



Agenda Item Four

Redress for Lake Alice Unit survivors who experienced torture and a separate matter relating to inequities in previous settlements

For: Ministerial Group – Crown Response to the Abuse in Care Inquiry

Date: 17 July 2024

Security level:

Purpose

1. This paper provides the Ministerial Group with advice on matters related to possible redress for survivors who experienced torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit (the Lake Alice Unit).
2. It also provides advice on a related Royal Commission recommendation that all Lake Alice settlements be reviewed for parity.

Recommendations

3. It is recommended that you:
 - a) **note** Cabinet has agreed Government formally acknowledge that some survivors of the Lake Alice Unit experienced torture [SOU-24-MIN-0072 refers];
 - b) **endorse** seeking Cabinet decisions in September on redress for torture at the Lake Alice Unit before wider work on the re-design of redress for survivors of abuse in care is completed;
 - c) **endorse** that redress for torture should consist of a new apology which explicitly acknowledges torture, a one-off payment, and access to appropriate support and assistance services which would align with recommendations from the UN Committee Against Torture (UNCAT);
 - d) **provide feedback** on the options for the size of a one-off payment, noting how they would combine with previous average and highest end payments as follows:
 - i. \$30,000 payment for torture = \$100,000 total (average), \$150,000 total (highest)
 - ii. \$50,000 payment for torture = \$120,000 total (average), \$170,000 total (highest)
 - iii. \$80,000 payment for torture = \$150,000 total (average), \$200,000 total (highest)
 - iv. \$100,000 payment for torture = \$170,000 total (average), \$220,000 total (highest)
 - e) **note** that providing access to support and assistance services needs to be considered in light of what may have already been provided or is currently available to individual survivors, particularly through ACC;
 - f) **provide feedback** on the options for resolving the potential complexities with access to appropriate support services for survivors of torture:

- i. using the one-off payment for torture as both a payment recognising the experience of torture and funds to access support services; or
 - ii. facilitating survivors of torture to access existing support entitlements and providing additional support grants to survivors who are unable to do so;
- g) **endorse** seeking funding for new redress for torture through a bid for between Budget contingency;
- h) **endorse** implementing new redress for torture for the Lake Alice Unit through the existing Ministry of Health historic claims process, with support from the Crown Response Unit (CRU), including to conduct targeted engagement with Lake Alice survivors and advocates as part of the process;
- i) **provide feedback** on your preferred approach to resolving the matter of legal fees that were deducted (by their lawyers) from payments to individual survivors who settled with the Crown in the first round of Lake Alice settlements (with subsequent settlements not affected by the same issue):
 - i. either to endorse resolving this matter now by seeking between Budget contingency funding to reimburse legal fees deducted from round one claimants (recommended);
 - ii. or to defer decisions on parity in Lake Alice settlements and/or to appoint an independent reviewer as per a Royal Commission recommendation.

Legal privilege

- 4. This paper includes references to legal advice and should be reviewed for legal privilege before it is publicly released.

The Crown has formally accepted that some survivors of the Lake Alice Unit experienced torture and Cabinet now needs to decide whether to proceed with or defer decisions on new redress for survivors of torture

- 5. As recently agreed by Cabinet [SOU-24-MIN-0072 refers], the Crown has formally accepted that some survivors of the Lake Alice Unit were tortured, as per the criteria set out in the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention). The criteria for torture in the Convention are included in Appendix One.
- 6. This decision is being communicated directly to key survivors in confidence and will be set out in the speech the Lead Coordination Minister for the Government's response to the Royal Commission makes at the time of the tabling of the Royal Commission's final report.
- 7. Cabinet now needs to make decisions on if and what specific new redress should be provided to survivors of the Lake Alice Unit who experienced torture and when it wants to make those decisions. The finding of torture represents a new material circumstance meaning that while some survivors have already received redress for their experiences in Lake Alice (see Appendix One for an overview the previous and ongoing settlement process), a new, specific response is required in order to acknowledge all that occurred. Such a response should be offered to those who experienced torture, even if they have had a settlement under the existing terms.

8. While the previous settlements and ongoing claims process do recognise the abuse experienced by Lake Alice survivors, including the abuse which meets the definition of torture, the process does not explicitly acknowledge torture or directly provide access to rehabilitative support services. Lacking these two components was central to the findings against New Zealand by the UNCAT, in its rulings on the individual complaints made by two Lake Alice survivors, Paul Zentveld in 2020 and Malcolm Richards in 2022. The other findings related to failures to conduct prompt and impartial investigations into the individual's complaints.
9. The two broad options for when to make and implement decisions on torture-specific redress are:
 - a) as soon as practicable, with redress ideally offered inside of the 2024 calendar year; or
 - b) as part of wider work to redesign redress for survivors of abuse in care, with this likely to be finalised through Budget 2025 or 2026 and subject to wider decisions considered by Cabinet.
10. Advice on the timing of decisions on redress for torture was provided to the Lead Coordination Minister for the Government's Response to the Royal Commission as part of the development of the Cabinet paper acknowledging torture. It was noted that there are risks with each of the timing options.
11. The primary risk associated with making and giving effect to decisions on redress for torture now is that decisions on torture-specific redress would be decided independent of decisions on what redress might be available for other survivors through an improved redress system. The result of this could be that torture-specific redress is ultimately out-of-line with subsequent decisions. Additionally, survivors who are currently accessing redress through other agencies claims processes (and other health settings covered through the Ministry of Health process) could have a sense of unfairness that Lake Alice survivors, who have already received higher payments on average, are receiving further payments and support.
12. The primary risk associated with deferring decisions on specific redress for torture is potential further harm to Lake Alice torture survivors who are increasingly aged and unwell. Survivors have also been awaiting decisions on redress for several years – the UNCAT findings in the case of Paul Zentveld were issued in January 2020 and the Royal Commission's report on the Lake Alice Unit was published in December 2022. There are also reputational risks that would result from the Crown's treatment of survivors who experienced torture and with New Zealand's international standing similarly impacted through ongoing criticism from UNCAT, with the potential for new or further complaints to UNCAT if the matter is not resolved. This could impact on survivor confidence in the Government's commitment and ability to deliver an effective overall response to the Royal Commission, which could adversely impact the wider redress redesign process.
13. We recommend the Ministerial Group endorse seeking Cabinet decisions on redress for torture as soon as practicable. Recognising that there are risks associated with each option, the likely harm to Lake Alice Unit torture survivors and the reputational risks to the Crown, and the small and highly specific nature of this cohort of survivors, suggest prioritising decision redress for torture presents the least overall risk to the Crown. This timing presents an opportunity to respond to a matter of long-standing concern, distress and advocacy. It also provides an opportunity to demonstrate decisive action by this

administration following the several years survivors have been waiting since the initial UNCAT recommendation.

14. Prior to the receipt of the final report from the Royal Commission, there was also some concern around whether the costs of providing torture-specific redress might be higher than anticipated if the Commission surfaced more instances of torture. Crown Response officials have reviewed the final report and it does not contain any specific findings of torture akin to what happened at Lake Alice. The Crown will also continue to review historical claims presenting to existing services to identify any allegations of torture. Nonetheless, any redress for torture agreed for Lake Alice survivors would set a precedent for acknowledging torture in other settings, whether delivered as a standalone process or as part of wider changes to redress.

If Cabinet wishes to proceed with making decisions now on torture-specific redress, this package should consist of a new apology, a one-off payment, and access to appropriate support services

15. Drawing on material on reparations under the Convention and Royal Commission recommendations on redress, an offering of redress for torture should consist of: an apology or acknowledgement, a payment, and access to appropriate support and/or rehabilitative services. Individual survivors would then be able to determine which components of such an offering they wished to receive.

A new apology to survivors that explicitly acknowledges torture

16. 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, consistent with the approach previously agreed by the government (working with the lawyers for the survivors) in 2001. Describing matters in a general way has left some survivors feeling that the apology did not adequately acknowledge their experiences. A copy of the text of the current apology is included in Appendix One.
17. The first component of a torture-specific redress offering should therefore be a new apology that explicitly addresses torture and acknowledges experiences at the Lake Alice Unit at a greater level of detail, drawing on Royal Commission's findings. The apology would still need to describe experiences at a collective rather than individual level, and careful balancing would be required between recognising the testimony of survivors while avoiding definitive statements about former staff in the absence of any successful prosecutions, particularly since most former senior staff (including the Lake Alice Unit's head, Dr Selwyn Leeks) are deceased or unfit to respond to allegations. A new apology to the survivors who made complaints to UNCAT, Paul Zentveld and Malcolm Richards, should also acknowledge their unique circumstances and role in this matter.
18. Subject to Ministerial feedback on an overall redress offering, the CRU can produce a draft text, working closely with Crown Law and other relevant agencies, for consideration by the offices of the signing Ministers and the Attorney-General (who has responsibility for matters relating to torture). Following initial Ministerial review, the draft text would need to be tested with some Lake Alice Unit survivors or their representatives to ensure it is not re-traumatising and speaks to the nature of their experiences.

fixed amount of £20,000 (NZ\$42,000) to any survivor who had been deported to Australia as part of the so-called 'Child Migrant Programme'. This £20k payment is provided in addition to the scheme's stepped payments which recognise the severity of abuse in care (which range from £10,000 to £80,000); so, a survivor in Northern Ireland who experienced abuse which qualifies for the highest payment and who was sent to Australia under the Child Migrant Programme is entitled to a payment of £100,000 (NZ\$209,000).

26. s9(2)(g)(i)

we include three more generous payment levels for consideration by Ministers. A \$50,000 payment would see the redress payments for survivors of torture align more closely with the highest payment in the Australian redress scheme. An \$80,000 payment would see payments align more closely with the highest payment in the Northern Irish (and Scottish) redress scheme for abuse in care. A \$100,000 payment would represent an exemplary figure that goes beyond comparable examples here or overseas.

27. Combining these three one-off payment options with the average and highest Lake Alice payments (\$70,000 and \$120,000) helps to give a sense of what the total redress payment to a survivor of torture at Lake Alice might look like:

- a) \$30,000 payment for torture = \$100,000 total (average), \$150,000 total (highest)
- b) \$50,000 payment for torture = \$120,000 total (average), \$170,000 total (highest)
- c) \$80,000 payment for torture = \$150,000 total (average), \$200,000 total (highest)
- d) \$100,000 payment for torture = \$170,000 total (average), \$220,000 total (highest)

28. We ask the Ministerial Group to endorse the inclusion of a one-off payment in any new redress offered to recognise torture. We also ask Ministers to provide a steer on which payment options you would like further analysis on – whether the four options included here or different options you would like considered.

Access to appropriate therapeutic and assistance services for the experience of torture

29. The third component of redress offering for torture should be providing access to appropriate support services. In material published by the UNCAT to assist in the application of the Convention it noted that redress for torture should include rehabilitation. The Royal Commission also recommended that any offer of redress for abuse in care should include providing survivors of abuse with access to a range of support services.

30. Examples of appropriate support services that survivors of torture at the Lake Alice Unit might need (or want) access to include:

- a) 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;
- b) 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
- c) home modifications to help address accessibility issues arising from chronic health conditions or impairments.

31. Decisions around supports for torture survivors need to be made in light of what support is available, through ACC in particular but also other health and disability services. As Ministers are aware, ACC is a scheme which provides financial compensation and/or support services to people who have suffered an eligible physical or mental injury (or injuries) caused by certain events. The most obvious 'event' covered by ACC is an 'accident', such as a fall or an incident at work. ACC has a sensitive claims process which covers mental injuries sustained from sexual assault (such as PTSD). ACC also covers injuries caused by medical treatment¹ if the injury is not an ordinary consequence of the treatment.²
32. A key driver of the uncertainty about what Lake Alice survivors might have received up to this point, or might be entitled to in future, is that this would always depend on a survivor's needs and eligibility. Moreover, a fundamental feature of ACC is that it is a no-fault scheme. As such, it requires evidence to show that a claim meets the cover criteria but does not require further information beyond that. The practical implication of this is that the data held by ACC does not necessarily identify where a claim relates to Lake Alice.
33. We have anecdotal information from some Lake Alice survivors that they are accessing ACC, although as referenced above, in at least one case this required court action to confirm eligibility. We are also aware of some survivors who due to the ongoing trauma from their experiences struggle to engage with services such as ACC and Work and Income. Speaking generally, survivors of Lake Alice, and particularly those who experienced improper use of ECT or paraldehyde injections, could be able to access a range of potential support services (and potentially financial entitlements), depending on need and eligibility criteria. Given the data limitations described above, this means the only way to know for sure what Lake Alice survivors themselves have received from ACC would be to ask the individuals themselves.
34. This suggests that the support component of redress for torture at the Lake Alice Unit could be more a question of facilitating access to existing support entitlements (through ACC or other systems), rather than directly funding or providing (new) support services through a redress process. It is nonetheless important that any new redress agreed for survivors who experienced torture at the Lake Alice Unit resolves issues around access to appropriate support services. As noted previously, failing to provide the two survivors who made complaints to UNCAT with access to rehabilitation was central to the findings against New Zealand in both cases.
35. We therefore recommend that the Ministerial Group endorse that redress for torture should include access to appropriate support services, including rehabilitation, to ensure that a new redress package agreed for survivors of torture aligns with our domestic and international obligations. However, because survivors' entitlement to existing support services through ACC is uncertain and will vary depending on individual circumstances, we ask the Ministerial Group to provide feedback on the preferred way to proceed in light of this complexity.

¹ Injuries caused by torture at Lake Alice would not be classified as medical injuries in the ACC system because the use of ECT or paraldehyde was not done for legitimate medical purposes.

² As clarified in a recent court case, injuries caused by torture at Lake Alice are not classified through the ACC system as unexpected medical injuries, because the use of ECT or paraldehyde was not done for legitimate medical purposes.

36. One approach would be to opt for a higher one-off payment for torture and to describe it as both a payment recognising the experience of torture and funds to access support services. This approach would be easier to implement in terms of administration, as the claims process would not need to have a support 'function'. But this approach could result in (unintended) equity issues: for example, a survivor who was unable to access funded support services would need to use more of their one-off payment to pay for this than a survivor who was able to access all they needed through ACC.
37. An alternative approach would be to assist survivors who come forward to make a claim for torture-specific redress to connect with independent navigation services like 'Way Finders', which are designed to help individuals quickly identify what they might be entitled to under ACC. A support grant could then be provided to survivors who can demonstrate they are unable to access the services they need through an independent navigation service. This approach would mitigate against any unintended equity issues in using the one-off payment to pay for support access. It would be important to emphasise that a support grant would be only available in exceptional circumstances. Decisions would also be needed on the size of the grant and how it would be funded.

There is uncertainty around how many survivors of the Lake Alice Unit were tortured, so two possible scenarios are used to indicate potential costs

38. The Royal Commission has identified 362 children and young people who spent time at the Lake Alice Unit. This total includes children and young people who only spent short periods in the unit, as well as others who spent much longer. As previously noted, 203 survivors have had settlements from the Crown and four claims are currently being considered (the Ministry of Health holds names of all survivors that have received settlements or have a current claim under consideration). Due to the limited nature of information set out in medical records, it is not definitively known which of the children and young people who spent longer periods at the Lake Alice Unit received ECT or paraldehyde injections as punishment.
39. In its report on the Lake Alice Unit, the Royal Commission discussed three groups of survivors, one of 15 individuals who had ECT administered to genitals and breasts, one of 16 individuals who had ECT administered to their arms, hands, shoulders, thighs, legs and feet, and an unspecified number of children and young people that received paraldehyde injections as punishment. The degree of overlap between the three groups was not discussed. Taking the two ECT groups as separate victims and assuming that a similar number (approximately 15-20 survivors) may have been separate victims of paraldehyde injections would give a conservative minimum of 50 survivors potentially eligible for redress for torture.
40. For an upper number, we have suggested using 100 possible claimants. This figure represents just under half of the settled claimants so far and therefore those who would likely have experienced more serious abuse than the 'average' under the payment framework developed in the early 2000s. In addition to public statements made about any new redress offering, the tabling of the final report in Parliament, campaigning by advocacy groups such as the Citizen Commission on Human Rights, and the networks between Lake Alice survivors all suggest it is worth planning for a higher-than-expected demand scenario.
41. However, as the Cabinet paper on acknowledging torture noted, many survivors who spent time at Lake Alice have died or may be incapable of coming forward. Some survivors who

settled with the Crown in the early 2000s may also have chosen to put this part of their life behind them and may not wish to come forward, even if a new offer of redress is made. Any offer of redress to survivors would need to encourage them to come forward about their experiences.

42. The following section on funding for potential redress for torture therefore uses two estimates – 50 and 100 survivors – for costing purposes.

Providing new redress for torture would require new funding to be sought from the between Budget contingency or as a pre-commitment against Budget 2025

43. Potential costs involved with providing new redress 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 pay up to five new Lake Alice settlements from its Legal Services budget for 2024/25 (\$350,000) and the CRU has no funding for making redress payments.
44. If Ministers agree to torture-specific redress, then funding could be sought from the between Budget contingency for 2024/2025 or as a pre-commitment against Budget 2025.³ We recommend the Ministerial Group endorse seeking funding from the between Budget contingency.
45. New funding would need to be sought for Vote Health to allow for any new payments and, depending on further work to better understand existing entitlements, access to support services. A new redress process for survivors of torture could be delivered alongside the existing Lake Alice claim process, but the Ministry of Health have advised that this would also require additional resourcing. The existing service operates with very minimal staffing levels and does not currently have a 'support' function. Key considerations on how any new redress could be delivered are discussed in the next section of the paper.
46. Drawing on the potential redress components outlined above, Ministers could agree an overall funding level per survivor. Table One shows the potential cost of payments using the two demand estimates and per survivor costs informed by the payment examples set out earlier. Note that the figures below do not factor cost of any new support offered to survivors of torture or administration costs, as that is still to be worked through.

Table One: Potential overall cost of providing redress for torture at the Lake Alice Unit

Per survivor cost	Number of claimants	Overall cost
\$30,000	50	\$1,500,000
	100	\$3,000,000
\$50,000	50	\$2,500,000
	100	\$5,000,000

³ Seeking funding from the between Budget contingency involves writing a letter to the Minister of Finance with a funding request template (similar to that used in the Budget process). Requests for funding from the between Budget contingency must demonstrate that the request is of high value, urgent, and cannot be met from within baselines. Seeking a pre-commitment against Budget 2025 would require a Budget funding case to be completed, with funding then approved for the 2024/25 year.

Per survivor cost	Number of claimants	Overall cost
\$80,000	50	\$4,000,000
	100	\$8,000,000
\$100,000	50	\$5,000,000
	100	\$10,000,000

Proactive engagement with Lake Alice survivors could support the design and implementation of any new redress within parameters agreed by Cabinet

47. If Ministers agree to specific redress for torture, we recommend that redress for the affected Lake Alice Unit survivors is delivered through the Ministry of Health's existing claims process, with support from the CRU in designing the new redress offering, to help ensure it meets the Crown's core objectives for redress [CBC-24-MIN-0050 refers]. Ahead of Cabinet's consideration of redress for torture, work would need to identify what additional administrative and support resources 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 Unit survivors, advocates, and relevant experts, to help manage the time and cost associated with engagement, including absorbing a level of cost within baseline.
48. We also recommend the Crown engage with survivors on the detailed process for delivering such redress. Engaging with survivors on the specific composition and delivery approach for redress could help the Crown avoid being seen to be overly prescriptive. Moreover, as survivors and the Crown may have highly variable expectations on what meaningful redress looks like, this reinforces the benefit of close working with survivors and their advocates, as it presents opportunities to work through different considerations as part of the process.

Separate to the matter of redress for torture, the Royal Commission recommended a review into previous Lake Alice settlements for parity

49. In its final report, the Royal Commission recommended that the government should:
 - a) 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
 - b) ensure that any payments to claimants who have not yet settled are, as a minimum, equitable in light of the review.
50. As noted previously, 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 initially followed for the round two settlement process, this was subject to successful legal challenge and resulted in a decision by the Crown to repay legal fees deducted from round two claimants.
51. There are two options to resolve the matter of parity in previous settlements. Our recommended approach is for Ministers to 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, although as discussed below, it is very unlikely that all of this would be needed. Funding to reimburse the legal fees would need to be sought from the between Budget contingency or as a Budget 2025 pre-commitment.

52. We cannot say with certainty how many survivors from the first settlement round are still alive or might come forward to make a claim for repayment, however, it will be fewer than 95. Using mortality rates for people in the same age group would suggest around 70 might still be alive, although this does not consider the additional factors at play with the Lake Alice cohort (such as having long-term medical conditions or impairments), meaning the number of potential claimants is highly likely to be lower still. When the Crown was seeking to repay round two claimants their legal fees, the Ministry of Health was unable to locate around 25 per cent of the round two claimants despite the offer of repayment and the use of a private investigator. The process for locating round two claimants also took place only a few years after settlement, whereas it is now approaching 24 years since the first round of settlements were made.
53. We also do not propose that an offer of legal fees repayment is extended to the families or estates of deceased survivors in the situation where a survivor from round one has passed away. A new offer to round one claimants would essentially mirror the process that took place for round two claimants, which only offered repayments directly to the individuals who settled in the second round.
54. This option supports an approach which aims to resolve all outstanding matters regarding the Lake Alice Unit at the same time. It is likely that any independent review of Lake Alice settlements, given the facts of the matter, would suggest additional payments are necessary to ensure parity across the settlement groups and the review itself would also require funding. Resolving this now would address a longstanding equity issue for those survivors and there would be challenges with delaying decisions on the legal fees matter if the decision is made to proceed with redress for torture as soon as practicable. In any engagement with round one claimants, it is very likely they would raise the matter of legal fees, especially given the recommendation from the Royal Commission in its final report.
55. On the other hand, Ministers could defer decisions on this matter for now, particularly if the preferred way forward is to appoint an independent reviewer. Despite other claimants not being subjected to the same legal costs deduction, it is possible that paying the top-up to round one claimants could result in other claimants feeling they have missed out.

Next steps

56. Subject to the views of the Ministerial Group, Crown Response officials can undertake the necessary work and analysis required to prepare a Cabinet paper which seeks agreement on an approach to redress for torture at the Lake Alice Unit.

Appendix One: Background material on the Lake Alice Unit

The three elements of torture in the Convention

1. The three elements of torture in the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment are:
 - a) any act causing severe pain or suffering, whether physical or mental;
 - b) intentionally inflicted for such purposes as:
 - i. obtaining from the victim or a third person information or a confession;
 - ii. punishing them for an act they or a third person has committed or is suspected of having committed;
 - iii. intimidating or coercing them or a third person; or
 - iv. for any reason based on discrimination of any kind; and
 - c) 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.
2. Cases were taken to the UN Committee Against Torture (CAT) by Paul Zentveld and Malcolm Richards and resulted in findings against New Zealand. The CAT determined (in reports issued in 2019 and 2022) that in the two cases New Zealand had breached Articles 12, 13, and 14 of the Convention for each survivor. Articles 12 and 13 require states to have complaint processes and to conduct prompt and impartial investigations by competent authorities. Article 14 requires states to provide redress with a right to fair and adequate compensation.

Previous and current Lake Alice Unit settlement processes

3. The Crown has engaged in two rounds of settlements for Lake Alice survivors to date, the first in 2001 and the second in 2002/3. The Ministry of Health maintains a process for assessing and settling any new claims that arise, in accordance with a 2009 Cabinet decision [CAB Min (09) 41/4 refers].

A. Round one settlement

In 1999, 88 former Lake Alice Unit patients, represented by Grant Cameron & Associates, filed a joint statement of claim in the High Court. The claim had four causes of action: breach of fiduciary duty, unlawful confinement/false imprisonment, assault and battery, and negligence.

The causes of action related to allegations of the use of electroconvulsive therapy and paraldehyde injections as punishments, sexual and physical abuse by staff, staff permitting sexual and physical abuse by other patients, unlawful confinement, administration of medical treatments without consent, and perpetrating and maintaining an environment of extreme fear.

In early 2000, the Government determined it would compensate and apologise to former Lake Alice Unit patients rather than defend the claim in the High Court.

In October 2000, \$6.5 million was approved for settlement with 95 claimants (the 88 former patients that had filed and seven other former patients that had since come forward). The Crown appointed retired High Court judge Sir Rodney Gullen to determine how the settlement monies should be divided among the claimants.

Sir Rodney considered the claimants' described experiences to determine how the settlement funds might be distributed. He produced a report about his assessment, which provided general comment on the experiences and the methodology he had used to allocate the settlement monies. Grant Cameron & Associates deducted approximately 40 per cent of the settlement amount in legal costs. The amounts paid out to individuals was strictly confidential and the Crown does not have specific details of individual amounts paid to claimants.

Following the settlement, the then Prime Minister and Minister of Health wrote to each claimant and apologised on behalf of the Government for their treatment in the Lake Alice Unit (see below for the text of round one apology letter).

B. Round two settlement

The Government decided in 2001 to take steps to settle any outstanding or potential claims by former patients of the Lake Alice Unit. The process was to involve an apology and a confidential settlement process broadly similar to the round one settlement of the class action.

Sir Rodney was again instructed by the Crown to consider claimants' experiences and make a determination on the payment amount to be made in line with the principles and criteria he established for the round one process. Sir Rodney was instructed to take into account the absence of substantial legal costs to new applicants.

The round two settlement saw 98 former Lake Alice Unit patients collectively receive \$6.3 million in compensation up until 2008. The average settlement was approx. \$70,000.

Mr Zentveld filed proceedings in 2005 challenging the instruction to take into account the legal costs deducted from the round one settlement when considering the payments to be made under the round two process. The District Court found for the complainant, which resulted in the reduction applied to the round two payments being reworked. Round two claimants were then being paid an additional approximately 30 per cent on their initial settlement amounts.

C. Individual claims

The Ministry of Health maintains an ongoing process for any new Lake Alice Unit claims that come forward. There have been 9 further settlements since round two was completed in 2008 – an average of one new Lake Alice Unit claim per year.

Claims are assessed against the principles and criteria established for the round two settlements, with the payment determined by the Ministry of Health's Chief Legal Advisor. The average settlement is \$68,000. The payment is accompanied by a written apology from the Prime Minister and Minister of Health.

Lake Alice settlement funding has been exhausted and costs for the ongoing claims process are currently met from the Ministry of Health's Legal Services budget on the estimate of two settlements per year maximum.

The Ministry currently has five outstanding new claims under consideration.

Example of an apology letter provided to a Lake Alice Unit survivor

Dear [survivor name]

We are writing to you personally on behalf of the Government of New Zealand to apologise for the treatment you received and may have witnessed in the Child and Adolescent Unit of Lake

Alice Hospital during the 1970s. We are apologising to all those who were mistreated. We believe it is important to take this step, to enable us to move on from shameful practices in mental health care in New Zealand.

You may be aware that the events at the Child and Adolescent Unit of Lake Alice Hospital have been the subject of investigation. As a government we have been determined to acknowledge what happened and to take what steps we can to put things right. We have publicly stated that, whatever the legal rights and wrongs of the matter, and whatever the state of medical practice at the time, what happened there was unacceptable. On behalf of the Government of New Zealand we sincerely apologise to you as a person fundamentally affected by what occurred in the Lake Alice

We hope that this apology will affirm to you that the incidents and events that you experienced and may have witnessed at the Child and Adolescent Unit at Lake Alice Hospital were not only inappropriate, even if judged by the standards of the day, but were also terribly unfortunate. They should not have happened. We very much regret that they did.

We know that this apology cannot change the past, but we do hope it will go some way towards enabling you to move on from your past experiences. In the same spirit we hope that the ex gratia payment the Government has made to you will be of some tangible help.

We wish you all the very best for a positive future.

Yours sincerely

Rt Hon Helen Clark
Prime Minister of New Zealand

Hon Annette King
Minister of Health

Proactive release - open and transparent Government