

CONFIDENTIAL AND PRIVILEGED**SUPPLEMENTARY STATEMENT OF COMMISSIONER FLOYD JOHN TIDD**

Name: FLOYD JOHN TIDD

Address: c/o 95-99 Railway Road, Blackburn, Vic 3130

Occupation: Territorial Commander, Salvation Army Southern Territory

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A. Redress and Claims Review

1. I am a Salvation Army officer and hold the rank of Commissioner.
2. I refer to my previous statement given to the Commission dated 17 September 2015. I also refer to the statement I read out at the commencement of giving evidence to this Commission on Friday, 9 October 2015.
3. The purpose of this supplementary statement is to clarify the commitments I have made, on behalf of TSAS, in relation to the recommendations contained in the Redress Report of the Royal Commission on Redress and Civil Litigation ("**Redress Report**").
4. TSAS's position is as follows:
 - (a) TSAS supports a single, national redress scheme for survivors of child sexual abuse.
 - (b) TSAS is still working through the detail of the recommendations in the Redress Report. It is also mindful of the fact that a national redress scheme may not be supported by the Commonwealth and that there may be, instead, State-based redress schemes in some jurisdictions.
 - (c) If a national redress scheme is supported by the Commonwealth and implemented, it is likely that many care leavers will have the opportunity to seek a re-opening of their past settled claims under such a scheme regardless of whether or not they were legally represented in the original claims process or whether they entered into a deed of release with TSAS.
 - (d) TSAS will co-operate with the Commonwealth government as necessary, and comply with any requirements of a national redress scheme as implemented by the Commonwealth, including in relation to such monetary levels of redress as may be prescribed or assessed within the national scheme.
 - (e) TSAS accepts the Royal Commission's recommendation that any payment must be a tangible recognition of the seriousness of the injury and hurt suffered by a survivor. TSAS is supportive of a matrix of the kind recommended by the Royal Commission for assessing monetary payments to survivors. Where agreement with survivors cannot be reached, TSAS supports the Royal Commission's recommendation that the amount of compensation payable under a national redress scheme should be determined independently from institutions.

- (f) The Redress Report also contains recommendations about interim arrangements; that is, arrangements between now and the time a national redress scheme might commence operation (which is identified in the Redress Report as 1 July 2017). The Royal Commission has recommended that, for the interim period, institutions adopt the elements of redress and the general principles for providing redress recommended in Chapter 4 of the Redress Report (recommendation 2). The Commission has also recommended that institutions adopt, for the interim period, the purpose of monetary payments recommended in Chapter 7 of the Redress report (recommendation 15) and be guided, in respect of the interim period, by the recommended matrix for assessing monetary payments (recommendations 16 and 17). I accept each of those recommendations.
- (g) Consistent with the recommendations in the Redress Report, TSAS will, in the interim period, assess any new claims for redress by reference to these guiding principles.
- (h) I have instructed that Clayton Utz, with the assistance of counsel, conduct a review of all 418 claims that have been settled between TSAS and survivors since 1996. The purpose of the review is to identify whether compensation payments made in respect of settled claims were assessed fairly and consistently.
- (i) If, as a result of the review, any claims are identified that were not assessed fairly and consistently relative to the bulk of other settled claims, TSAS will “re-open” those claims (including by making “top-up” payments) in the interim period between now and when a national redress scheme commences operation.
- (j) Where, however, claims were assessed fairly and consistently relative to the bulk of other settled claims, they will not be eligible for “re-opening” in the interim period. Re-opening such claims during the interim period, in the absence of a defined standard by which to assess the appropriate level of redress, would in my view be contrary to the Royal Commission’s objective of ensuring consistent assessments across claims. As the Royal Commission noted in the Redress Report, page 49, “the recommended average and maximum monetary payments are unlikely to apply readily to interim arrangements”.
- (k) Most survivors who reached settlements with TSAS were represented by lawyers and reached settlements that were negotiated on their behalf. In those cases, we can generally be confident that survivors’ interests were protected, and that compensation payments were assessed fairly and consistently relative to the bulk of other settled claims. Such claims will therefore generally not be eligible for re-opening in the interim period.

- (l) With these matters in mind, I have directed that TSAS's review of settled claims prioritise two categories of cases:
- (i) cases where survivors who reached settlements with TSAS without the benefit of their own legal advice; and
 - (ii) cases where new factual material has come to light after a claim was settled – for example, where similar claims were subsequently made against the same abuser by other survivors, or where abusers who had denied the allegations against them were subsequently arrested and convicted.
- (m) The review will also consider whether any survivors were disadvantaged, relative to other survivors who settled with TSAS, because of matters including TSAS relying on technical legal defences such as the *Ellis* defence, statutes of limitations or vicarious liability principles.
- (n) If, as a result of the review, there is a recommendation that a survivor was treated unfairly or inconsistently relative to the bulk of other survivors who reached settlements with TSAS, I anticipate receiving a recommendation to “re-open” his or her claim and make a further payment, assessed according to the principles identified by the Royal Commission in respect of payments made in the interim period.
- (o) I anticipate that the review described above will be completed by the end of 2015. I will expeditiously implement the recommendations of the review, including by making any recommended “top-up” payments. Where survivors are represented, contact will be made with their solicitors. Where survivors are unrepresented, we will investigate the best way to initiate further contact with them, mindful of our intention not to re-traumatise them.
- (p) I am not yet in a position to say what TSAS's position with respect to past settled claims will be if a national redress scheme is not supported and implemented. TSAS's position will depend on whether State-based redress schemes are adopted and, if so, their terms.
5. To be clear, the review I have announced is in respect of the interim period between now and when a national redress scheme might be adopted, and will lead to the re-opening of claims only in those cases where it appears that survivors were treated unfairly or inconsistently relative to the bulk of other survivors who have settled their claims with TSAS.


B. Standard of Care

6. At paragraph 46 of my previous statement, I said:

The aim of TSAS in operating children's homes was to provide children with the best care possible, and to a standard that replicated as best as possible the care the children would have received had they been cared for by loving parents.

7. This was a statement of my own personal belief of the aim of the homes, informed by the nature of The Salvation Army as a Christian organisation. The "aim", as I refer to it, is not directly derived from any historical document or policy written in relation to any of the homes. It would have been more accurate if I had started paragraph 46 of my previous statement with the words, "**In my view**, the aim of TSAS in operating children's homes **ought to have been** to provide children..." (emphasis added). I recognise, on reflection, that that standard was impossible to achieve in homes that were reformatory in nature.
8. In oral evidence on 12 October 2015, I said that this "aim" was an aspirational standard, and that it is reflected in current policy where TSAS has responsibility for the care of children and young persons in its social care programs. In particular, I mentioned the Westcare program. I had in mind parts 2.1, 2.2 and 2.3 of the Westcare Policy and Procedures for Planning and Delivery Standards [TSAS.001.001.0235] which state, among other matters, that TSAS attempts to ensure that all houses in the Westcare program are homely and welcoming.

This statement is true and correct to the best of my knowledge and belief.



Commissioner Floyd Tidd