

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
FAITH-BASED INSTITUTIONAL RESPONSE HEARING**

Under The Inquiries Act 2013

In the matter of The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Royal Commission: Judge Coral Shaw (Chair)
Dr Anaru Erueti
Ali'imuumua Sandra Alofivae
Paul Gibson

Counsel: Mr Simon Mount KC, Ms Kerryn Beaton KC, Ms Katherine Anderson, Ms Tania Sharkey, Mr Michael Thomas, Ms Kathy Basire and Ms Alisha Castle for the Royal Commission

Ms Rachael Schmidt-McCleave and Ms Julia White for the Crown

Ms Sally McKechnie and Ms Brooke Clifford for Te Rōpū Tautoko, the Catholic Bishops and Congregational Leaders

Mrs Fiona Guy-Kidd, Mr Jeremy Johnston and Ms India Shores for the Anglican Church

Ms Maria Dew KC, Ms Kiri Harkess and Mr Lourenzo Fernandez for the Methodist Church and Wesley Faith

Mr Brian Henry, Mr Chris Shannon and Ms Sykes for Gloriavale

Ms Sarah Kuper and Mr Matthew Hague for the Presbyterian Church

Ms Helen Smith and Ms Sarah Kuper for Presbyterian Support Central

Mr Sam Hider for Presbyterian Support Otago

Mr Andrew Barker and Ms Honor Lanham for Dilworth School and Dilworth Trust Board

Mr Karl van der Plas, Mr Jaiden Gosha, Ms Rachael Reed and Ms Ali van Ammers for the Dilworth Class Action Group

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
414 Khyber Pass Road
AUCKLAND

Date: 20 October 2022

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7 **CLOSING STATEMENT BY DILWORTH SCHOOL and**
8 **DILWORTH BOARD OF TRUSTEES**

9 **MR BARKER:** Kia ora. I wasn't intending on taking too much of your time, I did a reasonably
10 complete opening yesterday, and I think in fairness the issues that were raised have been
11 well canvassed during the course of this hearing, and I don't see there's a great deal of point
12 in me repeating them, so I was really going to target a few points just of clarification on
13 issues that arose.

14 The other aspect is that, of course, if there are any questions from the
15 Commissioners or areas for further inquiry, my friend Ms Anderson said that since I was
16 doing this an oral closing for the hearing if I needed to file anything later on I'd be more
17 than welcome to do so.

18 There may be issues that the Commissioners -- either I cannot answer or if you say,
19 "I'd like to know a bit more about that" I'd be happy to do that, so opportunity to find those.

20 But this is I suppose almost using the framework of a court process a little bit of a
21 reply to some of the issues that occurred during the course of the hearing.

22 Just coming to a few comments on the nature of the redress programme. There was
23 some comment made or criticism, I suppose, that it's been put in place before the work of
24 the inquiry has been completed, the independent inquiry, I mean. Mr Snodgrass explained
25 why that was, but I just wanted to draw to the Commission's attention that in the -- it is
26 specifically addressed in the terms of reference at clause 11 where the survivor can make an
27 application for redress prior to the inquiry being initiated, but --

28 **CHAIR:** Just to confirm, Mr Barker, these are the terms of reference of the --

29 **MR BARKER:** The Dilworth redress scheme --

30 **CHAIR:** Dilworth redress scheme. Yes, yes.

31 **MR BARKER:** -- that allows survivors to make an application for redress, have it considered and
32 dealt with there and then, they can make one for redress, have it held in abeyance until the
33 inquiry is determined, or they can make one after the inquiry if they wish to do so.

1 It also expressly includes the ability for, if the redress panel makes the
2 determination prior to the inquiry, they've got the ability to revisit redress awards after the
3 inquiry has come out.

4 So it was an attempt, as Mr Snodgrass indicates, to try and give people who wanted
5 redress now the ability to seek that redress now and if people wanted to seek it later then
6 they could seek it later.

7 Two other points on the terms of reference for that redress programme. I heard, I
8 think, one of the Archbishops just make the comment that it was -- he was concerned that
9 that programme sort of ended at the decision that is reached, and I just wanted to note that
10 the definition of redress that can be given is very broad and it allows for counselling
11 on -- you know, it can be set up through the redress award that's made, and also includes a
12 very, very broad discretion for the panel members to decide what form of redress is
13 appropriate.

14 So the whole scheme from I suppose Dilworth's point of view is that it does put a lot
15 of trust in those panel members to react to the situation of the survivor that is before them,
16 and that's really part of the whole step that has had to be taken by Dilworth that's had to
17 work its way through is that element of letting go, that once it's established it is out of their
18 hands what happens and how it is dealt with. Their sole obligation is to do as they're told
19 by that panel.

20 **CHAIR:** An ongoing obligation is accepted.

21 **MR BARKER:** Yes, if the result of the redress is there should be an ongoing relationship that is
22 what will have to happen.

23 **CHAIR:** Thank you.

24 **MR BARKER:** Then finally just on the terms of that redress programme, I just wanted to
25 highlight there was an issue as to the interaction between these two programmes and this
26 might be something I set out in just a written note afterwards, because it's one of those
27 issues I saw in emails but haven't quite followed but there was, I suppose, an interaction
28 between the redress panel and the Inquiry as to how do they deal with survivors who come
29 to both of them, and I think there may have been an agreed protocol between them as to
30 how they deal with that.

31 **CHAIR:** Just to be quite clear, you're talking about the Dilworth redress plan --

32 **MR BARKER:** Yes, sorry. Yes --

33 **CHAIR:** And --

1 **MR BARKER:** -- and the Dilworth independent inquiry. So you've got a situation where
2 someone might go to the inquiry but also want to seek redress, so how do you manage that
3 person? You don't want them to have to go and give the same story twice and things like
4 that.

5 **CHAIR:** And that raises an issue, Mr Barker, that I've had in my mind too, and I meant to ask a
6 witness, so I'll ask you and if you want to put it in writing, and that is, the listening service
7 that's been set up, that's a third avenue, isn't it --

8 **MR BARKER:** Yes, it is.

9 **CHAIR:** -- for survivors to go? One of the strong lessons we've learned is the pain and -- just the
10 endurance that survivors have to go through in repeating their story over and over again to
11 different places, and so certainly if there's a way of refining that down and -- meaning that
12 the survivors only have to tell their story the minimum number of times. So that listening
13 service is also important.

14 **MR BARKER:** That was actually one of the -- some of the feedback that came back from the
15 HRC claimants and in the redress programme it says that you can effectively make your
16 application by using material you've given in other contexts such as your Police statement
17 or something like that, so --

18 **CHAIR:** Or a private session --

19 **MR BARKER:** Or a private session, yes.

20 **CHAIR:** -- with this Commission.

21 **MR BARKER:** Yes, so it's not necessary you have to sit there and say -- re-give that whole
22 statement again to them, so that's expressly dealt with in the terms and conditions, and I'll
23 put that on my note.

24 **CHAIR:** Thank you.

25 **MR BARKER:** The next question I just wanted to briefly address is just -- there was a comment
26 made about the fact the redress programme relates only to Old Boys, and I just thought I'd
27 give some background to why that is. One of the great strengths of Dilworth is that it
28 operates under this trust structure which gives it tremendous freedom that is probably not
29 shared by many other educational institutions, but it does impose some restrictions, and that
30 ultimately the trustees are trustees in law and equity and have to follow the rules of a trust
31 deed.

32 And one of the difficulties is that the trust established -- the trust is established to
33 establish a school, but it then has an express power to help old boys who have left the
34 school, and that's really been the source of power for the redress programme itself, but

1 unfortunately it is a power that's limited to old boys which is where that restriction has
2 come from, it's really a trust-based restriction.

3 And, again, that probably distinguishes Dilworth from other entities because they
4 don't have absolute freedom, they've got a lot of freedom but the hard limits they have are
5 hard limits.

6 **CHAIR:** Yes. It's an interesting point. I mean, obviously the trust deed, there must be some sort
7 of third-party liability though, I mean, I'm just thinking, what if a burglar came on the
8 property and injured himself I don't know. Think about it.

9 **MR BARKER:** Yes, it is a hard -- it is a difficult issue.

10 **CHAIR:** It's a difficult issue, but you can see, can't you, just from the problem of one man, one
11 survivor who literally fell through the cracks and mercifully has been saved, well, picked
12 up by the Anglicans, but not all will possibly be in that boat. So I think it is something
13 that's worth looking at, thank you.

14 **MR BARKER:** Yes. There was a criticism made about -- by Mr Firth about not seeking to
15 correct statements in public. I'm not sure it's something that needs to be responded to by
16 Dilworth because I think it will be pretty obvious as to why that's not appropriate. But just
17 to emphasise that it is Dilworth's very strong view that it is not appropriate to challenge
18 these experiences that are expressed in the press and other processes, that survivors are
19 entitled to share their experience in whichever way they like and it's not Dilworth's job to
20 come and then try and criticise that or otherwise. There are forums, such as the Inquiry,
21 where these things can be investigated more deeply, but it's very much not Dilworth's
22 attitude to these matters.

23 And the final point was just a point about the consultation process, and
24 Commissioner Alofivae said -- asked a question about how that consultation worked. Just
25 in broad terms -- it's covered in Mr Snodgrass's statement -- there was the initial period of
26 about some four months where there was a lot of dialogue with primarily the Class Action
27 Group but then that led to a public consultation where there was a substantial website set up
28 with Q&As and information about the programme and interactive questionnaires you could
29 fill in and so on and so forth.

30 One of the things I might try and get for you is, we tried for Mr Snodgrass's
31 statement to get the actual website links, but they've all been destroyed or replaced, sorry,
32 with the new updated redress programme, so that information was sent through to the
33 Commission at the time but unfortunately we can't recreate it at the moment, so I might see

1 if I can do that just so you can get a feeling as to what the process for consultation was,
2 because it was quite extensive on that aspect.

3 But unless the Commissioners had any questions or areas that you would like me to
4 come back to you on.

5 **CHAIR:** Thank you very much, Mr Barker. Thank you for your appearance at the hearing and for
6 representing the Dilworth Trust Board. We very much appreciate your efforts -- and your
7 team, obviously, behind you.

8 **MR BARKER:** Thank you.

9 **CHAIR:** Now, our next submitter is the Anglican Church. Thank you, Mrs Guy Kidd.