

Aide-Mémoire

Lake Alice settlement process – end of life payment meeting 30 July

Date due to MO: 30 July 2024 **Action required by:** N/A

Security level: IN CONFIDENCE **Health Report number:** H2024047510

To: Hon Dr Shane Reti, Minister of Health
Hon Matt Dooney, Minister for Mental Health

Contact for telephone discussion

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To: Hon Dr Shane Reti, Minister of Health
Hon Matt Doocoy, Minister for Mental Health

Security level: IN CONFIDENCE **Health Report number:** H2024047510

Details of meeting: 30 July 2024, 4.45pm-6.00pm.

Purpose of Meeting: This meeting is to discuss end of life payment to survivors of Lake Alice Child and Adolescent Unit with six months or less to live who will not benefit from any redress.

Comment:

- This aide-mémoire outlines the proposal of end-of-life payments to survivors of Lake Alice Child and Adolescent Unit.
- The fourth meeting of the Ministerial Group on the Abuse in Care Royal Commission of Inquiry (the Royal Commission) was due to be held on 24 July 2024 but was rescheduled to 30 July 2024. You have received an aide-mémoire on 23 July 2024 with talking points to support the meeting. [H2024045535].
- This aide-mémoire is in addition to the existing papers on Lake Alice Child and Adolescent Unit (the Lake Alice Unit), which are included with the meeting agenda.
- This aide-mémoire discloses all relevant information.

End of life payments for Lake Alice Child and Adolescent Unit survivors

- Lake Alice Child and Adolescent Unit survivors are aged in their late 50s to late 60s. Sadly, some survivors have passed away, and many have major health challenges. At least one Lake Alice survivor is thought to be in the final weeks of his life and is unlikely to still be alive when redress decisions are announced. Survivors have raised this issue with Minister Stanford.

- Minister Stanford has proposed creating a regime for further payment to Round one or Round two Lake Alice Unit claimants who have previously had full and final settlements, who are able to provide medical evidence that they have six months or less to live.
- In essence, this would see that these claimants are able to benefit from any future payments to acknowledge torture at Lake Alice Child and Adolescent Unit, after the Royal Commission into Abuse in State Care report was published. The proposed amount is \$20,000 towards end-of-life care and/or funeral costs.
- Minister Stanford has proposed that this should be run through the existing scheme that is administered by the Ministry of Health (the Ministry).
- The Ministry maintains an ongoing process for any new Lake Alice Child and Adolescent Unit claims that come forward.
- Through this process, the Crown has to date settled claims with 203 Lake Alice survivors and four are currently being considered by the Ministry's historic claims process. The average payment is approximately \$70,000.
- Prior to 2022, the Ministry received an average of one new Lake Alice claim a year. However, because of publicity over the last couple of years, this has increased to around five new claims per year.
- Lake Alice Child and Adolescent Unit settlement funding has been long exhausted, and costs are currently met from Legal Services non-departmental expenditure (NDE) on the estimate of settlement of one to two cases per year maximum. That budget is already forecast to be overspent in 2024/2025 based on existing commitments (such as litigation costs).
- The Ministry will also approach the Crown Response Unit (CRU) to explore what level of support it can provide for progressing the end of life payments.
- The number of Lake Alice Child and Adolescent Unit survivors who would come forward to request an end of life payment is likely to be small. However, there are some challenges with the payment that would need to be worked through.
- The Ministry does not have a current record of address details for most Round one or Round two claimants. We would reach out to the CRU to support with any communications with survivors, using the CRU's established networks and communications channels.
- In the absence of new funding being appropriated, then unless a new source of funding is located (such as part of any wider upcoming funding decisions around redress) the end of life

payments would need to be managed alongside existing cost pressures.

- We understand that this payment is intended as a temporary measure while decisions on redress for torture are finalised. It is proposed that it is initially made available for the remainder of the 2024 calendar year, or until redress for torture is made available, whichever is sooner.
- The details of the process for applying the end of life payments would need to be worked through. As noted above, consideration will need to be given to how to contact survivors to make them aware of the payment, and the eligibility criteria.

Nomination of people to receive payment

- Minister Stanford would like the claimants who have less than six months to live to be able to nominate two people to receive the remainder of any redress payment after the claimant has died.
- Currently, payments both for Lake Alice survivors and redress claimants generally can only to be made to living survivors of Lake Alice Child and Adolescent Unit, or if the survivor passes away while the claim is open, for the payment to be made to their estate who will handle the distribution. Family members cannot claim on behalf of deceased family members under the current process.
- The proposal that eligible survivors are able to nominate up to two people to receive the remainder of any future financial redress payment after the death of the survivor may be challenging legally.
- The Ministry would instead recommend that this be amended to the Executor or Administrator of the person's deceased estate.
- Broadly speaking, a deceased person's "estate" includes, amongst other things, the deceased personal belongings, assets such as their house or land, bank accounts money, insurance policies proceeds, shares in companies etc. In this case, this may include any future financial payment the survivor is entitled to as a Lake Alice survivor.
- Generally, the legal right of any person (usually the Executor of the deceased's will, or the Administrator if the deceased has not made a will) to deal with the deceased estate is after a probate has been granted by the High Court to the Executor/Administrator. Probate is a court order recognising that the will as authentic and confirms that the Executor has the legal authority to deal with the deceased estate according to the will, or a court order confirming that the Administrator has the legal authority to deal with the deceased estate.

- Consequently, the proposal to allow the survivor to nominate any two persons to receive the remainder of the survivor's entitlement after his death may arguably run contradictory to the established estates law on how the assets of the deceased person may be distributed. In essence the proposal may arguably amount to allowing the two nominated persons to bypass the established legal process in terms of the distribution of the deceased estate.
- The decision to enable survivors to nominate two people to receive the payment after the survivor's death is likely to be relevant to the wider considerations for the development of any new redress process.

Administration of further redress – resourcing considerations

- Cabinet has agreed that the Government will formally acknowledge that some survivors of the Lake Alice Unit experienced torture. Consideration is now being given to whether (and what) specific new redress should be provided to survivors of the Lake Alice Unit who experienced torture. This was included in the Ministerial Group meeting for the Royal Commission response on 24 July 2024.
- The CRU has recommended that any new redress for torture for the Lake Alice Unit be implemented through the existing Ministry of Health historic claims process, with support from the CRU, including to conduct targeted engagement with Lake Alice survivors and advocates as part of the process.
- While the Ministry is supportive of further redress being offered to Lake Alice survivors, it should be noted that the Ministry does not have resource or budget to manage claims of significant numbers due to current funding and resourcing.
- Other options for administering redress could include the CRU itself, which has existing networks with survivors, or other agencies such as the Ministry of Social Development (MSD). MSD has a structure to support payments administration and, for example, administered the Christchurch Mosque assistance payment.
- If a scheme for payments more generally is anticipated to be done by the Ministry, the Ministry would need to be suitably resourced and funded to do so. Survivors will understandably expect the redress process to be quick and easy to access.
- The Royal Commission identified 362 children and young people who spent time at the Lake Alice Child and Adolescent Unit. Of those, 203 Lake Alice survivors have received a settlement and four are currently being considered by the Ministry of Health's historic claims process, as noted above.

- While it is difficult to predict the number of Lake Alice survivors who would seek further redress, it would likely be far higher than the current number of around five per year currently processed by the Ministry.



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