

# Aide-Mémoire

## Crown response to the Abuse in Care Inquiry – third Ministerial group meeting

<b>Date due to MO:</b>	24 June 2024	<b>Action required by:</b>	N/A
<b>Security level:</b>	IN CONFIDENCE (SENSITIVE)	<b>Health Report number:</b>	H2024042512
<b>To:</b>	Hon Matt Doocoy, Minister for Mental Health		
<b>Copy to:</b>	Hon Dr Shane Reti, Minister of Health		
<b>Consulted:</b>	Health New Zealand: <input type="checkbox"/>		

### Contact for telephone discussion

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## Crown response to the Abuse in Care Inquiry – third Ministerial group meeting

**Date due:** 24 June 2024

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**To:** Hon Matt Doocoy, Minister for Mental Health

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**Security level:** IN CONFIDENCE (SENSITIVE)      **Health Report number:** H2024042512

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**Details of meeting:** Tuesday 25 June, 5-6pm, in 5.3 EW

**Purpose of meeting/proposal:** The third meeting of the Ministerial Group on the Abuse in Care Royal Commission of Inquiry (the Royal Commission) will be held on 25 June 2024. This briefing summarises the latest information from the Crown Response Unit (CRU) regarding the draft recommendations, and the next steps for the response process. The anticipated agenda items are:

1. responding to the Royal Commission's final report
2. redress parameters.

**Comment:** **Item 1: The Royal Commission's final report is due by 26 June 2024**

- The Royal Commission is due to provide its final report to the Governor-General by 26 June 2024.
- It is anticipated that the final report will include a wide-ranging account of the history of care in New Zealand across many different care contexts through to the present day. It will likely:
  - include detailed stories of horrific abuse in state and faith-based settings, particularly between the 1960s to 1980s, and analysis of significant failures of governance, management, and monitoring
  - have an emphasis on Māori, Pacific peoples, and Deaf and disabled people, consistent with their over-representation in care populations
  - include further case studies into specific institutions (case studies have already been published on Marylands and Lake Alice) and profiles detailing the experiences of individual survivors while in care.

- The report will be highly critical of past care services and systems, and the people who had oversight of them, as well as identifying ongoing issues and concerns within current care settings.
- The report is also expected to contain commentary on present-day care settings from 2000 to 2024 and on the implementation of the Royal Commission's 2021 redress report (*He Purapura Ora, he Māra Tipu – From Redress to Puretumu Torowhānuī*).

***The Government has received the recommendations in confidence***

- On 30 May 2024, the Royal Commission provided its draft recommendations to the Minister of Internal Affairs in confidence.
- There are 136 draft recommendations in total, aimed at the Government and faith-based care organisations. The recommendations are broad-ranging and have a particular emphasis on machinery of government matters, care safety standards, workforce, complaints processes, enforcement, and the justice sector. Together, the recommendations represent a call for the transformation of the care system in New Zealand.
- Most of the recommendations are designed to apply across all care settings (state and non-state) rather than being specific to a particular context such as youth justice or disability-related care.
- The recommendations, if adopted, would have a particular impact on the work of the Ministries of Health, Education, Social Development, and Justice, Oranga Tamariki, Whaikaha (the Ministry of Disabled People), Health New Zealand, the New Zealand Police, Crown Law and the Public Service Commission. There would also be implications for other government agencies, as well as significant implications for third party providers, faith-based groups, and schools.
- Some of the draft recommendations that (if adopted) would have a significant impact on the Ministry of Health and/or Health New Zealand include to:
  - appoint an independent person to promptly review all Lake Alice settlements and advise whether any further payments to claimants who have previously settled are necessary to ensure parity in light of the District Court decision in 2002 (regarding the deduction of money from second round claimants for legal costs), and ensure that any payments to claimants who have not yet settled are, as a minimum, equitable in light of the review (rec 18)
  - create a statutorily enabled National Care Safety Strategy on the prevention of, and response to, abuse and neglect in care (rec 38)

- establish a new standalone Care Safety Agency to provide whole of system leadership on preventing and responding to abuse and neglect in care (recs 39-42)
- set, monitor & enforce comprehensive care safety rules and standards (rec 45)
- enact a new Care Safety Act and include any legislative measures required to establish a national care safety regulatory framework and to give effect to the Royal Commission's recommendations (rec 43) and review all legislation and regulations relating to the care of children, young people and adults in care to identify and address any inconsistencies, gaps or lack of coherence in the relevant statutory regimes (rec 44)
- create a system for the accreditation of all State and faith-based entities providing care directly or indirectly for children, young people or adults in care (recs 46-54)
- as a priority, support and invest in the development of disability, mental health, educational, and youth justice models of care that do not perpetuate the institutional environments and practices, including segregation, that led to historic abuse and neglect in care (rec 69)
- prioritise and accelerate work to minimise and eliminate solitary confinement ('seclusion' in health and disability settings) in all care settings as soon as practicable (rec 72)
- provide sufficient investment to enable children, young people and adults in care to have access to an independent advocate of their choosing to support them to understand and exercise their rights (rec 74)
- publicly report annually on the implementation of the Royal Commission's recommendations contained in the final report and all previous interim reports (rec 131).
- Further analysis and consultation with Health New Zealand will be required to more fully understand the implications for the health sector.
- We will provide further advice on the Lake Alice recommendation as part of the response work. Given most records about the details of most claims for Lake Alice settlements were destroyed after the death of the main adjudicator (retired Justice Sir Rodney Gallen), there are some practical challenges to aspects of the Royal Commission's recommendation.
- The CRU is co-ordinating an initial cross-agency analysis of these recommendations. This work will be reported back to Cabinet in September 2024. Recommendations are being considered by the CRU against the following matters.

- An initial assessment of the extent to which they support the prevention, detection and/or response to abuse in care
- Ease and potential timeframe and a high-level indication of potential cost for implementation
- Alignment with the current policy direction or work that may already be underway.
- The figure attached at Appendix A gives an overview of the range and volume of the recommendations.
- The Royal Commission has recommended that Government should publish a response indicating whether it accepts each of the Royal Commission's findings in whole or in part, and the reasons for any disagreement, within two months of the report being presented to Parliament. It recommends the same for the recommendations within four months.
- This is a very short timeframe to respond to the report and its 136 recommendations. The Ministry of Health understands that Minister Responsible for Co-ordinating the Crown Response to the Abuse in Care Inquiry plans instead to report back to Cabinet in September 2024 with recommendations on how and when the Government will publicly accept the findings and recommendations and others it does not wish to progress at this time.
- However, many recommendations will likely require further work before final decisions can be made. The recommendations are complex, and do not on their own provide a step by step "blueprint" that can be simply implemented.
- As part of the papers for this meeting, the CRU has provided a paper that identifies emerging themes from the Royal Commission's draft recommendations, and considers the next steps needed to respond to the recommendations.
- Further information about the Royal Commission and Lake Alice is provided in Appendix B.

**Item 2:** s 9(2)(f)(iv)

- The CRU has provided a paper to support a discussion about the initial s 9(2)(f)(iv)

- The first parameters s 9(2)(f)(iv)

### Next steps

- As noted above, the CRU is co-ordinating an initial cross-agency analysis of the recommendations and the Ministry of Health will provide input into this.
- The Minister of Internal Affairs is responsible for presentation of the final report to Parliament as soon as practicably possible after its anticipated receipt by 26 June 2024. Due to the long Parliamentary recess in July, this is expected to take place on 24 July 2024.
- A public apology is planned to be made by the Prime Minister on 6 November 2024.
- This aide-mémoire discloses all relevant information.



Robyn Shearer

Deputy Director-General

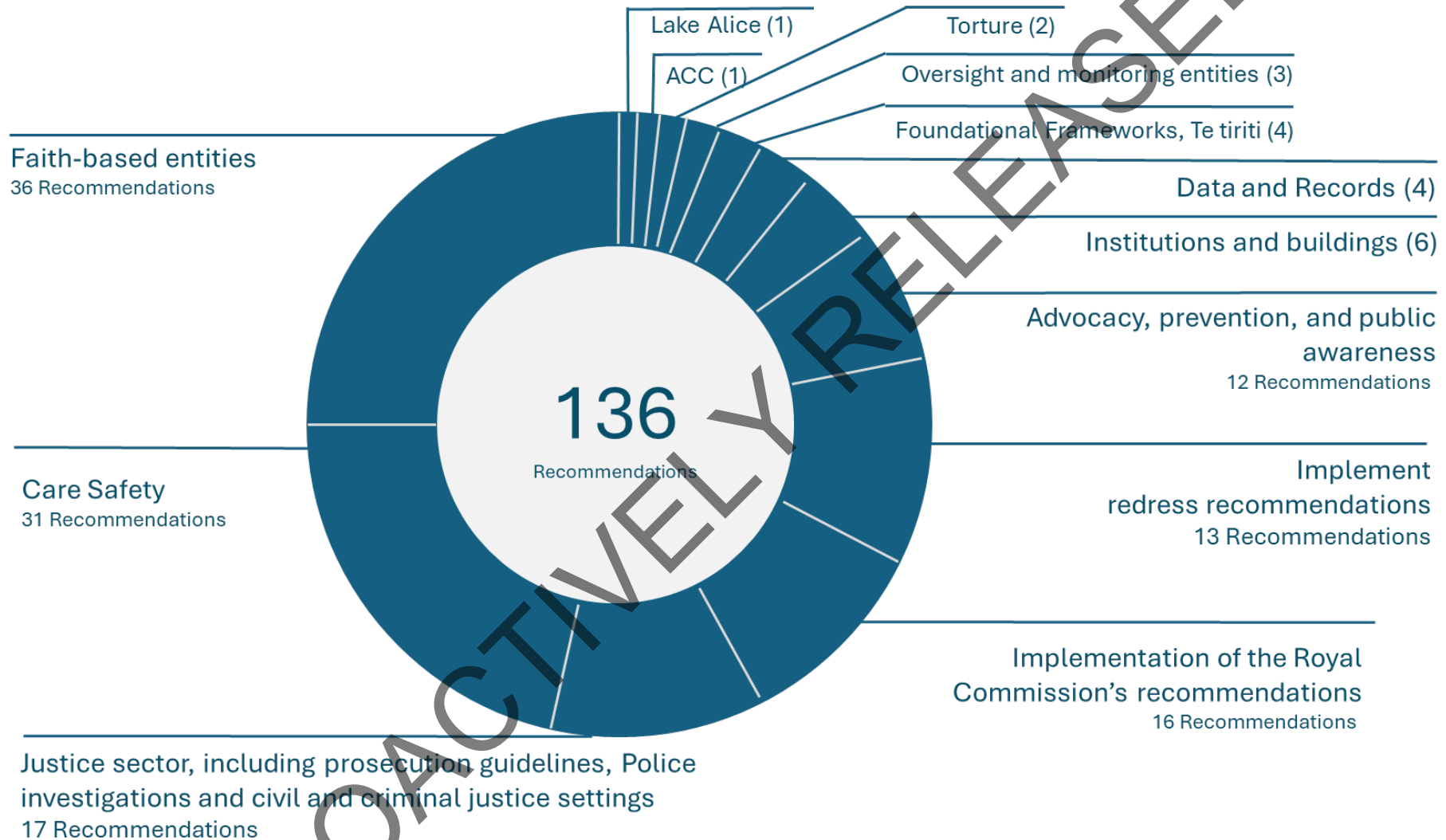
**Clinical, Community and Mental Health |  
Te Pou Whakakaha**

Date: 20 June 2024

PROACTIVELY RELEASED

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**Appendix A: CRU’s overview of the range and volume of the recommendations**



## Appendix B: Background information about the Royal Commission of Inquiry into Abuse in Care

### About the Abuse in Care Royal Commission of Inquiry

- The Abuse in Care Royal Commission of Inquiry (the Royal Commission) was established in 2018 to investigate children, young people, and vulnerable adults' experiences of abuse and neglect in State and non-State care in New Zealand between the years of 1950 and 1999.
- The Royal Commission has also heard about abuse that has occurred since 2000. The Royal Commission was established after long-standing calls by people who had been abused in care (survivors) and their advocates for an inquiry.
- The Royal Commission has heard evidence of experiences of abuse and neglect in children's homes, youth justice residences, foster care homes, community care providers, disability care settings, schools, churches, psychiatric and psychopaedic hospitals, and borstals. The types of abuse experienced include physical, sexual, emotional, psychological, cultural, and spiritual abuse and neglect.
- In August 2022, the Director-General of Health gave evidence before the Royal Commission providing acknowledgements and concessions about abuse and failings in State-run psychiatric facilities and State-run psychopaedic hospitals between 1950 and 1999.
- The Ministry of Health's evidence to the Royal Commission highlighted the significant changes in the health and disability sector, including the move to a community care focus, since the 1980s and 1990s to change the culture of care and the risks of abuse occurring.
- Most recently, *He Ara Oranga*, the report of the Government Inquiry into Mental Health and Addiction, highlighted challenges in mental health treatment, but did not raise significant issues about abuse as part of care, which reflects the extent of the changes in the culture of care.
- The Royal Commission has published 5 interim reports, including one in 2021 recommending wholesale changes to the way redress is provided to survivors (the redress report). One of the interim reports related to the Lake Alice Psychiatric Hospital Child and Adolescent Unit (but did not contain any recommendations).
- The Royal Commission's final report is due on 26 June 2024 and will include findings on the nature, extent, and impacts of abuse and neglect, with recommendations for strengthening the care system, including:
  - the terms of redress, including how the Crown should respond to historic abuse and neglect cases, and the performance monitoring of a new redress system
  - the appropriate steps Crown institutions should take to respond to historical abuse, including individual apologies by institutions where abuse took place
  - ensuring factors that have allowed abuse and neglect in care do not persist, including care workforce standards, policies and practices in care settings, complaint processes, and monitoring and oversight mechanisms.

### **Initial redress findings**

- The Royal Commission made some significant findings and recommendations in relation to the individual claims processes provided by different agencies, and the operation of the system as a whole in its 2021 redress report. The redress findings include:
  - participating in claims application and assessment processes can be retraumatising, and require survivors to recount their experiences, sometimes repeatedly, in a way that can cause anxiety or distress
  - claims processes are inconsistent and can be difficult to navigate, particularly for the survivors of abuse in multiple care settings
  - claims processes can be complex, administratively costly, and lengthy (with some processes taking many years) and often do not result in meaningful payments and apologies
  - claims processes are generally focused on financial redress rather than promoting healing and restoration of wellbeing through rehabilitation and support that meets the diverse needs of survivors
  - claims processes are operated by the organisations responsible for survivors' care at the time of their abuse and therefore lack independence and trust with survivors
  - claims processes fail to acknowledge the widespread and sometimes intergenerational effects abuse can have on family/whānau and wider communities.
- In response to the Royal Commission's findings, Cabinet has agreed to:
  - the development of an independent survivor-focused redress system, with a clear vision, purpose and characteristics that ensure the system is compassionate, equitable and meets survivors' needs [SWC-21-MIN-0204 refers]
  - the establishment of a design group, supported by an advisory group, to develop proposals for the high-level design of the new redress system [SWC-22-MIN-0214 refers].
- An 11-member Redress Design Group (Design Group), comprised primarily of survivors with strong Māori representation, has proposed an innovative and ambitious vision for redress. The proposals draw on international examples, and include some recommended governance, organisational and funding arrangements with an emphasis on survivor leadership and choice as key to enabling healing.

### **Crown response**

- The overall government response is led through the Crown Response Unit (CRU). The CRU is hosted within Oranga Tamariki and has involved over 17 agencies, with the Ministry of Health having a leading role.
- The Crown response is underway on recommendations from the Royal Commission's interim redress reports, following Cabinet decisions in 2022 [SWC-21-MIN-0204 refers].
- Work already underway responding to the recommendations in the interim reports, including on immediate changes to improve services, includes:
  - redress for survivors of abuse in care, including considering the wider redress context (civil litigation and ACC)

- the planning and delivery of a public apology to survivors of abuse in care as soon as practicable following the delivery of the Royal Commission's final report
- improving access to records processes for survivors of abuse in care and other care-experienced people
- enhancements to an interim Survivor Experiences Service
- actions to acknowledge some survivors of the Lake Alice Psychiatric Hospital Child and Adolescent Unit who experienced torture
- planning for the final report and coordinating a timely government response to the final report.
- The interim Survivor Experiences Service was established for survivors to share their experiences of abuse, which will operate until decisions are made on the provision of redress into the future. The Service is overseen by a Ministerially appointed Board comprised primarily of survivors.

### **Ministerial Group for the Crown Response to the Abuse in Care Inquiry**

- The Royal Commission's recommendations are likely to cover a range of Ministerial portfolios, and collaboration and commitment across the Crown will be needed. Key matters for the overall government response are likely to cover:
  - monitoring and oversight of the care system: who does it, how, and frequency
  - complaints processes
  - workforce (vetting, training, funding)
  - contracting services with third party providers
  - Treaty of Waitangi
  - human rights (torture)
  - prevention of abuse in care – current and future services
  - funding of services
  - agency collaboration (gaps in services)
  - a new system of redress.
- The Minister Responsible for the Crown Response to the Abuse in Care Inquiry, Hon Erica Stanford, has established a Ministerial Group to help drive and coordinate the Crown's response to the Royal Commission. Minister Stanford will chair the Ministerial Group.
- You will be attending the Ministerial Group in relation to your portfolios as Minister for Mental Health, Minister for ACC, and Minister for Youth. The other members are:
  - Hon Dr Shane Reti as Minister of Health and Minister for Pacific Peoples
  - Hon Paul Goldsmith as Minister of Justice
  - Hon Louise Upston as Minister for Social Development and Employment and Minister for Disability Issues
  - Hon Mark Mitchell as Minister of Corrections and Minister of Police
  - Hon Tama Potaka as Minister for Māori Development

- Hon Karen Chhour as Minister for Children and Minister for the Prevention of Family and Sexual Violence.

## Lake Alice

- Lake Alice was a psychiatric facility in Manawatū that opened in August 1950. It had a maximum-security unit and a child and adolescent unit that operated between 1972 and 1980.
- The Royal Commission found that some of the experiences at the Lake Alice Unit child and adolescent unit, specifically the way electroconvulsive therapy (ECT) and paraldehyde injections were used to punish children and young people, meet the threshold for torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).
- The three elements of torture, as set out in the Convention, are:
  - any act causing severe pain or suffering, whether physical or mental;
  - intentionally inflicted for such purposes as:
    - obtaining from the victim or a third person information or a confession;
    - punishing them for an act they or a third person has committed or is suspected of having committed;
    - intimidating or coercing them or a third person; or
    - for any reason based on discrimination of any kind; and
  - the pain or suffering is inflicted by or at the instigation of or with the acquiescence of a public official or person acting in an official capacity.
- Cases were taken to the United Nations Committee Against Torture (UN CAT) by Paul Zentveld and Malcolm Richards and resulted in findings against New Zealand. The UN CAT determined that in these both cases New Zealand had breached Articles 12, 13, and 14 of the Convention. Articles 12 and 13 of the Convention require states to have complaint processes and to conduct prompt and impartial investigations by competent authorities. Article 14 of the Convention requires states to provide redress with a right to fair and adequate compensation.

### *Ministry of Health redress process*

- The Ministry operates a redress process for persons abused in care in the Child and Adolescent Unit at Lake Alice. It is for persons who were resident in the unit between 1972 and 1977 and were aged under 17 years old at that time. This is administered between the Office of the Director of Mental Health and Health Legal.
- Two rounds of settlements, comprising a written apology from the Prime Minister and Minister of Health and a settlement payment from the Crown (averaging \$68,000 per individual in the round two settlement process), have already been paid to over 200 Lake Alice unit survivors. The Government made public announcements about the settlements at the time, although much of the detail remained confidential.
- Claimants in the first round of settlements had their legal fees deducted from their settlement amount, meaning that they received significantly less by way of their net payment than those in the second round of settlements.

- Claims are still being accepted and redress is accompanied by a personal apology from the current Prime Minister and Minister of Health. Funding appropriated for settlements has long been exhausted, but rather settlements are funded out of the Ministry's Legal Services NDE budget.

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