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Dilworth Trust Board

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by email

Privileged and Confidential

Dear Sir/Madam

NEW ZEALAND TAX AND SOCIAL SUPPORT POLICY TREATMENT OF REDRESS PROGRAMME FOR SURVIVORS

- 1 This letter sets out the New Zealand tax and social benefits implications for Old Boys who receive a payment under the redress programme (the *Programme*) established by the Trustees of the Dilworth Trust Board (*Dilworth*) for Old Boys who were victims of sexual abuse and profound physical abuse by a representative of Dilworth while a student at Dilworth School (*Survivors*).
- 2 We understand a copy of this letter may be provided to Old Boys to assist them.
- 3 If any Old Boy has a questions regarding this advice they should address these to Programme personnel in the first instance. Chapman Tripp does not have a client/lawyer relationship with any Old Boy regarding this advice.

ADVICE

- 4 Any payment received by a Survivor under the Programme should:

No Income Tax

- 4.1 Not be subject to income tax. The payments are capital in nature and are compensation for harm caused;

No GST

- 4.2 Not be subject to GST. Even if a Survivor is GST registered, the payment is not consideration for any supply made by the Survivor;

No effect on benefits

- 4.3 Not be treated as cash assets for the purposes of qualifying for the accommodation supplement or temporary additional support provided by Work and Income New Zealand (*WINZ*);
- 4.4 Not be treated as income of the Survivor for the purposes of qualifying for any income tested benefit under the Social Security Act 2018;
- 4.5 Not be treated as assets of the Survivor or the Survivor's spouse for the purposes of qualifying for an asset tested benefit provided under the Residential Care and Disability Support Services Regulations 2018;



Should be disclosed to WINZ

4.6 Be disclosed to WINZ where the Survivor receives a current WINZ benefit. Although there is no effect on the amount of benefit payable, WINZ should still be told about the receipt and that it is compensation paid under the Programme;

No effect on ACC payments

4.7 Not impact any payments or entitlements under the Accident Compensation Act 2001.

5 We note that any payment received by a Survivor would be expected to be used by them in the event that they are in 'hardship' and therefore would impact on their ability to claim an emergency benefit on grounds of hardship from WINZ.

6 We have provided further detail in Appendix A.

Facts

7 Our understanding of the relevant facts are set out below.

8 The Programme may consist of:

Apology

8.1 a direct personal response from Dilworth, including an apology;

Redress Payment

8.2 a lump sum redress payment in full and final settlement of all claims against Dilworth (*Redress Payment*);

Incidental Support

8.3 access to confidential counselling and psychological services funded by Dilworth;

8.4 financial support to Survivors to assist in making their application for redress, including reimbursement for reasonable legal costs incurred; and

8.5 other forms of redress which may be requested by the Survivor or considered appropriate by the Dilworth Redress Panel,

(together *Incidental Support*).

9 Dilworth is a trust domiciled in New Zealand and registered under the Charitable Trusts Act 1957 and the Charities Act 2005.

10 The Redress Payment is intended to compensate Survivors for harm caused, including:

10.1 physical harm; mental harm; humiliation, loss of dignity, and injury to the feelings,

but not including any:



10.2 economic loss; loss or reduction of property; loss of any benefit (whether or not of a monetary kind); or loss of employment or office.

Assumptions

11 We have assumed that all Incidental Support is ancillary to the Redress Payment.

Limitations

12 Our advice in this letter:

12.1 is subject to the facts and assumptions set out above;

12.2 is limited to the New Zealand tax and social support policy matters expressly covered in this letter; and

12.3 relates to New Zealand law in force as at the date of this letter.

13 Our advice is addressed to Dilworth and may not be relied on by another person.

14 Please let us know if you have any questions regarding our advice.

Yours faithfully

Graeme Olding
Partner



APPENDIX A

Income tax treatment of Redress Payment

- 1 The Redress Payment should not be subject to tax in the hands of Survivors under the Income Tax Act 2007 because the Redress Payment is capital in nature.
- 2 The Redress Payment is capital in nature because the Redress Payment:
 - 2.1 is not made in in connection with any services provided by the Survivors to Dilworth;
 - 2.2 does not compensate Survivors for the loss of any income or any other economic loss; and
 - 2.3 is made as a lump sum payment (notwithstanding that a part of the lump sum may be paid early to Survivors as an interim redress payment).
- 3 We have considered whether there is any risk that the Redress Payment could be viewed as taxable on the basis that it is similar in nature to an accident compensation payment made by the Accident Compensation Corporation, which is subject to income tax. In our view, there should be no such risk as the rule that provides that accident compensation payments are taxable is a specific rule that was intended to override the general tax principles that would otherwise apply – i.e. that amounts that are capital in nature are not subject to tax.

Income tax treatment of Incidental Support

- 4 The Incidental Support should not be subject to income tax in the hands of Survivors as this assistance and support is incidental to, and necessarily connected with, the Redress Payment, which as discussed above is capital in nature.

GST treatment of Redress Payment and Incidental Support

- 5 No GST should apply to the Redress Payment and Incidental Support.
- 6 If any Survivor is carrying on a taxable activity and is registered for GST under the Goods and Services Tax Act 1985:
 - 6.1 the Survivor should not include the value of the Redress Payment and Incidental Support in their GST return because the Redress Payment and Incidental Support is not paid as consideration for a taxable supply made by the Survivor; and
 - 6.2 to the extent that any person provides services to a Survivor in relation to the Programme and charges GST on those services (for example, legal fees), the Survivor should not claim a GST input tax deduction for those services in their GST return because those services are not used by the Survivor in the course of making taxable supplies.



Treatment of Redress Payment and Incidental Support under social support policies

- 7 Schedule 8 of the Social Security Regulations 2018 (Cash assets and income exemptions) and schedule 3 of the Residential Care and Disability Support Services Regulations 2018 (Exempt assets), both provide for ex gratia and compensation payments made by the Crown or a specified other entity to be excluded from asset and income testing for the purposes of financial assistance provided by the Ministry of Social Development.
- 8 For the purposes of the above regulations:
 - 8.1 "compensation" is defined to include a payment made in settlement of a claim against a "specified other entity" (whether or not that claim has been formally filed in a court or tribunal), where the payment is not made under an employment relationship or a contract to provide goods or services (this definition should be met as the Redress Payment and Incidental Support are in full and final settlement of all claims against Dilworth);
 - 8.2 "specified other entity" is defined to include a registered charity (this definition should be met as Dilworth is a trust domiciled in New Zealand and registered under the Charitable Trusts Act 1957 and the Charities Act 2005);
 - 8.3 for the compensation to qualify for the exemption, the payment must be made in recognition of harm, or in respect of a claim of harm, that occurred or is alleged to have occurred in New Zealand (this definition should be met as the Redress Payment is intended to compensate Survivors for physical harm; mental harm; humiliation, loss of dignity, and injury to the feelings but not any type of economic loss).
- 9 As a result:
 - 9.1 the Redress Payment and Incidental Support should not be treated as cash assets for the purposes of qualifying for the accommodation supplement or temporary additional support provided by the Ministry of Social Development (Social Security Regulations 2018, Schedule 8, Parts 1 and 2);
 - 9.2 the Redress Payment, Incidental Support and any income derived by a Survivor from the Redress Payment (where a Survivor uses the Redress Payment to make an income generating investment) should not be treated as income of the Survivor for the purposes of qualifying for any income tested benefit under the Social Security Act 2018 (Social Security Regulations 2018, Schedule 8, Part 4); and
 - 9.3 the Redress Payment and Incidental Support should not be treated as assets of the Survivor or the Survivor's spouse for the purposes of qualifying for an asset tested benefit provided under the Residential Care and Disability Support Services Regulations 2018 (schedule 3, Part 1).
- 10 For completeness, we note that the exemptions from means tested social support policies discussed above may not apply to the emergency benefit. This is because



the emergency benefit is a discretionary benefit granted on the basis of financial hardship being experienced by the applicant. Access to a lump sum amount in a bank account would likely be taken into account in assessing whether financial hardship existed.

- 11 We recommend that Survivors that receive a WINZ benefit disclose the amount of any payment under the Programme to WINZ. Although there is no effect on the amount of benefit payable, WINZ should still be told about the receipt and that it is compensation paid under the Programme.

Accident Compensation treatment of Redress Payment and Incidental Support

- 12 Compensation under the Accident Compensation Act 2001 (ACA) is not means tested. This means that any payment received under the Programme should not be relevant for assessing payments or entitlements under the Accident Compensation Act 2001.

Section 317 of the ACA prevents a person from bringing proceedings independently of the Act for damages arising directly or indirectly out of personal injury covered by the ACA. The Redress payment is in full and final settlement of all claims against Dilworth. As such, the receipt of the redress payment should not interfere with any ACC claims the Survivors may have in relation the abuse suffered.