

# Aide-Mémoire

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

<b>Date due to MO:</b>	23 July 2024	<b>Action required by:</b>	N/A
<b>Security level:</b>	IN CONFIDENCE (SENSITIVE)	<b>Health Report number:</b>	H2024045535
<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

Name	Position	Telephone
Robyn Shearer	Deputy Director-General, Clinical, Community & Mental Health   Te Pou Whakakaha	s 9(2)(a)
Phil Knipe	Chief Legal Advisor, Government & Executive Services   Te Pou Whakatere Kāwanatanga	

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# Aide-Mémoire

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

**Date due:** 23 July 2024

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

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**Security level:** IN CONFIDENCE (SENSITIVE)      **Health Report number:** H2024045535

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**Details of meeting:** Wednesday 24 July, 5-6pm, 2.1 EW

**Purpose of meeting/proposal:** The fourth meeting of the Ministerial Group on the Abuse in Care Royal Commission of Inquiry (the Royal Commission) will be held on 24 July 2024. This briefing summarises the latest information from the Crown Response Unit (CRU) regarding the Royal Commission's report and the next steps for the Government's response. The agenda items are:

- the Royal Commission's final report, *Whanaketia: Through pain and trauma, from darkness to light*
- redress redesign – high-level structuring of redress functions
- consideration of potential redress for torture at the Lake Alice Child and Adolescent Unit
- s 9(2)(f)(iv) and liability considerations in the public apology.

**Comment:** **Royal Commission final report**

- The Royal Commission provided its final report to Government on 25 June 2024. It will be tabled in Parliament on 24 July at 4pm. It comprises 16 documents: a preliminary report, five case study reports, a book of survivor experiences, and nine volumes of the final report itself. As the report is more than 2900 pages, the CRU has provided a summary document that gives an overview of all of the nine substantive parts of the report.
- The final report has 139 recommendations directed at the state and faith-based organisations. Of these, many are broadly relevant to the health sector. The Ministry of Health is preparing a separate aide memoire providing initial high-level advice on the recommendations (HR H2024045203). Reactive communications

lines have been provided to your office ahead of the final report's release.

### **Redress redesign – high-level structuring of redress functions**

- The Royal Commission has recommended an integrated redress system with four redress functions, that:
  - provides a safe, supportive environment for survivors to share their care experiences
  - facilitates acknowledgements and apologies by institutions for tūkino (abuse, harm, and trauma) in care
  - facilitates access to support services, financial payments and other measures that enable te mana tāngata (the restoration of a survivor's inherent dignity)
  - reports and makes recommendations on systemic issues relevant to abuse in care.
- The CRU has provided Ministers with a discussion paper setting out key decisions and issues for consideration about:

s 9(2)(f)(iv)

- Along with the need for independence and ease of navigation, survivors have highlighted the inconsistency in the levels of redress offered for similar abuse in different settings by current claims processes, which undermines the accountability and outcomes achieved by survivors.
- The Ministry of Health-run historic abuse claims process, while efficient, has a low level of independence, in that the Ministry has strong historic links with the provision and monitoring of care. This is similar to the other main state care claims processes operated by operated by the Ministry of Education, Ministry of Social Development, and Oranga Tamariki.
- Likewise, non-state care claims processes have low levels of independence being provided by the organisations that were also generally responsible for providing care.
- There is a low level of integration across the existing claims processes within the Crown and no integration between the Crown and non-State claims processes. There is no common entry point for redress available in New Zealand, meaning survivors must go to individual agencies if their care spanned multiple settings.
- The Ministry of Health considers that there is opportunity for improved consistency and greater operational efficiency by having

a more centralised approach to historic abuse claims.

### **Consideration of potential redress for torture at the Lake Alice Child and Adolescent Unit**

- The Royal Commission found that some of the experiences at the Lake Alice 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).
- Related to this, in 2022 the United Nations Committee Against Torture (UN CAT) made findings against New Zealand in relation to two cases taken by Lake Alice survivors. The UN CAT determined that in these both cases New Zealand had breached Articles 12, 13, and 14 of the Convention. Further information was provided in the aide memoire for the second Ministerial group meeting (H2024040803).
- 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.
- Further information about the Ministry of Health's historic abuse claims process is provided in Appendix A.

### ***Redress decisions***

- Cabinet has agreed that the Government will formally acknowledge that some survivors of the Lake Alice Unit experienced torture. Decisions are now required on whether, and what specific new redress should be provided to survivors of the Lake Alice Unit who experienced torture. CRU has provided a discussion paper on Lake Alice redress discussion paper as part of the materials for this meeting.
- The finding of torture represents a new material circumstance when considering redress options. While the previous settlements and ongoing claims process do recognise the abuse experienced by Lake Alice survivors, the process does not explicitly acknowledge torture or directly provide access to rehabilitative support services. These are key components of the findings against New Zealand by the UN Committee Against Torture (UNCAT).
- The CRU has recommended that, should Cabinet wish to proceed with making decisions now on torture-specific redress, this package should consist of:
  - a new apology

- a one-off payment
- access to appropriate support services.

### ***A new apology that explicitly acknowledges torture***

- Previous apologies provided to Lake Alice Unit survivors (signed by the Prime Minister and Minister of Health at the time of settlement) describe experiences at the institution in very general terms. This has left some survivors feeling that the apology did not adequately acknowledge their experiences.
- The Ministry of Health supports a further apology being offered by the Crown to Lake Alice victims from the Prime Minister, Minister of Health, and Lead Coordination Minister for the Government's Response, to recognise and acknowledge their experiences of torture.
- We note that, subject to Ministers' decisions, the CRU will draft the text of the apology, and has proposed to test it with Lake Alice survivors.

### ***One-off payment that recognises torture***

- As outlined in the discussion paper, the second component of a new redress offering should be a one-off payment that, alongside the apology, acknowledges torture. Such a payment would be in addition to the payment made for the overall experiences of abuse that are recognised through the current claims process operated by the Ministry of Health. Further information about this proposed payment is outlined in the meeting papers.
- The Ministry of Health supports the consideration of additional payments being made to Lake Alice survivors but notes that additional funding would need to be appropriated for this.
- In addition, the Ministry of Health has pointed out practical considerations, which include the sheer difficulty in locating survivors even with publicity (for example, in 2007/08, when we sought to contact round two claimants from 2003/4, we were unable to make contact with 20% of those claimants, even after engaging private investigators to support).
- Potential costs involved with providing a new redress, including a one-off payment, for torture would not be able to be met from existing baselines, except for the costs associated with creating and delivering a new apology to survivors who were tortured. The Ministry of Health has budgeted to settle up to five new Lake Alice claims from its Legal Services budget for 2024/25 (\$350,000) and the Crown Response Unit has no funding for making redress payments.

### **Access to services for Lake Alice Survivors**

- The third component of a redress offering for torture involves providing access to appropriate support services. Rehabilitation of the victims of torture is a key element in the response expected of a state party under the UN CAT. Providing access to a targeted range of services would therefore help to address the Crown's obligations and would also be in line with calls from survivors.
- Examples of appropriate support services that survivors of torture at the Lake Alice Unit might need (or want) access to include:
  - medical costs associated with conditions arising from the abusive use of ECT and paraldehyde injections, such as a urological examination and/or surgery, or neurological examination and cognitive therapy
  - dental costs to address oral health issues or operations such as hip-replacements, that would lead to significantly improved quality of life and which potentially address physical conditions that have their roots in the abuse and ill treatment experienced at the Lake Alice Unit; and/or
  - home modifications to help address accessibility issues arising from chronic health conditions or impairments.
- The CRU notes that ACC may provide an avenue for facilitating access to range of potential support services for Lake Alice survivors, depending on need and eligibility criteria. However, there are various factors to consider as outlined in the CRU's paper.
- Subject to Ministerial endorsement, the CRU would undertake further analysis and advice on whether there is a need to fund additional or new support services, or whether a new redress service could instead offer navigation or brokering services to help survivors access existing entitlements.
- The CRU is recommending, if Ministers agree to specific redress for torture, that redress for the affected Lake Alice survivors is delivered through the Ministry of Health's existing claims process, with support from the CRU, including to conduct targeted engagement with Lake Alice survivors and advocates as part of the process.
- The Ministry of Health supports survivors being able to access restorative supports of their choosing. However, we are not resourced to administer further redress for Lake Alice survivors, including access to support services, should this approach be agreed by Ministers. In particular, the teams supporting these processes have been downsized following restructuring decisions in June 2024.
- Subject to Cabinet's approach to redress for torture, subsequent work would need to identify what additional resource the Ministry of Health would require in order to offer any new redress. The CRU

would be able to utilise existing relationships with some Lake Alice survivors, advocates, and relevant experts, to help manage the time and cost associated with engagement, including absorbing a level of cost within baseline.

### **Timing of decisions**

- The CRU has considered two options for the timing of redress decisions for Lake Alice survivors:
  - as soon as practicable, with redress ideally offered inside of 2024 calendar year, or
  - as part of wider work to redesign redress for survivors of abuse in care (likely to be finalised through Budget 2025 or 2026 and subject to wider decisions considered by Cabinet).
- Lake Alice survivors are aged in their 50s to late 60s. Sadly, this means that a number of survivors will have died or may otherwise be incapable of coming forward. Many Lake Alice survivors who are alive have significant health challenges due to their age and their experiences at the Unit, and subsequent impacts on their life.
- The CRU has recommended the Ministerial Group endorse seeking Cabinet decisions on redress for torture as soon as practicable, rather than as part of the wider redress work.
- The Ministry of Health supports the CRU's recommendation that if new redress is to be provided, it should be offered as soon as possible, so that it can be of use to survivors.

### **Parity of Lake Alice payments**

- In its final report, the Royal Commission recommended that the government should:
  - 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 2005 regarding the deduction of money from second round claimants for legal costs
  - ensure that any payments to claimants who have not yet settled are, as a minimum, equitable in light of the review.
- As previously advised, Lake Alice survivors who settled with the Crown in the first round had approximately 40 per cent deducted from the total settlement by their lawyers, Grant Cameron & Associates, and therefore their individual payments, for legal costs. While the same approach was followed for the round two settlement process, this was subject to legal challenge which

resulted a government decision that the deductions round two claimants be reversed.

- Subject to funding being approved, the Ministry of Health supports the CRU's recommendation that Ministers agree that the equivalent value of the legal costs deducted from round one payments be put in a contingency fund.
- Round one claimants could then be invited to come forward and make a claim for reimbursement. The original settlement totalled \$6.8 million and so the 40 per cent deduction would therefore require \$2.6 million in total to cover the legal fees for the full 95 claimants. As with new redress for torture, funding to reimburse the legal fees would need to be sought from the between Budget contingency or as a Budget 2025 pre-commitment.
- Moreover, given the length of time since the original settlement, it will be difficult to locate all claimants and so it is extremely unlikely that all of the contingency funding would be needed.

§ 9(2)(f)(iv)

**and liability considerations in the public apology**

• § 9(2)(f)(iv)

- The CRU has provided a paper with advice to support Ministers' consideration of this issue.
- This aide-mémoire discloses all relevant information.

  
Robyn Shearer

Deputy Director-General

**Clinical, Community and Mental Health |**

**Te Pou Whakakaha**

Date: 22 July 2024

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## Appendix A: Background information about 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 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 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 non department expenditure (NDE) budget.

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