

Hon Erica Stanford

Lead Coordination Minister for the Government's Response to the Royal
Commission's Report into Historical Abuse in State Care and in the Care of
Faith-based Institutions

Appointment of Independent Arbiter

Date of issue: 2 April 2025

These documents have been proactively released:

- Appointment of the independent arbiter to make determinations on individual redress payments for survivors of torture at the Lake Alice Child and Adolescent Unit Cabinet paper;
- CAB-25-MIN-0018, Cabinet Minute, 3 February 2025.

Summary of redactions:

- Section 9(2)(b)(ii) – would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

Office of the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

Office of the Attorney-General

Cabinet Appointments and Honours Committee

Appointment of the independent arbiter to make determinations on individual redress payments for survivors of torture at the Lake Alice Child and Adolescent Unit

Proposal

- 1 This paper outlines our intention to appoint Hon Paul Davison KC as the independent arbiter responsible for making determinations on individual financial payments to survivors of torture at the Lake Alice Child and Adolescent Unit (the Lake Alice Unit). His appointment will be for an eight-month period commencing on 10 February 2025 and expiring on 30 September 2025.

Background

- 2 Cabinet has agreed to provide redress to survivors of torture at the Lake Alice Unit which includes a financial payment [CAB-24-MIN-0516 refers]. Eligible survivors can choose either an expedited payment process, where they receive a fixed payment of \$150,000, or an individualised process, where they receive an individual payment determined by an independent arbiter within a funding envelope
- 3 The fiscal envelope for the individualised pathway will be determined jointly by the Minister of Finance, the Lead Coordination Minister, and the Attorney-General, in consultation with the Associate Ministers of Finance (Hon David Seymour and Hon Shane Jones), within the \$19.56 million for redress payments agreed by Cabinet. This is expected to occur in early May 2025, once the number of survivors who have chosen the individualised pathway is confirmed.
- 4 The independent arbiter will determine individual payment amounts to be made to survivors who elect this process. Payment decisions made by the arbiter will be communicated to the Crown Response Office, which will administer the overall torture-redress process and will have responsibility for making the payments to survivors. Independent legal advice will be available to assist survivors.
- 5 Both expedited and individual payments will be made on a final settlement basis. The payments, and any income derived from them, will be exempt from

being treated as income and will not affect the recipient's tax-status or their entitlement to Ministry of Social Development (MSD) administered assistance.

- 6 Survivors of torture at the Lake Alice Unit will have until 30 April 2025 to notify the Crown Response Office of their intent to be part of the individualised process. The Lead Coordination Minister and the Minister for Mental Health can approve late applicants for the individual pathway in extenuating circumstances.

Comment

- 7 The appointment of an independent arbiter to make decisions on individually assessed redress payments for torture at the Lake Alice Unit is necessary to deliver on the redress proposal agreed by Cabinet [CAB-24-MIN-0516 refers]. Potential candidates for the independent arbiter were identified by Crown Law and the Crown Response Office, in consultation with the Attorney-General and Chief Justice.
- 8 The independent arbiter will be required to consider the funding envelope provided against the number of survivors that have elected to take up the individualised payment process and the different types of experiences those survivors have had to derive an appropriate spread of payments. The independent arbiter will then need to assess each survivor's personal experiences, including through direct engagement with the survivor and/or their lawyer, at the Lake Alice Unit to determine the appropriate payment for that individual.
- 9 Terms of Reference for the independent arbiter (which were developed in consultation with Crown Law and the Ministry of Foreign Affairs and Trade) are set out in Appendix One.
- 10 Hon Paul Davison KC is a retired judge of the High Court who also sat as a member of a Divisional Court of Appeal. Justice Davison was admitted as a Barrister and Solicitor in 1975. From 1978 to 1990 he was a litigation partner at the law firm Keegan Alexander. In 1990 he went to the independent bar, and he was appointed Queen's Counsel in 1996. He retired from the High Court in August 2023 and has since resumed practice at the Bar as a mediator and providing litigation and consultancy advice. In 1983, Mr Davison was also the Counsel Assisting the Committee of Inquiry into Oakley Hospital that investigated the death of a patient following the administration of ECT. The Chair of the Committee of Inquiry was Sir Rodney Gallen who was later appointed to oversee the distribution of \$6.5m to survivors of the Lake Alice in what is known as the first-round settlement.

Representativeness of appointment

- 11 As the skills required for this appointment are highly specific and only one appointment will be made, we are satisfied the appointment of Hon Paul Davison KC is appropriate.

Remuneration

- 12 The Lead Coordination Minister has sought and received the agreement of the Minister for the Public Service to an exemption to the Cabinet Fees Framework for this appointment. The daily fee is consistent with the funding agreed [CAB-24-MIN-0516 refers] and aligns to the operating costs set aside for this function.
- 13 Accordingly, the rate for the independent arbiter will be **s9(2)(b)(ii)** of work (GST excluded) plus actual and reasonable expenses, with the rate applied pro-rata where less than a day is worked. While the fee is higher than the maximum recommended daily rate advised by the Public Service Commission (of \$765-1194 per day) it is appropriate given the candidate is a retired High Court judge, King's Counsel and reflects the particular skills and experience held and independence required for this role.

Appointment process and consultation

- 14 We can confirm that an appropriate process has been followed in selecting the proposed appointee, in line with both normal procedures for appointing judicial figures to such roles.
- 15 The Crown Response Office, in consultation with Crown Law and the Ministry of Health, prepared a shortlist of potential suitable candidates. Potential candidates were then reviewed by the Attorney-General.
- 16 Formal consultation between the Solicitor-General and the Chief Justice on the candidates also took place, to confirm their suitability and availability. We have been advised that appropriate checks were also undertaken to ensure our recommended candidate's ability to work safely with survivors of torture and to ensure that the nominee has not represented the Crown or presided over litigation on matters related to abuse in care. The Public Service Commission has also been consulted.

Conflicts of interest

- 17 We can confirm that appropriate enquiries concerning conflicts of interest have been carried out, in accordance with the Public Service Commission appointment guidelines, to identify any conflict of interest that could reasonably be identified, and no conflicts of interest have been identified.

Communications

- 18 A press statement will be issued once the appointment has been completed.

Recommendation

We recommend that the Committee:

- 1 **note** our intention to appoint Hon Paul Davison KC as the independent arbiter, who will make determinations on individual financial payments to be made to survivors of torture at the Lake Alice Child and Adolescent Unit (who elect to take up the individual payment process), commencing on 10 February 2025 and expiring on 30 September 2025;
- 2 **note** the Terms of Reference specify Cabinet's intent the payments will be made on a final basis and that the payments, and any income derived from them, will be exempt from being treated as cash assets or income and will not affect the recipient's tax-status or their entitlement to Ministry of Social Development (MSD) administered assistance; and
- 3 **approve** the appended Terms of Reference for the role of the independent arbiter at Appendix One

Authorised for lodgement

Hon Erica Stanford

Lead Coordination Minister for the Government's Response to the Royal Commission's Report into the Historical Abuse in State Care and in the Care of Faith-based Institutions

Hon Judith Collins KC

Attorney-General

Proactively released under the commitment to open government

Appendix One: Terms of Reference for the independent arbiter for redress for torture at the Lake Alice Unit

Background

- 1 The Lake Alice Child and Adolescent Unit operated from 1972 until 1978 (although it was not formally closed until 1980) and was the site of significant abuse and cruel treatment of children and young people, under the operation of its head Dr Selwyn Leeks. The Lake Alice Unit has been the focus of sustained survivor and advocate efforts seeking accountability and redress
- 2 Providing redress for torture at Lake Alice is part of the Government's response to findings and recommendations of the United Nations Committee Against Torture in relation to two individual Lake Alice survivors. In December 2019, UNCAT found New Zealand in breach of Articles 12, 13 and 14 of the Convention Against Torture in relation to Mr Paul Zentveld. This was followed by a further report in June 2022 in relation to Mr Malcolm Richards which resulted in a similar finding regarding a breach of Articles 12, 13 and 14 of the Convention. In both cases, UNCAT recommended that the Government conduct a prompt, impartial and independent investigation into the complainants' allegations and provide the complainants with access to appropriate redress, including fair compensation in line with the investigation.
- 3 The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions also concluded that some of the experiences of children and young people at the Lake Alice Unit meet the definition of torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 24 July 2024, the Government formally acknowledged that some children and young people at the Lake Alice Unit were tortured.
- 4 Previous settlements have been made between the Crown and Lake Alice Unit survivors in respect of allegations made about wrongs by the Crown and/or its agents while the survivors were present at the Lake Alice Unit, but these settlements did not specifically acknowledge torture. There have been two settlement rounds between the Crown and groups of Lake Alice Unit survivors, the first in 2001 and the second in 2002/2003. Subsequent individual claims have been settled by the Ministry of Health and payment calculated using an approach developed in 2000 by retired High Court judge Sir Rodney Gallen.
- 5 Separate to this process for specific redress for torture, the Ministry of Health also continues to operate an ongoing claims process for historic abuse, which remains open to new claims from other survivors of the Lake Alice Unit who may choose to come forward. To date, 203 claims have been settled, two are awaiting decisions, and eight claims are being considered. The average payment made to survivors of abuse at Lake Alice to date is \$70,000 and the settlements are made on a full and final basis.

Further redress scheme for survivors of torture at the Lake Alice Unit

- 6 The Government has decided to make further redress available to survivors of torture at the Lake Alice Unit, including to those who had settled under existing terms. The additional redress reflects the Government's acknowledgement that some survivors of the Lake Alice Unit have suffered torture and the need to provide an effective remedy for these survivors. The torture involved the administration of unmodified electroconvulsive therapy (ECT) and/or the administration of paraldehyde injections as a punishment.
- 7 The Crown Response Office, in consultation with the Ministry of Health as required, will determine the initial eligibility of survivors to participate in the further redress scheme. Eligibility will be based on a declaration by the survivor that they received improperly administered electroconvulsive therapy (ECT) or a paraldehyde injection as punishment while at the Lake Alice Unit, and confirmation of the survivor's admission to the Lake Alice Unit if the survivor has not previously participated in a settlement process.
- 8 Eligible survivors will be able to choose between one of two payment pathways. An expedited payment process with a fixed payment of \$150,000 will be available through the Crown Response Office or an individualised pathway. Payments will be made on a final basis. Payments, and any income derived from them, will be exempt from being treated as cash assets or income and will not affect the recipient's tax-status or their entitlement to Ministry of Social Development (MSD) administered assistance.
- 9 All eligible survivors can access free independent legal advice to support them while they seek redress. A panel of suitable lawyers will be made available that eligible survivors can select a legal representative from, or they can choose their own lawyer.
- 10 Under the individualised pathway, individual payment amounts will be assessed by an independent arbiter who will consider the individual circumstances of the survivors who have chosen this option and make decisions on the payment amount for each survivor within the designated funding envelope.
- 11 In addition to a payment, eligible survivors will also receive a written apology signed by the Prime Minister and the Minister for Mental Health and will be assisted by the Crown Response Office to access their existing entitlements to support and rehabilitative services for the experience of torture. Survivors will also have access to counselling and psychological support to help with the impact of applying for redress, and will be able to access independent financial advice.
- 12 Redress for torture is only available to direct survivors of torture, not their family members or estates. However, if a survivor dies after registering their intent to make a claim, their estate will receive the \$150,000 expedited payment.

- 13 These Terms of Reference relate to the individualised pathway and set out the terms on which the independent arbiter is expected to conduct the task of determining individual payments for survivors who elect that pathway.

Purpose and scope of individualised pathway

- 14 The payment component of the Crown's redress package for torture at Lake Alice is intended to acknowledge an individual survivor's experience of torture as a child. The payment, alongside the written apology from the Prime Minister and the Minister for Mental Health, also serves to express the Crown's regret that, due to the State's failure to conduct prompt and effective investigations (acknowledged by the Police at the Royal Commission's Lake Alice Unit hearing), no successful prosecutions were made and survivors have never seen direct justice against their abusers.
- 15 The purpose of the individualised pathway is to provide flexibility and choice to survivors and to meet our international obligations under the Convention as to the nature of individualised redress. As an alternative to the expedited pathway, the individualised pathway allows survivors to opt for a payment that takes into account their personal experiences of torture at the Lake Alice Unit.
- 16 The scope of the independent arbiter's work is to determine appropriate payment amounts for the individual survivors who elect the individualised payment pathway based on the available information. The independent arbiter is not being asked to make factual findings about whether the survivor was tortured and the starting point is the acceptance of the survivor's account of what occurred unless it is contradicted by other information. The independent arbiter will take a survivor-focused and trauma informed approach and it is important to be led by the survivor and preserve the choice for the survivor, which includes how the survivor wishes to present their claim – this could be directly or through their representative and orally or in writing depending on the survivor's preference. Its purpose is not to provide a listening service for survivors or to conduct an inquiry into what happened at the Lake Alice Unit except to the limited extent described above.

Appointment as independent arbiter

- 17 The Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions and the Attorney-General appoint you Hon Paul Davison KC to:
- 17.1 develop a framework to support the allocation of the available funds. This framework will guide how you assess and determine individual survivor's financial redress;
- 17.2 independently assess the claims of survivors who choose the individualised payment pathway taking into account all of the information and evidence submitted by survivors and/or their legal representatives;

- 17.2.1 in making this assessment you may act on any information you think fit, whether or not that information would be legally admissible in a court of law;
- 17.2.2 you should take into account the fact that much corroborative material no longer exists or is not otherwise available, through no fault of the particular survivor(s);
- 17.3 make decisions on the individualised payment as redress for torture that each survivor who chooses the individualised pathway should receive within an overall funding envelope that will be notified to you by 30 May 2025;
- 17.4 communicate with the Crown Response Office and the survivor or the survivor's representative as to your determination of the level of financial redress for torture to be made in relation to each case, following the conclusion of your assessment; and
- 17.5 report to the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions and the Attorney-General no later than 30 September 2025 on the outcome of your assessments and decisions on payment.
- 18 In making the assessment you are asked to:
- 18.1 review the information and evidence put forward by survivors or their legal representatives;
- 18.2 seek any further information from a survivor or their legal representative that you consider necessary to inform your assessment;
- 18.3 consider submissions (which may be made orally, in writing or both depending on the survivor's preference) by the survivor and/or the survivor's legal representative;
- 18.4 if requested by the survivor, meet with the survivor and listen to the survivor's experiences;
- 18.5 if requested to do so by the survivor, engage with any other person who can provide directly relevant information; and
- 18.6 carry out the assessment process consistently with the principles of natural justice and taking a trauma informed approach.
- 19 Consultation with survivors' legal representatives to seek the views of their client/s is required before determining the framework you will apply for making payment decisions. For purposes of transparency once you have finalised your framework this should be made available to survivors' legal representatives and any survivor who has opted not to have legal representation.

- 20 To streamline the process and limit duplication from previous processes, you are able to make a decision entirely on already existing material provided to you such as previous police complaints or court filings, witness statements provided to the Royal Commission, records from the Lake Alice Unit, information provided to the United Nations, media interviews, or any other relevant and appropriate information. You are also expected to use existing information in the first instance, rather than requiring the development of new or bespoke material by a survivor or their legal representative. If required, individual records still held by Health New Zealand Te Whatu Ora from the Lake Alice Unit can be provided to you through the Crown Response Office.
- 21 If you engage with a survivor do so in accordance with clauses 18.3 and 18.4, consider the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, where relevant, take it into account in the way you interact with the survivor.

Secretariat support

- 22 The Crown Response Office is responsible for administering the overall redress process which includes ensuring you have appropriate administrative support to conduct your work. Actual and reasonable expenses incurred during your appointment can be invoiced to the Office for reimbursement. The arbiter will be expected, as required, to travel to meet with survivors at a time and location of the survivor's choosing (within reason). Actual and reasonable costs associated with this travel and meetings can be reimbursed, and the Office will be available to assist with arranging any travel or making other logistical arrangements.

Report to Ministers

- 23 On concluding your assessment of all individual claims, you are to provide a report to the Lead Coordination Minister and the Attorney-General setting out the framework you have applied, the process you undertook, and your decisions on the redress amount for each survivor including your reasons for reaching that decision. The report will be made publicly available, subject to appropriate redactions under the Official Information Act 1982 and the Privacy Act 2020.

Period of appointment

- 24 Your appointment will commence on 10 February 2025 and will end upon the delivery of the report to the Lead Coordination Minister and the Attorney-General, no later than 30 September 2025.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Lake Alice Unit Torture Redress: Appointment of an Independent Arbiter

Portfolio **Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions**

On 3 February 2025, Cabinet:

- 1 **noted** that the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions intends to appoint Hon Paul DAVISON KC as the independent arbiter, who will make determinations on individual financial payments to be made to survivors of torture at the Lake Alice Child and Adolescent Unit (who elect to take up the individual payment process), for a term commencing on 10 February 2025 and expiring on 30 September 2025;
- 2 **agreed** that the independent arbiter be paid **s9(2)(b)(ii)** of work (GST excluded) plus actual and reasonable expenses, with the rate applied pro-rata where less than a day is worked, as an exception to the Cabinet Fees Framework;
- 3 **noted** that the Terms of Reference, attached as Appendix One to the paper under CAB-25-SUB-0018, specify Cabinet's intent that the payments will be made on a final basis and that the payments, and any income derived from them, will be exempt from being treated as cash assets or income and will not affect the recipient's tax-status or their entitlement to Ministry of Social Development administered assistance;
- 4 **approved** the Terms of Reference for the role of the independent arbiter.

Diana Hawker
for Secretary of the Cabinet