to source and apply for any additional assistance that may be available from other organisations, agencies and support services.
21. In preparing an Application, a Survivor may rely on previous statements provided in other contexts, including statements to the Police or the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions.
22. The Redress Facilitator will prepare a report (**Report**) to the Panel on the claim, to accompany the Application. The Report will make no recommendation as to quantum of any financial Redress. The purpose of the Report will be to provide a record of the facts relevant to the Application supported by all the relevant information/documents.
23. The Application and a draft of the Report will not be provided to Dilworth for comment.

24. The Survivor will have the opportunity to review the Report and correct any errors of fact. The Application and the accompanying Report will not be submitted to the Panel for consideration without the consent of the Survivor. The Survivor may retain a copy of the Report for their records, subject to any confidentiality and privacy restrictions in respect of such information that have been determined by the Panel.
25. The Survivor will be able to put on hold or permanently withdraw their Application at any time and at their complete discretion.

Interim Assistance

26. The Programme will allow for reasonable legal costs incurred by the Survivor in preparing their Application.
27. There will also be the ability for the Redress Facilitator to provide interim financial assistance to the Survivor to assist in making their Application.
28. The Redress Facilitator will have the ability to source counselling and other support for the Survivor during the Redress process. This support will be funded by the Programme.
29. The Redress Facilitator will engage with the Survivor to understand what specific types of support they need.
30. These costs will not be taken into account by the Panel when making the Determination. They will not be deducted from a Redress payment. They will not affect the Survivor's ability to access support services to assist them in engaging with the Inquiry.

Determination of the claim

31. The Panel will be independent of Dilworth. Appointments to the Panel will be of suitably qualified people who are independent of and have no relationship with Dilworth. It is proposed that the Panel will be comprised of:
 - (a) a retired senior member of the Judiciary or senior lawyer of standing (Chair);
 - (b) a clinical psychologist of standing and experienced in the area of child sexual abuse and Survivor needs;
 - (c) a lay person of standing.

32. The Panel will need to determine:
 - (a) whether the Application is eligible under the Programme;
 - (b) whether financial Redress should be paid, and if so, how much;
 - (c) whether any other form of Redress is appropriate.
33. The Application may be determined by the Panel without the need for any hearing or appearance by the Survivor. This is to avoid stress and revictimisation of the Survivor. However, a Survivor will be entitled to address the Panel and, if they wish, an appropriate representative of Dilworth, and may be accompanied by a support person.
34. The Panel will be able to request further information from Dilworth in respect of the Application or any issue raised by the Application. Dilworth shall provide that information promptly, subject to the limitation set out in clause 19 which shall apply with all necessary modifications to the provision of information pursuant to this clause 34.
35. The Panel will be able to take account of the findings of the Independent Inquiry.
36. The Panel will be able to seek legal or clinical assistance if it believes that is necessary to determine the Application.
37. The level of any financial Redress will be at the discretion of the Panel. In determining the amount of financial Redress, they will have regard to:
 - (a) the nature of the abuse;
 - (b) the extent of the abuse;
 - (c) the impact of the abuse on the Survivor, including the immediate, short- and long-term physical, psychological, emotional, social relational and financial impacts, whether direct or indirect;
 - (d) the individual vulnerability of the Survivor;
 - (e) the degree of failure on the part of Dilworth in its care and protection of the Survivor, including the failure to protect the Survivor from a known or suspected abuser;
 - (f) any aggravating features relating to the abuse or Dilworth's response to the abuse, for example whether Dilworth silenced or punished the Survivor when they complained of the abuse; and
 - (g) the integrity of the Programme and the principles that:

- (i) Like cases should be treated alike;
 - (ii) The seriousness, determined by reference to the above factors, should be reflected in the levels of awards of financial redress such that the most serious instances should receive the highest levels of awards while the less serious instances should attract lower levels of awards.
38. The maximum amount of financial Redress that can be awarded to any Survivor is \$200,000. However, if the Panel, in its consideration of an Application, believes that its assessment of the factors at clause 37 is exceptional, when compared to other instances, the Panel may increase the award of financial Redress up to a maximum of \$300,000.
39. The Panel will be able to make awards as to other forms of Redress including counselling or a personal response from Dilworth including an apology, if the Survivor wants one.
40. The purpose of the Determination is to provide Redress to a Survivor. The Determination will not determine the criminal or civil liability of any entity or person or whether any act or omission by that entity or person complied or not with any law.

Acceptance/rejection of the Determination

41. The Determination will be a binding offer of Redress by Dilworth to the Survivor. The Survivor will be free to accept or reject that offer.
42. If the Survivor accepts the offer, it will be in full and final settlement of all claims he could make against Dilworth. However, the Survivor would still be able to make a claim in any Puretumu Torowhānui system that is subsequently introduced by the Government. It is likely that any Redress provided by Dilworth will be taken into account in deciding whether any further Redress will be available under the Government's scheme.
43. If a Survivor rejects the offer, he will be free to pursue any alternative claim against Dilworth.
44. The Survivor will be required to take legal advice before accepting the Determination. Dilworth will pay the reasonable costs of the Survivor receiving this advice.

Review of the Programme

45. The Panel will be able to appoint from time to time an independent clinical psychologist to review the effectiveness or otherwise of the Programme. That review may include consultation with Survivors who have completed a

Redress Application.

46. The Panel may, on the basis of a review by the independent clinical psychologist or otherwise and following consultation with Survivors and Dilworth, make amendment to its operational procedures and protocols, but may not amend terms relating to eligibility, scope or quantum of financial Redress.
47. The Panel may, on the basis of a review by the independent clinical psychologist or after it has received a copy of the report of the Independent Inquiry, and following consultation with Survivors and Dilworth, make a recommendation to Dilworth that terms relating to eligibility, scope or quantum of financial Redress be amended. Dilworth may make any such amendments recommended by the Panel.

Independence

48. The Programme will be administered independently of Dilworth. Dilworth will agree to fund the Programme and to authorise the making of offers of Redress in the Determination. Dilworth will have no involvement, direct or indirect, in the work of the Panel, the Redress Facilitators or the Administrator.

Term & Redress Review

49. After three years, and thereafter on a yearly basis, the Panel will consider whether on the basis of the number of Applications that have been received, the number of Applications that have not been determined, and its assessment of the likelihood of further Applications being made, or for any other reason, the Programme should be wound up after current claims are determined.
50. Dilworth may terminate the Programme if the Government introduces a Puretumu Torowhānui system providing Redress to Survivors.
51. Any decision to terminate the Programme on either basis:
 - (a) Must follow a period of notice;
 - (b) Would not apply to any claims that have been initiated prior to the date of termination of the Programme, unless with the consent of the Survivor;
 - (c) Must follow a period of consultation with Dilworth and Survivors (in the case of termination under clause 49) and the Panel and Survivors (in the case of termination under clause 50).

Confidentiality of information

52. The process by which a Survivor makes an application for Redress, and the determination of that application by the Panel is intended to be a private and confidential process. If an offer of Redress is accepted by the Survivor, then the confidentiality of the offer will be for the Survivor and the Panel to determine. The Panel will develop its processes concerning confidentiality and privacy which ensure information it receives and the determinations it makes protect parties reasonable expectations and rights as to confidentiality and privacy.