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30 October, 2014

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Re: Statement in response to Commission's letter dated the 22 October, 2014

This statement follows the structure and layout of the Royal Commission letter requesting the statement dated 22 October, 2014.

1. Intention to hold public meeting....

Understood and acknowledged.

2. We anticipate that the scope and purpose.....

Understood and acknowledged.

3. The Royal Commission requests that you prepare about the history and nature of your role.....

General Response:

- a. My involvement with the Ashram dates back to November 2002 at which time I attended the Ashram as visitor to attend a meditation course.
- b. Between 2003 and 2008 I conducted a number of in house 'effective communication' courses for the Ashram residents. These courses were provided on a donation basis.
- c. In the middle of 2012 I was approached by the Ashram regarding whether I could assist in helping them upgrade their Integrated HR Systems.



- d. This work was invoiced at a discount. See **Appendix A – Invoice Satyananda Yoga Academy Pty Ltd Nov 12.**
- e. The scope of this undertaking was limited to the human resource policies and procedures, contract of employment for employees and an engagement agreement for volunteer working with the Ashram as well as Work Health & Safety Systems.
- f. The initial task required the undertaking of a compliance audit which would in turn determine the scope of work. This compliance audit is attached for your reference. See **Appendix B – Compliance Audit.**
- g. The primary work was implemented around Christmas of 2012, early 2013. I've attached the Policy and Procedure Manual, and related contracts. Please see: **Appendix C - Contract for Employee, Appendix D – Engagement Agreement for Volunteer** and, **Appendix E – Ashram Policies & Procedures Manual.**
- h. The Audit also identified significant work that needed to be undertaken with regards to Work Health and Safety systems for implementation. The initial draft for the WH&S system has been released and is a current work in progress. Please see **Appendix E.1 – Ashram Draft WH&S Operations Guide** and **Appendix E.2 Work Health and Safety Handbook.**
- i. Note that all activities relating to WH&S system development is being undertaken on a donation basis.
- j. In November/December 2013 I was called to discuss the historic issues and appropriate responses to child abuse. My comment at that time was that i) I have no experience in these matters, ii) that we should approach this matter with openness and transparency iii) I'm happy to help where I can; and iv) recommended allowing open discussion on the Facebook forum.
- k. In or about February/March 2014 it became obvious that we needed a structured approach to formulate an effective response to the historic abuse. It was decided therefore to form a taskforce of individuals to help craft and manage an appropriate response to coincide with the 40th Anniversary at which time a formal public acknowledgment would be made.
- l. I was asked to chair the taskforce but due to time constraints was unable to do so.
- m. I did act as chairman of the taskforce during the 2 week period at or about early May 2014.

3. (a) (i) Qualifications and experience in providing consultancy services in the field of Human Resources

- a. I am the Principal of electAssociates which provides Human Resource Management services to approximately 40 small to medium businesses.
- b. In so doing I effectively function as my client's outsourced Human Resource Department
- c. electAssociates is a business wholly owned by myself and has been operating for a period of 10 years.



- d. electAssociates' Legal Associate is Mr David Mendelssohn who has more than 30 years experience in Employment law and related matter. David under pins the legal integrity of all our systems.
- e. I have more than 30 years experience in providing Human Resource Services. Initially I focused and specialised on providing HR Solutions to companies that work in the information technology space. Over the last 10 years I've worked extensively in a range of industries including construction, fashion, retail, transport, information technology and manufacturing.
- f. I represent my clients at Fair Work Commission Hearings and act as instructor representing my clients in cases that are escalated to the Federal Circuit Court.
- g. Before assuming my current position with electAssociates, I've held the following management functions with companies that provided HR Solutions:
 - i. General Manager (NSW) (2001 – 2004) for the publicly listed French/Swiss owned Human Resource business Adecco Ltd. Adecco is the largest HR Outsource company in the world.
 - ii. Managing Director (Director) for Technical Logistics Australia Pty Ltd (1988 – 1994); a Human Resources business focused on Australia and the USA which is wholly owned business of SPL World Group (Head office in San Francisco, USA).
 - iii. Branch Manager (NSW) (1986 – 1988) Computer People a human resources business wholly owned by the publicly listed Computer Power Group Ltd.
 - iv. General Manager Australia (1982 – 1986) Span Group of Companies focused on provision of a range of HR services. Wholly owned by the British based Span Group of Companies.
 - v. Between 1994 and 1999 I held the position of National Sales Manager for Sienna Technologies. This was a non-HR function.
 - vi. I am certified as a Lead Auditor in Work Health and Safety (AS/NZS 4801), Quality Management systems (ISO 9001:2008) an Environmental Management systems. Current Cert no 2014010415/2.
 - vii. I am also the chairman of the judging panel for the Austrad sponsored Consensus Software awards and the Consensus Green technologies awards.
 - viii. I am also the developer the course "Emotional Intelligence in the workplace" a public workshop which has been attended by more than 1000 individuals. These courses were provided on a by donation basis only. Due to time constraints I've not run this course for two years.
 - ix. Please see **Appendix F – Profile Bert Franzen**.

3. (a) (ii) Developing and implementing child protection policies and procedures.

- a. I have had no previous experience in developing child protection policies or procedures.
- b. I, and my legal associate, have a very strong background in interpreting legislation and crafting policies and related procedures to ensure compliance.
- c. I am very familiar with the compliance requirements stated in the Child Protection (Working with Children) Act 2012 (ACT).



- d. It is my view that the child protection systems currently in place at the Ashram exceed the requirements as stated in the ACT. My response in clause 3c below will elaborate on my reasons and supporting evidence for making this assertion.

3. (a) (iii) Developing, implementing and developing support services to victims of sexual abuse

I have no experience in developing, implementing and developing support services to victims of sexual abuse.

3. (a) (iv) Developing and implementing redress and/or compensation for victims of crime.

I have no experience in developing and implementing redress and / or compensation for victims of crime.

3. (a) (v) Organisational responses to allegations and instances of child sexual abuse.

I have no experience in facilitating organisation responses to allegations and instances of child sexual abuse.

3. (b) The basis upon which you currently are and / or have been engaged by the Ashram, including details of services that you currently offer or have offered to the Ashram and fees and rates you charge have charged for your services.

- a. Please see my response in clause 3 (a) to (m) above.
- b. My activities with the working together taskforce have been solely on a voluntary basis.
- c. There is no contract of engagement or fees charged.
- d. Nor have I received any free courses, services or accommodation.
- e. The service that I'm currently offering is to i) finalise the implementation of the WH&S systems including the delivery of online induction courses which are currently in draft form, and ii) make available my extensive business experience to work with, and where required, advise the Taskforce with the view of developing the optimum compassionate, caring and structured response to the historic abuse raised by the victims on the Facebook pages, letters, anonymous communications and public blog posting, especially in the context of the 40 year anniversary.

3. (c) Your understanding of the current policies and procedures in place relating to child protection and responding to child allegations of child sexual abuse.



The Ashram has over the many years structured a multi-tier response to abuse that took place. This response may be described as follows:

a. Policy regarding Management Structure

- i. It is my understanding that at the time the abuse took place the organisational power; being both Executive Management and the Yoga tradition was delegated to a single person being Swami Akhandananda Saraswati.
- ii. Sometime after the abuse took place; the management structure for the Ashram was changes to a matrix management model. This involved the separation of the Operation Management from the Yoga Tradition Management. The Directorship for the Academy, Director for Administration and Human Resource Management were devolved to three individuals. The Yoga tradition was managed by a fourth individual and do not interact from an operational perspective.
- iii. In this way, the Ashram has set up a management model that ensured there was no longer a single point of power.
- iv. This model was definitely in place in 2002 and to the best of my knowledge was implemented sometime in the early to mid 90's.

b. Overall Ashram Child Protection Policy – Strategy

- i. The overall strategy behind the current policies is to stop any likely past offender from entering the Ashram as a resident or becoming a yoga teacher in the broader community.
- ii. To ensure that any children who are in the Ashram are properly supervised by their parents or an appropriate carer.
- iii. To ensure there are points of escalation should any concern be raised by a resident or any other party concerning the behaviour another towards a child.

c. Overall Ashram Child Protection Policy – Strategy implementation (Operational mechanisms)

The strategy referred to in point b above is achieved through the operation of a series of document policies and procedures. These policies and procedures are presented below:

1. The Ashram Policy and Procedure Manual clearly states that only individuals who have received clearance to work with children are permitted to work in the Ashram (this applies to both voluntary or paid personnel). Please refer to page 20 “Working with Children – Clearance Requirements” of the Ashram Policies and Procedures Manual (**Appendix E**). Note my version of the policy was implemented prior to the introduction of the new legislation which went live in June 2013.



2. When an employee is appointed in the Ashram, even though they will, in most cases, not be working with children, they are required to sign a contract that requires them to have working with children clearance. Please refer to page 4 **Annexure C** - Employee contract "Working with children"
3. When a Volunteer is appointed in the Ashram, even though they will, in most cases, not be working with children, they are required to sign a contract that requires them to have working with children clearance. Please refer page 4, **Annexure D** - Volunteer Contract "working with children"
4. When an individual decides that they want to become a resident of the Ashram to further develop their yoga practice they are required to be cleared to work with children. Please refer the resident stay application form page 18 prohibited employment declaration. **See Annexure G – Resident stay application form.**
5. When an individual decides that they want to stay for a short-term period and intends to bring their children they must agree to take supervision responsibility for their children. Please refer to the short-stay application form page 7 which highlights that if the attendee is intending to bring their children that the parent must at all times supervise their children at all times. See attached **Annexure H – Terms and Agreement Resident stay – Sevak.**
6. Please refer Satyananda Yoga Academy Australian Policy & Procedure Manual volume 2, clause 1.2 (c) which states that for students to enrol in the Yoga Teaching course that they need to complete a "prohibited employment declaration" form. See attached **Annexure I – Satyananda Yoga Academy Australia Policy and procedure manual Volume 2.**
7. Please refer Satyananda Yoga Academy Australian Policy & Procedure Manual volume 3, clause (a) which states that for students to enrol in the Yoga Teaching course that they need to complete a "prohibited employment declaration" form. See attached **Annexure J – Satyananda Yoga Academy Australia Policy and procedure manual Volume 3.**
8. The Ashram also offers family weekends. There is a form which the office administration has which requires parents to be responsible for the supervision of their children and for them to sign agreement to "child protection clearance". I have sighted but do not have a copy of this document.
9. Should a matter of concern be raised by, or to, an Ashram resident or supervisor, whether an employee or volunteer; the Ashram's Grievance Policy is the mechanism to raise this concern. The Grievance Policy ensures that the individual's confidentiality is maintained in raising the grievance and provides mechanisms according to which the grievance is to be investigated. Please refer to **Annexure E** pages 51 "Grievance Policy"
10. If the grievance is found to be upheld then the matter is addressed under the Disciplinary Policy. The Disciplinary policy allows for immediate dismissal and if the grievance is considered to be criminal in nature, the matter will be escalated to the Police (this is not overtly stated however). Please refer to page 46 Disciplinary Policy.



11. The policies defined in points 9 & 10 above aim to a) provide a duty of care to the employee, and b) mitigate any legal risk the Ashram might have in case of wrongful accusation.

d. Overall Ashram Approach to Child Protection and Other Policies – Future proofing

Company policies and the related procedures are, by their very nature, dynamic and must be kept alive and continuously updated to reflect the ‘as is’ situation, i.e. laws change, IR landscape changes, new case law, new codes of practices. From my perspective:

1. The current issues that the Ashram is grappling with are that of policy and procedure sustainability and accessibility.
2. Policies and procedures which have not been leveraged over time have a tendency to be forgotten. This is largely due to the high staff/resident/volunteer turnover, and therefore loss of corporate memory etc.
3. For the policies and procedures to be effective and ‘real’ they must also be readily available so they be referenced by whoever needs them.
4. The solution to these challenges, that the ashram and I are working on at the moment, is to develop an online induction course for all new and existing personnel.
5. Naturally, this would include information and video based education on bullying, child protection, sexual discrimination and WH&S targeted at the various departments.
6. The learning management system to facilitate this is owned by electAssociates and will be made available at no cost to the Ashram.
7. Unfortunately the amount of time I have available to donate to Ashram is finite and has been largely occupied with Taskforce matters.
8. It is for this reason that the WH&S System and e-Learning portal rollout has been delayed.

3. (e) Your role and involvement in responding to any complaints or allegation of child sexual abuse made by former residents made by former residents of the ashram including but not limited to your role in:

3 (e) i. Corresponding with former residents of the Ashram.

1. The Taskforce applied strict confidentiality provision to much of the correspondence (email in particular) with a view of protecting the vulnerabilities of the victim/s.
2. I was therefore not privy to most of the victim ashram communication.
3. Some correspondence was distributed on a needs basis only.



4. I communicated with a Ms Bhakti Manning to whom, on Ashram instruction, I issued a cease and desist letter via my legal associate.
5. At the same time I also issued a cease and desist letter to a Mary Smith. Mary Smith was obviously an alias and was never formally identified.
6. To the best of my knowledge Ms Manning was a resident in an Indian ashram not Mangrove Mountain. Please see **Annexure K – Cease and Desist Letter issued to both Ms Manning and Ms Smith**
7. At the time of issuing the cease and desist letter neither party had raised any issues relating to their person experience relating to sexual abuse. They were making comment about it.
8. The cease and desist letter was written to Ms Manning because she wrote a letter to the entire frontline Satyananda Yoga teaching community. This letter had caused the individuals who received it to be genuinely concerned about their reputation by their continued involvement with the Satyananda organisation.
9. The Manning letter seemed to imply to the recipients that there could be police investigations resulting from a Royal Commission inquiry. This was totally untrue as there were no legal matters under consideration. Please referred to in Ms Manning's letter **Annexure L – Letter from Ms Manning to Yoga teachers.**
10. Ms Manning's letter and the Ashram's Cease and Desist letter was written before Ms Manning declared herself to be a victim of an Indian Ashram not Mangrove Mountain.
11. We have since received a letter from her legal representative disagreeing with the terms of our complaint. Please see **Annexure M – Letter from Ms Manning legal representative.**
12. This matter remains to be tested in law.
13. The letter from Ms Mary Smith in particular was very damaging. It was able to be delivered as a direct result of Ms Manning making the mailing list which she compiled and made public. Please see **Annexure N – Letter from Mary Smith.**
14. Note that it is true that the email address are publicly available but were not available as a general mailing list. They were provided so students could contact the teachers.
15. Sometime in April 2014, I was asked by the Taskforce chairperson to have a conversation relating to our HR systems with a Mr Tim Clark who she had been liaising with.
16. I had two telephone conversations with Tim. Tim did not represent himself as being a sexual abuse victim. Rather he was a victim of 'slave labour' and wanted back pay for unpaid wages.
17. Tim was trying to ring me on the 15 May 2014 and I was not able to answer his calls as I was in back to back business commitments. He subsequently left a number of disturbing voice mail messages and ended up sending me a



number of abusive texts. As a consequence I ceased all communication with this individual. Please see **Annexure O – Text interchange TC & BF.**

18. I have had no correspondence with any other former residents.

3 (e) ii. The working together taskforce established by the Taskforce in March 2014.

1. I was invited to join the Taskforce and was also asked to act as the chair which I declined due to time constraints.
2. I was, and continue to be, an active member of the taskforce. I saw my role as being the establishment of a project plan, schedule of activities and providing direction as and when required.
3. Where possible I produced drafts of documents and undertook research.
4. It is my goal to do all things possible to ensure that the victims are treated with compassion and dignity and that the Ashram could structure an optimum response.
5. It soon became clear that no-one in the Taskforce had any experience in the field of child sexual abuse and facilitating an appropriate response.
6. It was at this time that we sought the advice and guidance of an external expert Mr Terry O'Connell. Mr O'Connell specialised in this area and worked for an organisation call Real Justice.

Advise provided by myself to the Ashram

7. I advised the Ashram that based on discussions with my legal representative that, as the Ashram had not been culpable in the abuse taking place, it appeared it did not have a legal responsibility to make financial reparation to the victims.
8. The taskforce decided in a meeting on the 8th May, 2014 to not completely close this door.
9. I advised the Taskforce that based on my discussion with my legal advisors that the victims could have sought legal and financial redress from the perpetrator of the crime Swami Akhandananda Saraswatti.
10. I advised the Ashram that based on my discussion with my legal representative that, as the abuse was by a single individual who was incarcerated and, as there had been not a single case of child sexual abuse occurring during the following 30 years, that the abuse cannot be classified as having been 'Systemic' as referred to clause f of the Royal Commission's terms of reference.
11. Further the term 'Systemic' is not defined in the terms of reference. A reasonable person would conclude that the common usage of the word as defined in the Macquarie dictionary would be the meaning.
12. The Royal Commission obviously does not agree with this interpretation.



13. I offered the Ashram the opportunity to have a written legal opinion provided but this offer was declined due to budgetary constraints.
14. I produced the first draft of the ‘Survivors Pack’ based on input from the Taskforce and Real Justice.

3 (e) iii. The Ashram’s 40th anniversary celebrations at Easter 2014.

1. The purpose of the Taskforce stemmed from the fact that it would be wrong to celebrate 40 years without recognising the serious damage that was done to the victims of Swami Akhandananda Saraswati all those years ago.
2. That the victims needed a mechanism to a) be recognised, b) be shown compassion, c) be provided the mechanism to communicate their pain, and d) be provided the facilities where possible to help the victims heal.
3. As a taskforce member I was therefore directly involved in the taskforce determining the optimum response for the 40th anniversary.
4. In determining the response we used the services of Real Justice.
5. Unfortunately I was not able to attend the Easter weekend due to other commitments.

3 (e) iii. Development of the Survivors Pack.

1. I was instrumental in doing a lot of the research that was provided to the taskforce members is input for a planning meeting held on the 9 May, 2014. Please see attached **Annexure P- Planning Document for Management Plan 9 May**.
2. On the 9th May the Taskforce met together with representatives from Real Justice and the senior members of the Ashram community.
3. The aim of this meeting was to determine consensus between all stake holders in terms of how to move forward.
4. I drafted the first version of the Survivor Plan as a direct output from this meet.
5. The group meeting facilitated by Real Justice on Easter Saturday is another output from this meeting.
6. The commission has been given a recording of this meeting in previous submissions made by me.
7. A really important question to be asked is; ‘why there were no survivors involved with the development of the response?’.
8. The answer was that a) the victims didn’t trust the ashram, b) didn’t trust the taskforce, and c) did not want to interact with the taskforce in any meaningful way.
9. It is for this reason that the taskforce via the survivor pack made available the services of Real Justice (at the ashram’s expense) to any victim who chose to use the service.



10. The purpose behind this service was to a) provide healing where possible and b) provide the victims with a voice through an independent third party. It was hoped that maybe some survivor response themes could be identified from this interaction that the Ashram could respond to in a meaningful way.
11. There was a very small uptake of this facility by the victims. Two of those who took up the offer were not abuse victims within the a) Mangrove mountain ashram and the other was a victim of a contemporary adult to adult sexual harassment matter.
12. The interaction between the victim and Real Justice is totally confidential. There is no personal information fed back to the ashram.

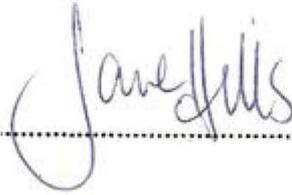
3 (f) Any other matter in relation to which you think your evidence may be of assistance to the royal commission.

1. As an institution, and as the HR representative for the Ashram, it became clear very early that there is no 'best practice' policy and procedure available in terms of the optimum response to 'Historic' sexual child abuse matters.
2. There also seemed to be a great deal of confusion around 'Institutional liability' as opposed to 'institutional response'. Did the Ashram have a legal liability or not? Which is different to; does the Ashram have a moral liability or not.
3. The only thing we had to go on was common decency and a strong moral compass. This is obviously not enough!
4. There is a lot of information available on what not to do. Which is not helpful, i.e. the Roman Catholic Church's towards healing initiative being one example.
5. Real Justice and Terry O'Connell provided us with clarity regarding a) our own individual emotional responses to the serious and disturbing matters we were dealing with, b) rationalising the victim's psychology and why it presented as it did and were responding the way they were, and c) the formulation of a best response possible.
6. The appointment of Real Justice was therefore a very important step forward for us.
7. Since the abuse by Swami Akhandananda Saraswatti nearly 30 years ago there has been not a single incident of child abuse.
8. The statement in point 7 is supported by the fact that in the open Facebook forum where victims could post anonymously if they desired, there was not a single comment of abuse posted that in anyway relates to the post Swami Akhandananda period. For legal reasons this site was closed down.
9. A search on the internet reveals that there is not a single incident of post Sw Akhandananda child abuse posted anywhere on the internet.
10. A reasonable person could therefore assume that no further abuse took place.



11. This absence of further incidents of abuse is not because the Ashram is lucky. It is my view that it is a direct result of the effectiveness of the systems described in clauses 3 (c) above formulated in response.
12. No legal advice has been sought in preparing this statement.

In signing this document, I Bert Michiel Franzen state that all the information provided is true and correct.

<p>Signed by:</p>  <p>.....</p> <p>(Signature)</p> <p>Print Name: Bert M Franzen Address: Unit 1 Building 5 49 Frenchs Forest Road Frenchs Forest, NSW, 2086</p>	<p>Signed on behalf Witness</p>  <p>.....</p> <p>(Signature)</p> <p>Print Name: Jane L Hills Title: REDACTED Address: REDACTED</p>
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