

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

Redress for Survivors of Torture at the Lake Alice Child and Adolescent Unit

Date of Issue: 7 February 2025

These documents have been proactively released:

- Cabinet paper – Redress for Survivors of Torture at the Lake Alice Child and Adolescent Unit; and
- SOU-24-MIN-0158 Cabinet Social Outcomes Committee Minute of Decision, 4 December 2024; and
- CAB-24-MIN-0516 Cabinet Minute of Decision, 16 December 2024.

Summary of redactions:

- Section 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinion.
- Section 9(2)(h) - to maintain legal professional privilege.

Proactively released under the commitment to open government

Cabinet

Redress for survivors of torture at the Lake Alice Child and Adolescent Unit

Proposal

- 1 This paper seeks agreement to provide redress to survivors of torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit (the Lake Alice Unit).

Relation to government priorities

- 2 This paper progresses the Government's response to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission). This paper also responds to the United Nations Committee Against Torture (UNCAT) findings in 2019 and 2022 that New Zealand breached the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention).

Executive summary

- 3 The Government will progress its full response to the Royal Commission of Inquiry next year. This will focus on support for survivors of abuse in care and preventing future abuse. In advance of that, I am seeking agreement to provide redress to the survivors of the Lake Alice Unit who were tortured when they were children as defined in the Convention.
- 4 Two rounds of settlements for abuse in care were made to Lake Alice survivors in 2001 and 2002-2003 with subsequent claims settled on a case-by-case basis. To date, 203 claims for abuse at the Lake Alice Unit have been settled, with an average payment of \$70,000 per claim. However, these settlements did not acknowledge the torture experienced by survivors of the Lake Alice Unit, the failings of a number of government agencies, and that complaints were not adequately investigated, including by the New Zealand Police.
- 5 s9(2)(h) [REDACTED]
While it is not possible for this response to right or fully compensate for the wrongs of the past it will provide important recognition to the remaining survivors of torture at the Lake Alice Unit and an expression of our regret as to the many ways in which they were failed.
- 6 While Cabinet could decide to defer decisions in relation to redress for torture at the Lake Alice Unit until 2025, responding to torture is a separate matter to responding more broadly to abuse in care. Torture requires three specific elements to be present and is the only form of abuse to have its own international convention. This is reflected in New Zealand's Crimes of Torture Act 1989.
- 7 I propose Cabinet agree to provide redress to survivors of torture at the Lake Alice Unit, consisting of three components: a payment which recognises an individual's experience of torture, a new apology which explicitly acknowledges torture, and steps relating to access to support and rehabilitative services.

- 8 9(2)(g)(i) [REDACTED]

9(2)(g)(i)

9(2)(g)(i) Many of the remaining survivors of the Lake Alice Unit also suffer from very ill health and some have died since the Government's acknowledgement in July.

- 9 For financial redress, I recommend two separate payment pathways. Survivors would be able to choose either an expedited payment process, which provides a fixed payment for all eligible claimants, or an individual payment process, where each individual claim is assessed by an independent arbiter who would then make determinations on payment amounts. This approach provides flexibility for survivors and is more responsive to the different experiences of torture that survivors had at the Lake Alice Unit. Payments would be made on a final basis and the two pathways completed by the end of 2025.
- 10 Officials have advised that they estimate up to [REDACTED] eligible survivors could make claims. The total costs associated with the financial redress package, including operating costs, would be a maximum of \$16.68 million based on an expedited payment of \$100,000 and an average individualised payment of [REDACTED]. Estimated costs for two alternative options are included in Appendix One.
- 11 To ensure survivors of torture can access appropriate support and rehabilitative services, and to avoid duplication with existing services, I propose that the support component of torture-redress will be provided through existing support services. I am advised that operational changes have recently been made by ACC to improve the experience for Lake Alice survivors. Officials will be required to report back to the Minister for ACC and myself by March 2025 with an update on torture survivors' ability to access appropriate supports.
- 12 s9(2)(h) [REDACTED]
- [REDACTED] This view has been informed by advice from Crown Law and the Ministry of Foreign Affairs and Trade. Independent legal advice was also received from s9(2)(a) [REDACTED] inform Crown Law's view. s9(2)(g)(i) [REDACTED]

The Crown has formally acknowledged that torture occurred at the Lake Alice Unit

- 13 Following Cabinet agreement on 1 July 2024 [SOU-24-MIN-0072 refers], at the tabling of the Royal Commission's final report in the House on 24 July 2024 the Prime Minister formally acknowledged that some survivors of the Lake Alice Unit were tortured when they were children. The UNCAT was informed of the Crown's acknowledgement in a report-back submitted in August 2024 [SOU-24-MIN-0079 refers].
- 14 To meet the definition of torture under the Convention, three elements must be present. These are:
- 14.1 any act causing severe pain or suffering, whether physical or mental; and
 - 14.2 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
 - 14.3 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.

15 While 203 survivors have previously received settlements from the Crown, these only recognised the experiences of abuse and neglect at the Lake Alice Unit, not torture.

16 s9(2)(h)

The Crown's failings and obfuscation in relation to torture at the Lake Alice Unit have taken place over decades

17 The Royal Commission's findings relating to the Lake Alice Unit and the failings of the Crown were published in December 2022 in a report titled *Beautiful Children*.

18 In summary, the Lake Alice Unit was established in 1972 and the first documented complaint of Dr Selwyn Leeks electrocuting children and young people as punishment was made by a 13 year old boy in December 1972. The boy's complaint was copied to the head office of the Department of Social Welfare. The complaint was amongst half a dozen documented similar complaints made to authorities by children and their families in a six-month period between the end of 1972 and the start of 1973. None of these complaints were acted on.

19 Between 1973 and 1982, dozens more documented complaints and concerns were made to every government department that had some connection or responsibility for Lake Alice. Complaints were made to police officers, social workers, heads of the Departments of Social Welfare, Education, and Health, the Medical Council, Ombudsman, District Inspectors, doctors, and nurses. None of these complaints were sufficiently acted on.

20 Over the following years institutions and entities requested to act included the Ombudsman, a commission of inquiry, NZ Police, the Medical Association, the Medical Council, the New Zealand branch of the Royal Australian and New Zealand College of Psychiatrists, the Department of Health, the Department of Education, the Department of Social Welfare, Cabinet, Crown Law, the Health and Disability Commissioner, and ACC¹. None resulted in adequate investigations into the serious allegations relating to Lake Alice.

21 In particular, there were significant failings in police investigations in 1977, 2003-2006, and 2006-2010. This included failing to interview complainants about their complaints regarding rape and sexual abuse at the Lake Alice Unit, losing key evidence and records, failing to carry out basic investigative steps, reducing the investigation's scope, bias, seeking legal advice based on incomplete and inaccurate information, not providing investigations with sufficient resources or priority, and failing to consider the Convention Against Torture and the Crimes of Torture Act 1989.

22 New Zealand then relied on these failed investigations to claim at the UN that allegations of torture at the Lake Alice Unit had been properly investigated and police had determined there was not sufficient evidence for prosecution. Requests for the police to re-open or review the investigations were brushed aside. In 2021, Police apologised to survivors at the Royal Commission saying they did not give sufficient priority and resources to investigating allegations of criminal offending in the Unit and that as a result allegations were not properly investigated.

23 The Royal Commission also sets out the highly adversarial approach that the Crown took to litigation in which they exploited every legal advantage to try and defeat claimants, even when they knew the claims were meritorious. There were also numerous times that agencies and Crown Law delayed or failed to hand over relevant documents, even when ordered to by a court. Crown Law issued a general apology in 2021 in relation to abuse in care saying that they had not always met the high standards expected of them.

¹ <https://www.abuseincare.org.nz/reports/inquiry-into-the-lake-alice-child-and-adolescent-unit/executive-summary/summary-of-findings/>

- [REDACTED]
- 24 A fourth police investigation, Operation Lake Alice, was commenced in February 2020. This investigation ended with decisions to charge Dr Selwyn Leeks and two other staff members. All were found not fit to stand trial due to their old age and ill health.

Making specific redress available to survivors of torture is consistent with obligations under international human rights instruments

- 25 Reflecting our commitment to prioritise decisions in relation to the Lake Alice Unit, Cabinet agreed in August 2024 to a \$20,000 payment to any Lake Alice Unit survivor with a terminal illness and less than six months to live to contribute towards end-of-life care and funeral costs [CAB-24-MIN-0300 refers]. The payments were intended to be provided in the interim while work on redress for torture progressed. I have been advised that three claims have been made for the terminal illness payment.
- 26 New Zealand has obligations under human rights instruments, most notably the Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR) provide redress to individuals whose rights have been breached. Specific redress for torture would also demonstrate New Zealand's continuing commitment to universal human rights and to the international system.
- 27 Providing redress is also part of the UNCAT recommendations. In December 2019, UNCAT found New Zealand in breach of Article 12 of the Convention for failing to carry out prompt and impartial investigations into allegations of torture at Lake Alice in relation to Mr Paul Zentveld. It recommended that we 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. This was followed by a further report in June 2022 in relation to Mr Malcolm Richards. Further complaints to UNCAT by other survivors are possible. New Zealand's application of the Convention is also subject to regular periodic review by the UNCAT, meaning this matter will continue to be raised if it is not satisfactorily addressed. In addition, New Zealand is subject to periodic reviews by the United Nations Human Rights Committee (UNHRC) where the issue is expected to be raised if our response is seen as inadequate.
- 28 In developing this proposal, I have sought advice on our obligations under the Convention, and under other relevant international agreements such as the ICCPR (which also requires States provide effective remedies for torture). s9(2)(h)
- [REDACTED]
- 29 Article 14 of the Convention against Torture requires States to ensure victims (survivors) of torture obtain redress and have a legal right to seek fair and adequate compensation. When New Zealand ratified the Convention in 1989, it also made a reservation that: "The Government of New Zealand reserves the right to award compensation to torture victims referred to in Article 14 of [the Convention] only at the discretion of the Attorney-General of New Zealand." By agreeing to provide the redress proposed in this paper, we are therefore exercising the Government's discretion to award compensation to survivors of torture.
- 30 The UNCAT has issued guidance to assist interpretation of Article 14. The guidance is not legally binding but is seen as an authoritative interpretation of its meaning and redress agreed by the Crown will be assessed against it. An overview of the key features of the UNCAT guidance is in Appendix Two.

- 31 s9(2)(h)
- [REDACTED]
- This view has been informed by advice from Crown Law, the Ministry of Foreign

[REDACTED]

39 I consider that making this decision now is the best approach. Since 2001, there has been a unique and specific redress response to Lake Alice survivors without having a clear impact on expectations of other survivors. 9(2)(g)(i)

[REDACTED]

40 In addition, torture is a distinct and particularly egregious form of abuse because it entails a public official intentionally inflicting harm on an individual in order to advance a specific and banned purpose of the state, in this case, punishment. Torture is the only form of abuse to have its own international convention. This is reflected in New Zealand's Crimes of Torture Act 1989.

41 We have also been clear since the tabling of the Royal Commission's final report that torture redress for the victims of Dr Leeks and others at the Lake Alice Unit was going to be a priority for our Government given the age and vulnerable health of many of the remaining survivors. These survivors have already waited five years since the first UNCAT decision for redress. Delaying decisions would also damage the credibility and authenticity of the commitments we have made to prioritise Lake Alice torture redress.

42 Communications will be clear that the Government is responding specifically to torture at the Lake Alice Unit and that these decisions have been taken independently of future redress design decisions for abuse in care. Information will also clearly explain why certain acts have been acknowledged as torture, with reference to the three elements as defined in the Convention.

I propose that redress for torture at the Lake Alice Unit consist of a financial payment, an apology, and access to support and rehabilitative services

43 I propose that redress for torture at the Lake Alice Unit consist of:

- 43.1 a one-off financial payment which recognises the experience of torture;
- 43.2 a new written apology provided to individual survivors which explicitly acknowledges torture; and
- 43.3 access to appropriate support and rehabilitative services for the experience of torture.

A payment that recognises the experience of torture

44 The first component of the Crown's redress package for torture at the Lake Alice Unit will be a payment that, alongside the apology, acknowledges an individual survivor's experience of torture as a child. The payment and apology also serve 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. Payment would be on a final settlement basis.

45 I have been advised that, as far as we are aware, New Zealand would be the first country in the world to acknowledge and provide redress for the torture of children and young people. There are no legal parameters that define what range the payment should sit within and officials have advised me there are no directly comparable international cases that could serve as a precedent. This means determining an appropriate payment that recognises the experience of torture within our specific context has been difficult. Our approach to redress for torture at the Lake Alice Unit was the subject of discussion at the Crown Response Ministerial Group over a number of months.

- 46 For example, in 2019 the UK settled a claim brought by 33 Greek Cypriots in which they alleged torture and human rights abuses from the mid-1950s. The individuals received approximately £30,000 (\$65,000 NZD) but the British Government did not acknowledge that torture occurred and said the settlement was not an admission of liability.
- 47 Nepal passed the Compensation Relating to Torture Act 1996 which provides for victims to claim up to approximately NZD \$142,500 (adjusted equivalent) and the Nepalese courts have awarded compensation for torture in a number of cases. However, victims have only 35 days from the date of the alleged torture to lodge a claim.
- 48 In Australia, a former ward of the state of Victoria was forced to undergo electric shock therapy after disclosing he had been sexually abused in care. He reached an \$825,000 settlement with the state government and Uniting Church in 2020.
- 49 This paper proposes an expedited payment of \$100,000 or an individualised amount determined by an independent arbiter in addition to payments already received by (or available to) Lake Alice Unit survivors for abuse. This approach was the one that had the most support from ministers on the Crown Response Ministerial Group, though there was a range of views about the approach and timing of providing redress. While no amount could compensate survivors for torture or the significant and ongoing impact it has had on their lives, this goes some way to recognising the gravity of being tortured as a child. The financial modelling this paper is based on an expedited payment of \$100,000. However, Cabinet could also consider any other alternative amount such as \$75,000 or \$150,000. Costings estimates based on these two options are in Appendix One.
- 50 The proposed approach to the one-off payment recognising the experience of torture is summarised in Table One below, with more detail in Appendix Three.

Table One: Overview of the recommended approach to financial payments

<ul style="list-style-type: none"> • Two pathways: expedited or individual. • Survivors would be able to register their intent to make a claim with the Crown Response Office from the time of public announcement. • Both processes would make independent legal representation available to eligible survivors, as expected under the Convention. Legal advisors would be able to assist survivors in the decision about which pathway to opt for and any other legal advice required to inform their decision. Those providing legal services and the independent arbiter will be instructed to consider the Istanbul Protocol² on how to engage with victims of torture for the purposes of determining redress, in particular, ensuring that interview techniques and processes are safe. • Payments in both processes would be made on a final settlement basis. Both pathways would be completed by the end of 2025. <p>Expedited pathway</p> <ul style="list-style-type: none"> • The payment level for the expedited pathway would be fixed. • Payments for the expedited pathway would start from 3 March 2025. This will enable the Crown Response Office to establish the operational support for this process and will also ensure that survivors have time to consider both pathways and seek advice before making a decision. In exceptional circumstances (e.g. a survivor being seriously ill) the Lead Coordination Minister and the Minister for Mental Health could approve an earlier payment.

² *The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* is published by the United Nations High Commissioner for Human Rights and is intended to provide practical guidance for investigative, legal, and medical professionals in the investigation and documentation of torture and other serious ill treatment.
<https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>

- Eligible survivors would be able to opt into the expedited pathway until 30 September 2025. The Lead Coordination Minister and the Minister for Mental Health would be able to approve late applications until 30 November 2025 in extenuating circumstances.

Individualised pathway

- For the individualised pathway, an independent arbiter (likely a retired judge) and their terms of reference would be considered by Cabinet in early 2025.
- The arbiter would be expected to consult with the legal representatives of survivors to determine the principles or considerations that they will use to determine individualised redress payments.
- Eligible survivors would have until 30 April 2025 to choose the individual payment process. This is a relatively tight timeframe for the individual process due the vulnerable health of many survivors and the need to have as complete a view as possible of the number of claimants seeking redress through that pathway. This will enable a decision to be made on the fiscal envelope and the independent arbiter to reach determinations. In extenuating circumstances, the Lead Coordination Minister and Minister for Mental Health would be able to agree to a person entering the individual pathway until 30 June 2025.
- The fiscal envelope for the individualised pathway would be agreed jointly in 2025 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) taking into account of the number of eligible survivors who have chosen this pathway and within the funding envelope agreed through this paper.
- The arbiter would determine payments for individual survivors based on their assessment of each individual claim, including through interactions with individual claimants, and/or their representative.
- Survivors will be able to engage directly to the independent arbiter but there will be no requirement do so; survivors' chosen legal representative could instead prepare and make the claim on their behalf. To streamline the process and limit duplication from previous processes, the arbiter will be able to make a decision on already existing material 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 UN, media interviews, information provided during previous rounds of settlements, or any other relevant and appropriate information. The arbiter would also be expected to use existing information in the first instance, rather than requiring bespoke submissions.
- The independent arbiter would be required to complete their work by 30 September 2025, though this could be extended with the agreement of Cabinet.

51 I considered an alternative of a tiered payment approach but recommend this two-pathway approach on the basis that it creates more flexibility for survivors and is more responsive to different torture experiences, all of which are important to survivors. However, the proposal will not meet some survivors' expectations that redress payments provide full compensation. There may also be some survivors who wish to consider their options for litigation.

52 As previously agreed by Cabinet, if a survivor eligible to receive torture-redress has received an end of life payment, \$20,000 would be deducted from their redress payment.

53 Consistent with the existing process, should a survivor die after registering their intent to make a claim, their next-of-kin may continue with the claim. However, if a survivor dies before registering their intent, their estate would be not entitled to make a claim.

[REDACTED]

Correcting a regulatory inconsistency regarding Lake Alice redress payments

- 54 As with recent payments for Lake Alice survivors agreed by Cabinet, I propose payments as part of the torture-redress package are made on an ex-gratia basis to recognise the experience of torture and will not affect the recipient's tax-status or their entitlement to Ministry of Social Development (MSD) administered assistance³. However, officials have advised of a regulatory inconsistency relating to Lake Alice redress payments.
- 55 The Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018 currently contain exemptions that prevent ex-gratia payments made to former residents of Lake Alice (and any income derived from these payments) from being treated as income or cash assets when determining eligibility to MSD administered assistance (referred to as the Lake Alice exemption). The Lake Alice exemption applies for 12-months from the date the payment was received. The same regulations have a general exemption for ex-gratia payments in relation to compensation or ex-gratia payments for harm other than to former residents of the Lake Alice Unit. The general exemption does not have a time limit and is therefore permanent.
- 56 MSD advises that under the current settings, it is arguable that where a payment meets the requirements of both the Lake Alice exemption and the general exemption, the Lake Alice exemption should be applied as it is the more specific of the two provisions. This means that any exemption will be limited to 12 months.
- 57 With the agreement of the Minister for Social Development and the Minister of Health, I propose that Cabinet agree to amending the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018 so that payments (and any income derived from those payments) made to Lake Alice Unit survivors will be exempt on a permanent basis⁴. This aligns with Cabinet's previously expressed intent.

A new written apology which explicitly acknowledges torture

- 58 The second component of torture-redress is a new written apology that explicitly addresses torture. The new apology should be signed by the Prime Minister and the Minister for Mental Health, reflecting the seriousness of the events and Crown responsibility for the Lake Alice Unit.

Access to appropriate support services for the experience of torture

- 59 Under the Convention, redress for torture survivors should include access to appropriate support and rehabilitative services.
- 60 Officials have completed initial work to identify what support services torture survivors at the Lake Alice Unit could be eligible for, based on the support needs survivors have spoken of. I am advised that ACC has identified opportunities for operational improvements in existing services to make access for Lake Alice Unit survivors smoother, within baselines. However, there are also potential gaps in current provision. Further detail on the work on support services provided in Appendix Three.
- 61 To avoid duplication, I propose the support component of the redress package for torture survivors consists of a combination of assisting eligible survivors to access existing support services entitlements and the operational improvements noted above. Due to the potential gaps, officials will be required to report back to the Minister for ACC and for Mental Health and the Lead Coordination Minister by March 2025 with an update on

³ Except for Temporary Additional Support (TAS) administered by the Ministry of Social Development – income derived from redress payments is considered when applying for TAS, although not the redress payment itself.

⁴ With the exception of Temporary Additional Support (TAS) which is administered by MSD, income derived from redress payments is considered when applying for TAS, although not the redress payment itself, and this applies to income from all redress payments, regardless of institution.

[REDACTED]

torture survivors' ability to access appropriate supports. This report back can also provide options to address any persistent gaps and challenges.

62 Assistance to access support entitlements will be provided by staff working in the redress process inside the Crown Response Office. This will primarily involve helping survivors navigate the various support services they are entitled to, based on their individual circumstances. As the process of applying for redress can itself be difficult for survivors, ensuring access to counselling and psychological support will be prioritised.

63 Financial advice will also be available to survivors when they receive their payment for those who may want advice or support in making financial decisions. The Crown Response Office will also have discretion to "stagger" a redress payment at a survivor's request where they consider themselves to be financially vulnerable and do not wish to receive their financial redress in one payment.

Non repetition

64 One of the five elements of the UNCAT guidance is a guarantee of non-repetition. While there are a number of aspects to this, one that is frequently highlighted by survivors is the ongoing use of ECT. The Mental Health Bill sets out further limits to the use of ECT, though it does not go as far as some survivors have requested. The Select Committee process will provide another avenue to consider what further changes could be made.

Torture-redress to be administered through the Crown Response Office

65 I propose redress for torture is administered through the Crown Response Office with any support as required to determine eligibility or provide relevant records from the Lake Alice Unit being provided by the Ministry of Health. Where necessary, survivors (or the representative of their estate) would be requested to provide consent for any sharing of their information between the Crown Response Office, the Ministry of Health, and the independent arbiter. The Ministry of Health will continue to administer the small number of remaining historic claims relating to abuse at the Lake Alice Unit and reimbursement of legal fees from the round one settlement.

66 The Office would register survivors' intention to make a claim, provide information about the pathways and access to legal representation, allocate survivors to the pathway of their choice, operate the expedited pathway, provide assistance to access support services, ensure the arbiter has appropriate administrative support, and arrange payments (for both processes). The operationalisation of these functions will need to be staggered with the immediate priority being the first two.

67 Independent legal representation will be available to torture survivors, as is expected under the Convention. The Crown Response Office, in consultation with Crown Law, will propose arrangements for torture survivors' access to legal representation, to be jointly agreed by myself and the Attorney-General. The arrangements will include a proposed rate for legal services and a shortlist for a panel of suitable lawyers, who would be available to provide legal services (at the agreed rate). If a survivor wishes to use their own lawyer, the lawyer will need to agree to the agreed rate for services.

68 Arrangements for the panel of legal representatives are expected to be in place by mid-January. Many survivors have expressed that having access to independent legal advice to inform decisions about how, or if, they participate in any torture redress process, is critically important. Those who choose the individual payment process would also be able to begin working with their legal advisor to prepare their claim.

69 Up to \$3.12m in funding is requested for operating the redress process including remuneration for the independent arbiter, costs of legal representation for survivors, and for the Office to operate the redress process and provide case management services. [REDACTED]

[REDACTED]

s9(2)(g)(i). The operational funding required will be lower should a greater proportion of survivors choose the expedited pathway.

[SENSITIVE] Financial implications

- 70 This paper recommends Cabinet agree to a proposed funding envelope of up to \$16.68 million. This figure is based on [REDACTED] successful claims, a \$100,000 payment in the expedited process, and an average payment in the individual payment process of s9(2)(g)(i) plus arbiter, legal, and administration costs. This average could differ depending on joint Ministers' decisions in 2025 about the size of the fiscal envelope for the individualised pathway. More detail on the estimated costs are provided in Appendix One.
- 71 Costings also assume up to s9(2)(g)(i) [REDACTED]. As there is a level of uncertainty about the number of claimants who would elect each payment pathway I recommend torture redress be funded from a tagged operating contingency and the Minister of Finance and the Lead Coordination Minister authorised to approve draw downs.
- 72 The costs associated with the proposals in this paper, except those associated with the new apology for torture survivors, cannot be reprioritised from within Crown Response Office or Ministry of Health appropriations.
- 73 I propose the out-of-cycle funding sought be charged against the between-Budget contingency established as part of Budget 24.

Legislative implications

- 74 The proposal to permanently exempt compensation and ex gratia payments made to survivors of the Lake Alice Unit will require amendments to the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018.

Regulatory Impact Statement

- 75 The Ministry for Regulation's Regulatory Impact Analysis team has determined that the proposed amendments to the Social Security Regulations and the Residential Care and Disability Support Services Regulations 2018 are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Population implications

- 76 The Lake Alice Unit survivors represent a specific cohort. They are men and women aged in their mid 50s to late 60s, and include both Māori and Pacific peoples, and disabled people. As a specific cohort there are no broader population implications with the proposals set out in this paper.

Human rights

- 77 The proposals in this paper are consistent with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990 and provide recognition of the right that now exists under section 9 (the right not to be subjected to torture or cruel treatment). The proposals also relate to international agreements which New Zealand is a signatory to, namely the Convention and the ICCPR.

Use of external resources

- 78 An external legal opinion was sought on the recommendations in this paper to inform the Crown Law Office's ultimate view on the law. No other external resources have been used in preparing the advice in this paper.



Consultation

79 This paper was developed by the Crown Response Office, ACC, Crown Law Office, Department of Corrections, Inland Revenue Department, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, Ministry for Pacific Peoples, Ministry of Social Development, Ministry for Women, New Zealand Police, Oranga Tamariki – Ministry for Children, Public Service Commission, Te Puni Kōkiri, Treasury, and Whaikaha – Ministry of Disabled People were consulted on earlier versions of the paper. The Department of the Prime Minister and Cabinet was informed.

Communications


80 Given the vulnerable health of many survivors a public announcement as to the redress process will be made the week of 16 December. This will allow survivors to register their interest in being part of the process before Christmas. The announcement of the independent arbiter will follow in February following consideration by APH. Crown Response Unit will undertake active and ongoing communications to reach Lake Alice survivor communities. The Ministry of Health will also be requested to contact survivors they have had recent engagement with on legal inequities as many of those survivors will also be eligible for torture redress.

Proactive release

81 This paper will be proactively published on the Crown Response Office’s website with appropriate redactions under the Official Information Act 1982.

Recommendations

I recommend that the Committee:

- 1 **9(2)(h)** 
- 2 **agree** to make redress available to survivors of torture at the Lake Alice Child and Adolescent Unit which consists of: a one-off payment; a new apology for each survivor signed by the Prime Minister and Minister for Mental Health which explicitly acknowledges torture; and access to appropriate support and rehabilitative services;
- 3 **agree** that due to the lack of definitive records, determination of initial eligibility will be based on a person declaring that they received either improperly administered electroconvulsive therapy or paraldehyde injections while at the Lake Alice Child and Adolescent Unit, and confirmation of their admission to the Lake Alice Unit (if required);
- 4 **note** that the Ministry of Health will provide any support required to the Crown Response Office to determine eligibility and any necessary access to records for the arbiter;
- 5 **note** that, where necessary, survivors (or their estate) will be requested to provide consent for relevant information to be shared between the Ministry of Health, the Crown Response Office, and/or the independent arbiter;
- 6 **note** the Crown Response Office, in consultation with the Crown Law Office, will propose arrangements to the Lead Coordination Minister and Attorney-General for providing torture survivors with access to independent legal advice;
- 7 **authorise** 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

[REDACTED]

Institutions and the Attorney-General to jointly agree the arrangements for providing survivors with access to independent legal advice;

8 **agree** that in the situation where an eligible survivor dies after registering their intent to make a claim, their next-of-kin or executor can continue with the application;

9 **agree** the approach to payments recognising torture will be two separate payment pathways which consist of:

9.1 an expedited payment process with a fixed payment of \$100,000 for all eligible claimants, with no further assessment required beyond the declaration outlined in recommendation 3; or

9.2 an individual payment process with one-off payments determined by an independent arbiter and within an overall envelope which enables payments that reflect individual survivors' different experiences of torture;

10 **note** that the proposed appointment of the independent arbiter and their terms of reference will be considered by Cabinet in early 2025;

11 **agree** that any payments made will be on a final settlement basis;

12 **s9(2)(h)**

[REDACTED]

13 **agree** that claims be accepted until 30 April 2025 for the individual pathway and until 30 September 2025 for the expedited pathway;

14 **note** that the timeframes in recommendation 13 will result in both pathways being completed by the end of 2025;

15 **agree** 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 Minister for Mental Health can approve later access for a survivor into either process in extenuating circumstances;

16 **note** that payments as part of the expedited pathway will commence from 3 March 2025, to enable survivors time to seek legal advice and for the Crown Response Office to establish their operational processes;

17 **agree** that the payments described in recommendation 9, and any income derived from these payments, will be made on an ex-gratia basis and are consequently exempt from being treated as cash assets or income for tax or benefit purposes;

18 **agree** to amend the Schedule 8 of the Social Security Regulations 2018 and Schedule 3 of the Residential Care and Disability Support Services Regulations 2018 to extend the permanent exemption on ex-gratia or compensation payments being treated as income and cash assets to former patients of the Lake Alice Psychiatric Hospital;

19 **invite** the Minister for Social Development and Employment to instruct the Parliamentary Counsel Office, if required, to draft amendment regulations to give effect to the decision in recommendation 17 above;

20 **note** that the Crown Response Office will have discretion to "stagger" redress for torture at a survivor's request where they consider themselves to be financially vulnerable and do not wish to receive their financial redress in one payment;

21 **note** if a survivor eligible for torture-redress has received an end-of-life payment [CAB-24-MIN-0300 refers] this will be deducted from their payment recognising torture;



- 22 **agree** the support component of torture-redress will be provided through existing support services and assistance for eligible survivors to access those services, acknowledging potential gaps in existing service provision;
- 23 **note** that officials will report back 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 Minister for ACC and for Mental Health by March 2025 with an update on torture survivors' access to appropriate support and rehabilitative services, and options to address any gaps identified;
- 24 **agree** the overall administration of the torture-redress process will be through the Crown Response Office, noting also the role of the independent arbiter and the provision of independent legal advice; under recommendations 7 and 9;
- 25 **note** that the independent arbiter will be required to complete their work by 30 September 2025, with any extension required to be agreed by Cabinet;
- 26 **agree** to establish a new tagged operating contingency of the following amount to provide redress to survivors of torture at the Lake Alice Unit:

	\$m – increase/(decrease)			
	2024/25	2025/26	2026/27	2027/28
Lake Alice Unit torture-redress payments – tagged operating contingency	16.680	-	-	-

- 27 **note** the proposed tagged contingency of \$16.68 million is based on the parameters set out in recommendation 9 and an assumption of up to [redacted] successful claims, and comprises of \$13.56 million for redress payments, and \$3.12 million for independent legal advice, remuneration for the independent arbiter and operating the process;
- 28 **authorise** the Minister of Finance and 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 jointly to draw down the tagged operating funding in recommendation 26 (establishing any new appropriations as necessary);
- 29 **agree** that the fiscal envelope for the individualised pathway be determined jointly by the Minister of Finance, the Lead Coordination Minister, and the Attorney-General, in consultation with Associate Ministers of Finance (Hon David Seymour and Hon Shane Jones) within the \$13.56 million for redress payments noted in recommendation 27;
- 30 **agree** the tagged operating contingency in recommendation 26 be charged against the between-Budget-contingency established as part of Budget 24; and
- 31 **agree** the expiry date for the appropriation in recommendation 26 be 1 February 2026;
- 32 **note** funding available in the between-Budget contingency for 2024/25 has been fully exhausted; however, funding remains across the rest of the forecast period;
- 33 **note** that any costs in the 2024/25 year outlined in recommendation 26 will have an adverse impact on the 2024/25 operating balance.

Authorised for lodgement
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

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Appendix One: Estimated costs for three payment options based on [redacted] eligible survivors

Expedited payment of \$75,000 and average individualised payment of [redacted]

Expedited payment	Number of claims (est.)	Individualised payment	Number of claims (est.)
\$75,000	[redacted]	Average of [redacted] (could differ depending on joint Ministers decisions in 2025)	[redacted]
Cost of payments	[redacted]		[redacted]
Overall cost (incl. \$3.12m legal and operating costs): \$13.62-\$14.07 million			

Expedited payment of \$100,000 and average individualised payment of [redacted]

Expedited payment process	Number of claims (est.)	Individual payment process	Number of claims (est.)
\$100,000	[redacted]	Average of [redacted] (could differ depending on joint Ministers decisions in 2025)	[redacted]
Cost of payments	[redacted]		[redacted]
Overall cost (incl. \$3.12m legal and operating costs): \$16.32-\$16.68 million			

Expedited payment of \$150,000 and average individualised payment of [redacted]

Expedited payment process	Number of claims (est.)	Individual payment process	Number of claims (est.)
Fixed payment of \$150,000	[redacted]	Average of \$[redacted] (could differ depending on joint Ministers decisions in 2025)	[redacted]
Cost of payments	[redacted]		[redacted]
Overall cost (incl. \$3.12m legal and operating costs): \$22.32m - \$22.68m			

Appendix Two: Summary of UNCAT guidance on implementing article 14 of the Convention Against Torture

- 1 The United Nations Committee Against Torture (UNCAT) published *General comment No. 3 (2012): Implementation of article 14 by State parties* to assist governments in interpreting the article of the Convention relating to redress.⁵ Guidance issued by the UNCAT is not legally binding on States, but it is seen as an authoritative interpretation of its meaning.

Key elements of the UNCAT guidance on article 14

- 2 Article 14 of the Convention Against Torture states:
- 2.1 Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation;
- 2.2 Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.
- 3 When New Zealand ratified the Convention in 1989 it made the following reservation: “The Government of New Zealand reserves the right to award compensation to torture victims referred to in Article 14 of [the Convention] only at the discretion of the Attorney-General of New Zealand.”⁶
- 4 The UNCAT considers that the term ‘redress’ in article 14 encompasses the concepts of ‘effective remedy’ and ‘reparation’, and the concept of reparation itself entails five components. The UNCAT also emphasises the importance of survivor participation in the redress process. The table below compares the proposals in this paper against the UNCAT guidelines in the table below:

Table Two: UNCAT guidance and the Crown’s proposed redress package

Element of redress set out in UNCAT guidance on article 14	How this is reflected in the Crown’s proposed redress package
Restitution – to re-establish the victim in his or her situation before the torture was committed.	Since the Lake Alice Unit survivors were abused as children and young people and there has been a significant passage of time, there is limited ability to re-establish survivors to a prior situation – which is reflected in the guidance on rehabilitation that survivors of torture might never fully recover. For the Lake Alice Unit survivors, the element of restitution is therefore closely aligned to rehabilitation.

⁵ <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc3-general-comment-no-3-2012-implementation>

⁶ The UNCAT noted a concern about New Zealand’s reservation to article 14 in its most recent (2023) periodic review and included a recommendation that New Zealand considers withdrawing its reservation. The Ministry of Justice is leading the cross-agency consideration of the full set of UNCAT periodic review recommendations, which are due to be reported back to Cabinet in later in 2024.

<p>Rehabilitation – medical and psychological care as well as legal and social services to restore and repair the harm suffered by the victim, acknowledging the pervasive effect of torture means the victims life might never fully recover.</p>	<p>Survivors of torture have access to a range of support services and entitlements under existing settings, and so a combination of operational improvements to existing schemes and assistance for survivors to access those schemes is proposed. Officials will also report back to the Lead Coordination Minister and the Minister for ACC and for Mental Health no later than March 2025 on survivor’s ability to access services through this approach. This report can also bring options to address any persistent gaps in service provision for consideration.</p>
<p>Compensation – recompensate for any economically assessable damage resulting from torture or ill-treatment.</p>	<p>The proposed redress package includes a payment which meaningfully acknowledges an individual’s experience of torture.</p> <p>The payment is not intended to fully compensate for the experience of torture. Compensation for most personal injuries since 1 July 1974 has been provided through the ACC system; prior to this compensation was sought through the courts.</p> <p>ACC is reviewing existing systems to ensure that survivors can request compensation for loss of income due to injury.</p>
<p>Satisfaction and the right to truth – verification of the facts, judicial and administrative sanctions against the perpetrators, and an acknowledgement of wrongdoing. May include a public apology to the victim.</p>	<p>The Royal Commission’s report on the Lake Alice Unit, <i>Beautiful Children</i>, provides a full public outline of the facts of what occurred there.</p> <p>The opportunity for judicial sanctions against the perpetrators of torture are believed to have been exhausted.</p> <p>The Government’s formal acknowledgment of torture and statements in the House as part of the tabling of the Royal Commission’s final report provide a public acknowledgement of wrongdoing. Reference to Lake Alice in the public apology on 12 November will also acknowledge wrongdoing. The paper which sought Cabinet agreement to acknowledge torture has also been proactively released.</p> <p>The proposed apology to individual survivors as part of the redress package provides a further direct acknowledgment of wrongdoing.</p> <p>Officials are also exploring how torture survivors can be assisted with issues relating to medical and ACC records and how they reference survivors’ experiences of unmodified ECT.</p> <p>The New Zealand Police, during the Royal Commission, acknowledged failings associated with their role in bringing perpetrators to account</p> <p>The Public Service Commission has been tasked with providing assurance that claims of individual</p>

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	<p>public servant misconduct made by the Royal Commission are adequately addressed.</p>
<p>Guarantees of non-repetition – measures to counter the impunity of perpetrators and the recurrence of torture. Such measures range, depending on the context, from external oversight and monitoring mechanisms to the establishment of judicial remedies, strengthening of the judiciary’s independence, and adequate training for law enforcement officials.</p>	<p>The Crimes of Torture Act 1989 introduced an offence for torture punishable by up to 14 years imprisonment. This Act also required the Minister of Justice to establish National Prevention Mechanisms to have responsibility for all places of detention. The Ombudsman, the IPCA and the Children’s Commissioner have all been appointed and can make unannounced visits to civilian places of detention they have responsibility for and report directly to Parliament.</p> <p>There have been significant legislative and operational reforms in the mental health sector in the decades since the Lake Alice Unit operated. This includes external monitoring bodies such as the Health and Disability Commissioner and the Mental Health and Wellbeing Commission.</p> <p>In its final report, the Royal Commission made two recommendations relating to torture. The first (recommendation 6) relates to the Police opening or re-opening investigations and the second (recommendation 7) relates to care providers supporting those investigations.</p> <p>The New Zealand Police are considering the development of a specific training package for investigators on the offence of torture.</p> <p>Crown Law are also revising guidance used in government processes which review historical claims for possible torture, to ensure these are fit for purpose following the UNCAT decisions regarding Lake Alice and the Royal Commission’s findings.</p> <p>The Mental Health Bill that had its first reading on 23 October will set out further limits to the use of ECT, though it does not go as far as some survivors have requested. The Select Committee process will provide another avenue to consider whether further changes should be made.</p>

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Appendix Three: Technical details informing the analysis of the payment approach and indicative costing

- 1 The table below summarises the assumptions used to inform advice on the potential size of the tagged contingency for torture redress payments for Lake Alice Unit survivors. Explanatory notes setting out what sits behind these costings are also provided.

Table Three: Expedited and individual payment process overview

Initial eligibility confirmation	Number of claims (est.)
Eligibility for a payment: Declaration to have experienced either unmodified ECT or paraldehyde injection and confirmed admission to the Lake Alice Unit.	s9(2)(g)(i)

Information to support the expected number of eligible survivors

- 2 Apart from the UNCAT decisions regarding Paul Zentveld and Malcolm Richards, there are no definitive records of which young people were tortured at the Lake Alice Unit and who are therefore entitled to redress. Planning has proceeded on the basis of up to s9(2)(g)(i) eligible survivors.
- 3 In its report on Lake Alice, the Royal Commission identified 362 children and young people who spent time there and analysis of survivor’s submissions to the Inquiry suggests a minimum of 50 survivors who experienced either (or both) unmodified ECT or paraldehyde injections, administered for the purposes of punishment. Records from a previous Police investigation suggested the number of survivors who experienced ECT as punishment is 105, including 20 who had experienced ECT applied to their genitals. This investigation suggested the number who had paraldehyde injections as punishment is 80, and also noted the likely overlap between these groups.
- 4 The figure of s9(2)(g)(i) also factors in increased awareness of the process due to high-profile events for Lake Alice survivors such as the Royal Australasian College of Psychiatrist’s public apology in February 2024, the tabling of the Royal Commission’s final report in the House, and the upcoming public apology by the Crown for abuse in care. Some survivors of the Lake Alice Unit will have died and 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 not wish to come forward.
- 5 The spread of payments made to Lake Alice Unit survivors through the round two process and ongoing individual settlements has been reviewed to get some sense of the different levels of experience recognised through the previous payments. This analysis shows approximately 10 per cent of survivors have received the highest payments (over \$100,000), 30 per cent have received payments above the average but less than the highest group (\$70,000-99,000) and 60 per cent have received a payment at or below the average (less than \$70,000). The distribution of payments identified through this process needs to be treated with caution as previous payments also factored in abuse that was not part of the Crown’s acknowledgement of torture (for example, sexual abuse).
- 6 A total settlement would be determined based on the average expected payment multiplied by the number of claimants. These costings assumed a payment of \$100,000 for the expedited pathway and an average payment of s9(2)(g)(i) per survivor on the individualised pathway, and a distribution of payment amounts based on the modelling

outlined above. The s9(2)(g)(i) average may differ dependent on joint Ministers decisions in 2025 about the size of the fiscal envelope for the individualised pathway.

- 7 The independent arbiter would be tasked with distributing the total funding amount among the individual claimants in a fair and equitable way, based on each individual claimant's circumstances. This would be based on the arbiter's assessment of each individual claim, and interactions between the arbiter and the claimants or their representatives at the claimants' discretion. The arbiter would be chosen on the basis of their expertise, and it would not be necessary to provide significant guidance. They would be expected to engage with the legal representatives of survivors as to the principles they will use to determine redress. As noted in the body of the paper, the arbiter (and legal advisers) will also be instructed to use guidance set out in the Istanbul Protocol on safe and effective methods for interviewing victims of torture.
- 8 Costs for this approach are hard to predict as it will depend on how many survivors choose the individual payment process. For indicative purposes, an average of s9(2)(g)(i) in legal costs per survivor has been assumed on a basis of survivors accessing on average s9(2)(g)(i) days at a cost of s9(2)(g)(i) per day, with an additional \$600,000 to administer the process, which includes funding for remunerating the arbiter and for the Crown Response Office to employ two fixed term staff to administer the process and support the arbiter.
- 9 Survivors will need to be provided with clear and straightforward information on the two payment pathways so they can make an informed decision about which is best for them. One of the reasons eligible survivors may elect an individual assessment is that they will potentially have access to a higher payment, and the payment decision is made independently of the Crown. This comes, however, with the need to provide a more detailed account of their experience and some survivors may find it re-traumatising. It will also be a longer process. The incentive for eligible survivors to elect the expedited process is that it will require less recounting of their experience of torture and will be a quicker process. Survivors can be supported in making this decision with the independent legal advice provided through this redress package.
- 10 There is no certainty which pathway survivors would likely choose. If more survivors elect the expedited process this would reduce the overall cost of this approach, as the payments provided through that pathway will be lower (on average). s9(2)(g)(i)

Table Four: Two different demand scenarios for the expedited and individual processes

	Payment costs (total)	Total cost incl. operational
s9(2)(g)(i)	s9(2)(g)(i)	\$16.68 million
s9(2)(g)(i)	s9(2)(g)(i)	\$16.32 million

- 11 As outlined in the paper, two payment options were considered while developing the proposal – a tiered payment process with three payment levels or the recommended two pathway approach. A flat payment was also considered by set aside early in the process due to strong feedback from survivors that any process had to have the capacity to reflect survivor's different experiences of torture. The table below outlines the pros and cons of the tiered and two pathway options.

Table Five: Analysis of the tiered payment and two payment pathway approaches

Option	Pros	Cons
<p>Tiered payment process with three payment levels</p>	<ul style="list-style-type: none"> • Allows for some recognition of different experiences with tiered payments. • Redress can be provided to survivors faster, with a more straightforward assessment process. • Simpler to administer. Some assessment required but can be completed by non-legal assessors. • Lower operating costs. Nearly all funding goes to eligible survivors. 	<ul style="list-style-type: none"> • Requires some sharing from survivors to establish payment level, increases risk of re-traumatisation. • Likely to depart from survivor expectations due to lack of individual assessment. • Assessment framework requires discretion because cumulative time spent in the Unit may discriminate unfairly. This aspect of the process would need to be administered carefully to ensure its integrity and is amenable to judicial review.
<p>Two pathway approach with expedited and individual payment processes</p>	<ul style="list-style-type: none"> • Maximises survivor choice with expedited and individual processes. • More likely to align with survivor (and UNCAT) expectations. • Gives survivors confidence in the integrity of the scheme. Those seeking a higher payment require assessment of their claim by an arbiter. • Individual payment process has a level of independence from the Crown. Independent legal advice for survivors is also a more intentional part of this approach. 	<ul style="list-style-type: none"> • Survivors who choose the individual assessment will have to wait longer for redress than those who opt for the expedited assessment. • Survivors may be incentivised to opt for individual process due to potential for higher payments. This process has high risk of re-traumatisation due to need to discuss experiences with the arbiter and legal representatives. • Parameters of individual process still agreed by Cabinet. Payment amounts will still be unlikely to meet survivor expectations. • More unpredictable for costing as individual payments will vary based on survivor accounts. • More complex to administer. Significant operational costs due to independent arbiter and legal services required.

Appendix Three: Support services for survivors of torture

- 1 The table below outlines the support needs, examples of relevant agencies or providers and an initial assessment of the key considerations.

Table Six: Initial analysis of the key considerations with providing support services to survivors of torture

Support need	Agency/provider	Considerations
Primary care Injury or non-injury related health care	ACC ⁷ Health NZ Primary healthcare provider, i.e. GP or community health provider. Private healthcare providers Whānau Ora	Co-payment often required across primary care, although Lake Alice Unit survivors who are older may have access to free GP visits and/or access to discounted or waived co-payments with Community Service Cards. ACC will fund some/all primary care if injury related. Private healthcare out of reach for many survivors. Health insurance often inaccessible due to their experiences. Redress payments should not have to be used to pay for (private) support services if they cannot access them through public system(s).
Dental care	ACC MSD	ACC cover for dental work has a very high bar; it requires clear (eligible) cause for dental injury. Tooth decay due to passage of time or not seeking regular dental treatment is not eligible for cover. Dental grants available through Work and Income are limited; would not cover new dentures, for example.
Home modifications	ACC Disability Support Services MSD	ACC requires an injury-related need to fund home modification. There are significant pressures on disability support funding. Redress payments should not have to be used to pay for home modifications which are needed due to the survivor's experience of torture.

⁷ The Accident Compensation Scheme (AC Scheme) for physical injuries caused by torture (e.g. migraines) and mental injuries (e.g. PTSD) caused by the physical injury. To determine cover, there is a requirement for assessment which is affected by capacity issues in the health and disability system. Entitlements are provided for injury-related needs. Physical injuries are not covered if they occurred before 1 April 1974, which may exclude some survivors of torture from before then.



Cabinet Social Outcomes Committee

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.

Redress for Survivors of Torture at the Lake Alice Child and Adolescent Unit

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 4 December 2024, the Cabinet Social Outcomes Committee (SOU):

- 1 **noted** the contents of the submission *Redress for Survivors of Torture at the Lake Alice Child and Adolescent Unit* [SOU-24-SUB-0158];
- 2 **referred** the submission to Cabinet on 9 December 2024 for further consideration, updated where appropriate in light of the discussion at SOU.

Jenny Vickers
Committee Secretary

Present:

Hon David Seymour
Hon Chris Bishop
Hon Dr Shane Reti
Hon Erica Stanford
Hon Paul Goldsmith
Hon Louise Upston
Hon Mark Mitchell
Hon Tama Potaka
Hon Melissa Lee
Hon Nicole McKee
Hon Casey Costello
Hon Nicola Grigg

Officials present from:

Office of the Prime Minister
Officials Committee for SOU
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 Minister for Disabled People



Cabinet

Minute of Decision

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Redress for Survivors of Torture at the Lake Alice Child and Adolescent Unit

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 16 December 2024, following reference from the Cabinet Social Outcomes Committee, Cabinet:

- 1 **noted** that while previous settlements have been made with many Lake Alice Child and Adolescent Unit (Lake Alice Unit) survivors for abuse in care, the Crown's acknowledgement of torture represents a new material circumstance which means a specific response is required, even for those who have previously settled their claim;
- 2 **agreed** to make redress available to survivors of torture at the Lake Alice Unit, which consists of:
 - 2.1 a one-off payment;
 - 2.2 a new apology for each survivor signed by the Prime Minister and Minister for Mental Health which explicitly acknowledges torture; and
 - 2.3 access to appropriate support and rehabilitative services;
- 3 **agreed** that due to the lack of definitive records, determination of initial eligibility will be based on a person declaring that they received either improperly administered electroconvulsive therapy or paraldehyde injections for the purpose of punishment while at the Lake Alice Unit, and confirmation of their admission to the Unit (if required);
- 4 **noted** that the Ministry of Health will provide any support required to the Crown Response Office to determine eligibility and any necessary access to records for the arbiter;
- 5 **noted** that, as necessary, survivors (or their estate) will be requested to provide consent for relevant information to be shared between the Ministry of Health, the Crown Response Office, and/or the independent arbiter;
- 6 **noted** that the Crown Response Office, in consultation with the Crown Law Office, will propose arrangements 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 (the Lead Coordination Minister) and Attorney-General for providing torture survivors with access to independent legal advice;
- 7 **authorised** the Lead Coordination Minister and the Attorney-General to jointly agree the arrangements for providing survivors with access to independent legal advice;

- 8 **agreed** that in the situation where an eligible survivor dies after registering their intent to make a claim, their next-of-kin or executor can continue with the application;
- 9 **agreed** that the approach to payments recognising torture will be two separate payment pathways, which consist of:
- 9.1 an expedited payment process with a fixed payment of \$150,000 for all eligible claimants, with no further assessment required beyond the declaration outlined in paragraph 3; or
- 9.2 an individual payment process with one-off payments determined by an independent arbiter and within an overall envelope which enables payments that reflect individual survivors' different experiences of torture;
- 10 **noted** that the proposed appointment of the independent arbiter and their terms of reference will be considered by Cabinet in early 2025;
- 11 **agreed** that any payments made will be on a final settlement basis;
- 12 **s9(2)(fh)**
- 13 **agreed** that claims be accepted until 30 April 2025 for the individual pathway and until 30 September 2025 for the expedited pathway;
- 14 **noted** that the timeframes in paragraph 13 will result in both pathways being completed by the end of 2025;
- 15 **agreed** that the Lead Coordination Minister and the Minister for Mental Health can approve later access for a survivor into either process in extenuating circumstances;
- 16 **noted** that payments as part of the expedited pathway will commence from 3 March 2025, to enable survivors time to seek legal advice and for the Crown Response Office to establish its operational processes;
- 17 **agreed** that the payments described in paragraph 9, and any income derived from these payments, will be made on an ex-gratia basis and are consequently exempt from being treated as cash assets or income for tax or benefit purposes;
- 18 **agreed** to amend Schedule 8 of the Social Security Regulations 2018 and Schedule 3 of the Residential Care and Disability Support Services Regulations 2018 to extend the permanent exemption on ex-gratia or compensation payments being treated as income and cash assets to former patients of the Lake Alice Psychiatric Hospital;
- 19 **invited** the Minister for Social Development and Employment to instruct the Parliamentary Counsel Office, if required, to draft amendment regulations to give effect to the decision in paragraph 18 above;
- 20 **noted** that the Crown Response Office will have discretion to "stagger" redress for torture at a survivor's request where they consider themselves to be financially vulnerable and do not wish to receive their financial redress in one payment;

- 21 **noted** that if a survivor eligible for torture-redress has received an end-of-life payment, as agreed by Cabinet in August 2024 [CAB-24-MIN-0300], then this will be deducted from their payment recognising torture;
- 22 **agreed** that the support component of torture-redress will be provided through existing support services and assistance for eligible survivors to access those services, acknowledging potential gaps in existing service provision;
- 23 **noted** that officials will report back to the Lead Coordination Minister and the Minister for ACC and for Mental Health by March 2025 with an update on torture survivors’ access to appropriate support and rehabilitative services, and options to address any gaps identified;
- 24 **agreed** that the overall administration of the torture-redress process will be through the Crown Response Office, noting also the role of the independent arbiter and the provision of independent legal advice;
- 25 **noted** that the independent arbiter will be required to complete their work by 30 September 2025, with any extension required to be agreed by Cabinet;
- 26 **agreed** to establish a new tagged operating contingency of the following amount to provide redress to survivors of torture at the Lake Alice Unit:

	\$m – increase/(decrease)			
	2024/25	2025/26	2026/27	2027/28
Lake Alice Unit torture-redress payments – tagged operating contingency	22.680	-	-	-

- 27 **noted** that the tagged contingency of \$22.68 million is based on the parameters set out in paragraph 9 and an assumption of up to 50(2)(g)(i) successful claims, and comprises of up to \$19.56 million for redress payments, and \$3.12 million for independent legal advice, remuneration for the independent arbiter, and operating the process;
- 28 **authorised** the Minister of Finance and the Lead Coordination Minister to jointly draw down the tagged operating funding in paragraph 26 (establishing any new appropriations as necessary);
- 29 **agreed** that the fiscal envelope for the individualised pathway 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 noted in paragraph 27;
- 30 **agreed** the tagged operating contingency in paragraph 26 be charged against the between-Budget-contingency established as part of Budget 24;
- 31 **agreed** the expiry date for the appropriation in paragraph 26 be 1 February 2026;
- 32 **noted** that funding available in the between-Budget contingency for 2024/25 has been fully exhausted, but that funding remains across the rest of the forecast period;

33 **noted** that any costs in the 2024/25 financial year, as outlined in paragraph 26, will have an adverse impact on the 2024/25 operating balance.

Rachel Hayward
Secretary of the Cabinet

Proactively released under the commitment to open government