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Starting Work on a Trauma-informed Redress System for Survivors of
Abuse in Care

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Chair
Cabinet Social Wellbeing Committee

STARTING WORK ON A TRAUMA-INFORMED REDRESS SYSTEM FOR SURVIVORS OF ABUSE IN CARE

Proposal

1. The Royal Commission of Inquiry into Historic Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) is providing its report on redress for survivors of abuse in care to the Governor-General on 1 December 2021. In anticipation of the Royal Commission's redress recommendations, the Crown has been doing preparatory work on a potential trauma-informed redress system. This paper seeks agreement to:
 - a. the need for a new approach to responding to survivors, and the intent to develop an integrated, independent redress system that acknowledges the harm and trauma people have experienced and supports them to improve their wellbeing – which can be announced as part of a media statement when the Royal Commission's redress report is publicly released in mid-December 2021;
 - b. report back in April 2022 on proposed responses to the Royal Commission redress report's recommendations and findings, including on priority areas for immediate work; and
 - c. develop options for collaborative arrangements for designing an independent trauma-informed redress system, based on the Royal Commission's findings and recommendations, to form part of the April 2022 report back.

Executive summary

2. The Royal Commission has been examining redress for survivors of abuse in care and provided 94 caveated draft redress recommendations on 1 October 2021. The Royal Commission will provide its report on redress to the Governor-General on 1 December 2021, which will provide full recommendations, findings, and contextual information.
3. The Royal Commission's draft recommendations propose a fundamental shift in the response to survivors from the current multiple historic claims services to an independent, integrated survivor-focused redress system. They also provide high-level guidance on the process for developing a redress system in partnership with Māori and guided by the views and experiences of survivors and key communities, including Pacific peoples, and disabled people.
4. Detailed recommendations analysis will be undertaken by the Crown Response once the redress report has been received, and proposed responses provided for Cabinet consideration and agreement in early April 2022. The report back can highlight priority areas for immediate work to be undertaken, and how the findings and recommendations can best shape the development of a redress system.
5. Based on survivors' evidence and the Royal Commission's draft recommendations, it is clear existing historic claims services are not meeting the needs of survivors and in many cases are retraumatising people. There is an urgent need for a significant shift from settlement-based claims processes to an integrated support-based approach to redress.
6. The following example redress vision and potential purpose statement and characteristics are provided to give a sense of the significant shift involved and the potential breadth of a support-based redress system. The potential purpose statement and characteristics are not intended to replace the collaborative design work to be undertaken in response to the Royal Commission's full findings and recommendations.

7. An example vision for redress is:
 Kōrerohia i ngā mea kua nohopuku. Whakaorahia i ngā mea kua mamae. Whakahouia i ngā mea kua ngaro. Mai i te pō ki te ao mārama, me tū kaha, tū maia, tū manawanui tātou katoa.
Speak what has been silent. Heal what has been hurt. Restore what has been lost. From the dark to the light, let us all stand strong, brave and steadfast.
8. A potential purpose statement is that redress is both an individual and collective experience of:
- acknowledging and responding to the harm and trauma people have experienced;
 - supporting and empowering people to restore and enhance their wellbeing; and
 - helping prevent others being abused or neglected in care.
9. The potential characteristics of an integrated redress system, are that it:
- covers people who were children, young people and vulnerable adults in child protection, disability, education, psychiatric and psychopaedic, and youth justice care settings for both the State and third-party providers;
 - is support- and community-based, meeting a range of needs to help address the effects of both abuse and neglect;
 - covers all survivors and their wider family and whānau, with the support provided reflecting differences between survivors and others;
 - operates within a Te Tiriti Partnership approach – upholding kāwanatanga in its structures and operation, supporting the restoration of survivors' connections to whakapapa, whānau and kāinga, and has kaupapa Māori woven throughout the system;
 - covers abuse that has occurred at any time, not set a limit on the time when people may seek redress, and allow people to access different types of support at different times;
 - is available for those who have already settled historic claims through existing agency processes; and
 - has clear demarcations between the redress system and the systems for the safety of children, young people and vulnerable adults currently in care – the care system needs to learn from the redress system but those in care need to have a clear path for immediate access to safety.
10. The development of an integrated redress system will require a comprehensive system design approach. Such an approach can be undertaken using collaborative arrangements that reflect the partnership-based process the Royal Commission is recommending. It is crucial the development of redress is grounded in the needs of those who will be using the system.
11. It is proposed different collaborative arrangement options are analysed by the Crown Response, with key stakeholder consultation, and advice on a recommended approach and timetable provided to Cabinet in April 2022. The advice will also include options for Ministerial oversight and a recommended approach for approving subsequent detailed governance and procedural material.
12. There are many older and terminally ill survivors of historic abuse who would benefit from a redress system, or at the very least some of the components that can be introduced more rapidly. Recognising this urgent need, the April 2022 paper will include priority items for immediate work. It is envisaged full redress system proposals, including implementation and transition plans, will be provided for Cabinet consideration and decisions in July 2023. Final timing will be subject to decisions made as part of the April 2022 paper.
13. There will be financial costs and prioritisation required for to implement and operate an integrated redress system, which will be quantified in the detailed design work. There will be scale considerations based on the phasing of potential demand, the levels of wider family and whānau assistance, and workforce development and provider resourcing needs. These aspects will all be modelled as part of the design process.

14. No immediate legislative changes are proposed. The design process will identify potential legislative changes, particularly around information sharing, treatment of financial payments for ACC, tax and benefit purposes, the potential inclusion of redress funding contributions from third-party care providers (such as faith-based institutions), and changes that would affect civil litigation that will need to be considered as part of the detailed design proposals.
15. Officials were directed in December 2019 to consider potential options for the central assessment or review of historic claims of abuse. The timing of the work was to be based on the Royal Commission's redress investigation. Survivors' evidence has demonstrated a need for a more fundamental shift from claims to redress. It is proposed the work on developing a redress system, as set out in this paper, formally supersedes the December 2019 directive.
16. The Royal Commission's redress report will be of considerable interest to many groups, and will prompt questions about the Government's intentions. I intend to issue a media release accompanying the publication of the report that clearly states the Government's intent to develop an independent, survivor-focused redress system, informed by the Royal Commission's report and developed in partnership with Māori and other key partners.

The Royal Commission has been examining redress for survivors of abuse in care

17. The Royal Commission is examining the abuse of children, young people and vulnerable adults in State care and faith-based institutions from 1950–1999. The Royal Commission has structured its work around themed investigations, one of which is State and faith-based redress for abuse in care. The Royal Commission produced an interim report in December 2020 setting out preliminary commentary on the evidence it had received to that point.
18. The Royal Commission held separate hearings on State and faith-based redress from September 2020 to March 2021, following delays due to COVID-19. Witnesses included survivors, advocates, and representatives from non-governmental organisations (NGOs), multiple Crown agencies, and the Catholic Church, Anglican Church, and Salvation Army.
19. Survivors, advocates, and NGOs' evidence covered experiences across a range of care settings, claims and litigation experiences, redress approaches and perspectives on how a future redress system could operate. Crown witnesses outlined the development of the different claims services, the legal aid system, and some of the current approaches to redress. Church witnesses outlined historic structures and oversight in their institutions, and the development and operation of their claims processes.
20. Survivors' evidence highlighted current claims services are opaque, time-consuming processes that do not meet survivor needs and can often be retraumatising. Current processes are focused on trying to establish what happened to a survivor to determine a financial settlement amount, rather than focusing on what support survivors need to address their harm and trauma.
21. The Royal Commission held a 2-day 'Redress Roundtable' in July 2021 to help provide further input into its thinking. The Roundtable followed a public questionnaire that posed a series of questions about how a future redress approach could work. The Roundtable involved 40 survivors, advocates, academics, and service providers examining the same questions in facilitated discussions. Crown observers attended the roundtable. The Royal Commission has also conducted more than 900 private listening sessions with survivors to date.

The Crown Response has been listening carefully to the Royal Commission and survivors

22. The cross-government response to the Royal Commission (the Crown Response), agreed by Cabinet in April 2019 [CAB-19-MIN-0.139.01 refers], has been:
 - a. providing large volumes of information and material to the Royal Commission's investigations, and evidence and witnesses for hearings; and
 - b. carefully listening to the evidence provided to the Royal Commission to enable the Crown to act on findings, recommendations, and identified issues – the Crown has been noting

all evidence provided and discussions facilitated as part of the Royal Commission's redress investigation.

23. All aspects of the Crown Response's work are governed by principles agreed by Cabinet: manaakitanga, openness, transparency, learning, being joined up, and meeting our obligations under Te Tiriti o Waitangi/The Treaty of Waitangi.
24. The Crown Response reports to me as responsible Minister, and involves multiple agencies, including ACC, Archives New Zealand, the Crown Law Office, the Department of Corrections, the Ministries of Business, Innovation and Employment, Education, Health, Justice, and Social Development, the New Zealand Police, Oranga Tamariki, the Public Service Commission, and Te Puni Kōkiri.

Draft redress recommendations were delivered on 1 October 2021

25. The Royal Commission provided a set of 94 draft caveated redress recommendations to the Minister of Internal Affairs, and copied to the Crown Response, on 1 October 2021. The draft recommendations are attached as Appendix A. While caveated, they cover a breadth of proposals for redress spanning system framing, design and delivery, acknowledgment and apologies, considerations beyond the redress scheme, and interim steps.
26. While still in draft, the recommendations provide a strong picture of the Royal Commission's vision for a paradigm shift to a future single trauma-informed redress system, which the Royal Commission refers to as a "redress scheme". Initial consideration of the draft recommendations has informed this paper.

Reviewing the full redress recommendations after their December 2021 delivery

27. The Royal Commission is delivering its interim¹ report on redress to the Governor-General on 1 December 2021. The report will include a full, uncaveated set of recommendations, contextual commentary, and case studies of survivors' experiences with historic claims processes and litigation. It is understood there will be a small number of additional supporting recommendations and some of the draft recommendations will be amalgamated or have timing shift. For example, the Royal Commission will be recommending a national apology is delivered after it provides its final report in June 2023, rather than in early 2022.
28. Detailed analysis of the full findings and recommendations will be undertaken by the Crown Response, with cross-agency consultation, once the interim report is received. Advice on proposed government responses to the recommendations, including response timetables, will then be provided for Cabinet consideration and agreement in April 2022.
29. The report's commentary and findings will provide an overview of the issues and experiences with existing claims and care services, and an outline of the Royal Commission's work, analysis, and engagement to develop the recommendations. The information will place the recommendations in their context and may highlight historic issues that agencies will need to respond to public questions about, but is not expected to affect the forward-focused redress work set out in this paper.
30. Some draft recommendations have areas of complexity. such as the inclusion of faith-based institutions, proposed changes to the ACC regime, and changes affecting civil litigation for abuse in care cases. These areas will need to be carefully worked through, and could involve further detailed consideration by expert panels.

There will be priority areas targeted for more immediate work

31. The draft recommendations have highlighted priority areas for more immediate work – for a survivor listening service and advance payments to survivors with serious illnesses, medical

¹ The term 'interim' referring to any report ahead of the Royal Commission's final report in June 2023, rather than being a provisional document

conditions or of advanced age. The April 2022 report back will include advice on priority projects to improve existing historic claims processes and create components that could be folded into a full trauma-informed redress system.

Existing historic claims services are divided among multiple agencies

32. There is no integrated, comprehensive redress system for survivors at present. There are a number of services for historic claims of abuse in State care operated by multiple agencies, based on the care setting and time period:
 - a. the Ministry of Education handles claims related to State primary schools before 1989 (prior to the implementation of Tomorrow's Schools) and any State schools that have closed;
 - b. school boards of trustees handle claims related to primary schools after 1989 and secondary schools for any time period;
 - c. the Ministry of Health handles claims related to psychiatric institutions before 1993 (prior to the disestablishment of the Department of Health and Area Health Boards);
 - d. district health boards handle claims related to psychiatric institutions within their districts after 1993;
 - e. the Ministry of Social Development handles claims related to child protection and care and youth justice settings before April 2017; and
 - f. Oranga Tamariki handles claims related to child care and protection and youth justice settings since April 2017 – Oranga Tamariki has an interim claims process, based on the agreement it would take responsibility for claims dating from 1 April 2017.
33. The claims services across the four central agencies (the Ministries of Education, Health, and Social Development, and Oranga Tamariki) involve lodgement of a claim (either by the survivor or a legal representative), working with the claimant to gather information about the events they describe, varying degrees of assessment against agency-specific frameworks, and a response to the claimant typically involving a settlement with financial recognition, some services (depending on the agency), and a formal apology.
34. The current claims processes were developed at different times in response to a range of early reports of abuse, with little grasp of the scale of the abuse and people's trauma. While some improvements (such as consistency of messaging and simplified application processes) have been made to claims approaches over the years, they remain fundamentally settlement-based processes with investigation and acknowledgement.
35. Faith-based institutions run their own claims or redress processes, which vary across denominations and can involve apologies, financial payments, counselling, or other support services. Survivors need to approach institutions separate to any State claims process.

There is a clear need for a fundamental shift to a survivor-focused redress system

36. Based on survivors' powerful testimony to the Royal Commission, the Royal Commission's draft recommendations, and feedback to agencies through their own previous consultations, it is clear claims-based schemes are not meeting people's need for assistance given the harm and trauma they have experienced. Acknowledging that survivors have diverse experiences and requirements, common criticisms are:
 - a. participating in a claims application and assessment process can be retraumatising, with survivors forced to work through a series of legal steps that can see them forced to recount their experiences in a way that can cause anxiety or distress;
 - b. for survivors of abuse in multiple care settings, the complexity of having to undertake multiple claims with different agencies, with processes that are not transparent and timeframes that vary widely but often take many years;

- c. survivors' experiences have caused them to distrust the system and a process that is focused on making a claim can further discourage them from seeking broader rehabilitation and support; and
 - d. claims approaches are bureaucratic and focused on an individual claimant within a Pākehā-centric framework, failing to recognise the outward rippling effects abuse can have on whānau, hapū, iwi, and wider communities.
37. Survivors have experienced a range of physical, sexual, emotional, and psychological abuse and neglect that have had profound impacts on their lives, and the lives of those around them. Survivors have described wanting:
- a. to be heard and believed, with the opportunity to share their stories in a respectful and sensitive manner;
 - b. genuine acknowledgment of their experiences and the harm that was caused to their lives;
 - c. to access a range of supports that assist in healing, resolution, and empowerment;
 - d. to be treated as a person rather than part of a process, in a way that is culturally sensitive and speaks to their particular circumstances; and
 - e. the opportunity for accountability and justice, and assurances that what they experienced will not be suffered by future generations.
38. There needs to be a fundamental shift from claims processes (that were often established to manage legal risks) to an integrated system that facilitates access to a range of supports to help restore wellbeing. In light of this, I am seeking agreement to start work on a trauma-informed redress system. The goal would be a compassionate redress approach focused on acknowledgement and support services that improve survivors' overall wellbeing, which can evolve to meet changing needs. With time, demand for redress should decrease in the face of an evolving safer care system.
39. I am not proposing to limit people's right to seek restitution through the courts, which survivors can currently pursue if they do not want to go through a historic claims service. Establishing a survivor-focused redress system should help minimise the need for survivors to pursue litigation. The Royal Commission's draft recommendations include proposals aimed at making civil litigation a more viable alternative for survivors if they wish to pursue that option. The full recommendations will need to be reviewed to determine how they might affect a redress system, and any flow on effects they could have for wider legal services and civil proceedings.

Examples of what an integrated, survivor-focused redress system could encompass

40. The following example vision and potential redress purpose statement and characteristics are provided to give Cabinet a sense of the potential breadth of a future redress system and the significant shift from current settlement-based claims processes to an integrated support-based approach. The potential purpose and characteristics are not intended to replace the findings and recommendations of the Royal Commission, and the subsequent engagement, analysis and design work needed to develop the actual redress system.
41. An example vision for redress is:
- Kōrerohia i ngā mea kua nohopuku. Whakaorahia i ngā mea kua mamae. Whakahouia i ngā mea kua ngaro. Mai i te pō ki te ao mārama, me tū kaha, tū maia, tū manawanui tātou katoa.
- Speak what has been silent. Heal what has been hurt. Restore what has been lost. From the dark to the light, let us all stand strong, brave and steadfast.*
42. Reflecting the Royal Commission's draft redress principles and the Crown Response's preliminary consideration, a potential redress purpose statement is that redress is both an individual and collective experience of:

- a. acknowledging and responding to the harm and trauma people have experienced – which can include people being able to tell their story in their own words and time, a written or spoken apology, recognition payments, and providing and maintaining historical and personal records;
 - b. supporting and empowering people to restore and enhance their wellbeing – providing or connecting people with a full range of physical and mental health support and cultural, living, reconciliation or dialogue processes, education and community assistance services; and
 - c. helping prevent others being abused or neglected in care – ensuring insights from the redress system are fed into ongoing developments and improvements in the care system.
43. In listening to survivor evidence and the Royal Commission's draft recommendations, and reviewing international experiences the Crown Response has identified high-level needs a redress system should seek to meet. The needs give rise to various characteristics a system should demonstrate to meet its overall intent of being a compassionate, equitable survivor-focused approach. Figure 1 outlines examples of high-level needs and their corresponding draft system characteristics.

Figure 1. Example high-level needs and the resulting potential characteristics for a future redress system

High-level need	The redress system should therefore
Reflect the breadth of situations where the abuse of children, young people and vulnerable adults occurred, where they were (or are) under the care or protection of others. The system should seek to avoid confusion with other situations where there is a different oversight or responsibility relationship.	a. Cover people who were children, young people and vulnerable adults in child protection, disability, education, psychiatric and psychopaedic, and youth justice care settings for both the State and third-party providers – aged care, adult correctional, and general hospital and healthcare settings would not be covered.
Ensure it is focused on the breadth of needs arising from the different kinds of abuse or neglect people suffered, to give people a full opportunity for improved wellbeing.	b. Be support- and community-based, meeting a range of needs to help address the effects of both abuse and neglect – including physical and psychological health, educational and living needs, cultural connections, and personal and collective history.
Recognise the outward-rippling effects of the original harm and the need to help all those affected to produce lasting improvements in wellbeing.	c. Cover all survivors and their wider family and whānau – with the support provided reflecting differences between survivors (who are the primary focus) and others who have been impacted, such as children, whānau, hapū and iwi, to help address collective harm and effects across generations.
Reflect the fundamental role of Te Tiriti in the operation of a system that has a significant role with and for Māori – tamariki Māori and rangitahi have been over-represented in care and suffered intergenerational effects including disconnection from whakapapa.	d. Exist and operate within a Te Tiriti Partnership approach – redress will reflect and uphold kāwanatanga in its structures and operation, support the restoration of survivors' connections to whakapapa, whānau and kāinga, and have kaupapa Māori woven throughout the system.
Ensure it is inclusive and enduring, and does not perpetuate trauma by requiring survivors or their whānau to engage with the system under time constraints. The system should also be available to the kin of survivors who have passed away, to ensure the deceased person's experiences are still acknowledged.	e. Cover abuse that has occurred at any time, not set a limit on the time when people may seek redress, and allow people to access different types of support at different times.

High-level need	The redress system should therefore
Reflect the need for equity, with those who have been through existing claims services not missing out on broader support options or more generous acknowledgement payments that become available. This also prevents confusion or trauma for survivors with currently lodged claims having to consider whether they should halt their claims to wait for a new redress system.	f. Be available for those who have already settled historic claims through existing agency processes – ensuring access to the services and approaches not currently provided through claims to address broader needs and potentially providing ‘top up’ payments if redress financial components are higher than the historic claim payment.
Ensure those in care have a clear path for immediate access to safety. The care system needs to learn from the redress system, but there cannot be confusion between the redress system and dealing with immediate needs.	g. Have clear demarcations between the redress system and the systems governing the safety of children, young people and vulnerable adults currently in care.

Getting work underway on developing an integrated redress system

44. There is an urgent need to progress work on redress. There are many older and terminally ill survivors of historic abuse who would benefit from a redress system, or at the very least some of the components that can be introduced more rapidly, as noted in paragraph 31.
45. The Royal Commission’s draft recommendations’ preface reinforces this urgency, “Survivors of abuse in care and their communities have been waiting too long without adequate responses to the harm that has been caused to them, and this is causing continuing harm to many. Many have died. This work cannot wait any longer.”

Developing a redress system using a comprehensive system design approach

46. Work to develop an integrated redress system will require a comprehensive system design approach, that draws on the Royal Commission’s full findings and recommendations. Such an approach involves working with the multiple elements involved in complex change in an integrated way – drawing upon analysis of strategic goals and intent, policy and legislation, functions and roles, information and resource flows, and underlying assumptions and mental models. Figure 2 provides an example of some of the different elements that would be involved in taking a comprehensive service design approach for developing redress.
47. System design is underpinned by rigorous project and analytical methodologies. For redress development, expert input would be drawn on from a range of disciplines – including mātauranga Māori, policy analysis, trauma psychology, accessibility design, service design, and modelling – and woven throughout the different elements. Careful engagement planning and resources would also be used to help ensure work could proceed at pace without creating trauma for, or unrealistic expectations among, survivors and communities.

Figure 2. Example of some of the multiple elements involved in potential redress system design



Selecting the most appropriate collaborative arrangements for system design

48. Māori have been and are overrepresented in the State care system and are therefore significantly more likely to have experienced abuse. The Crown Response recognises it must learn from the unilateral actions of the past which contributed to abuse, and ensure the redress system is based in partnership, active protection, equity, and manaakitanga so that it does not inadvertently perpetuate harm.
49. The Royal Commission's draft recommendations note a new independent redress system should be designed and delivered in partnership with a Māori collective exercising tino rangatiratanga. The Royal Commission proposes the Māori collective lead the design of the system with close consultation and the active involvement of a survivor collective, with the Crown having a partner role in the design and implementation of the system. The Royal Commission also recommends engagement with Pacific peoples, deaf and disabled people, and a cross-section of survivors and their communities, including whānau, hapū, and iwi, experts, and service providers.
50. System design can be undertaken using a collaborative structure. There are a number of collaborative arrangements that could be put in place for redress development that are aligned with the Royal Commission's recommendations. Within a partnership-based framework, options would include different combinations of responsibilities and mandates between groups sitting within two broad categories of:
- a. redress providers, including the Crown and third-party providers such as faith-based institutions and NGOs; and
 - b. redress users and partners, including survivors and advocates, iwi, hapū and urban Māori authorities, Pacific organisations, deaf and disability organisations, academics, researchers and other experts, and other key communities.
51. Advice on different options for collaborative arrangements will be provided as part of the April 2022 report back, informed by the analysis of the Royal Commission's full recommendations. The advice will also include options for Ministerial oversight and a recommended approach for approving subsequent detailed governance and procedural material. A dedicated project team will be based in the Crown Response's Secretariat to support the arrangements and overall redress work. The Crown Response will engage with the Royal Commission and other key stakeholders, from the range of groups outlined in paragraph 50, as part of developing the collaborative advice.
52. The Royal Commission requested the Crown not undertake survivor consultation in 2021, while its redress investigation was active. Survivors' voices have been heard clearly through the Royal Commission's hearings, forums, and reports. However, it is critical that the Crown Response can directly engage with survivors as part of the redress work. The Crown Response will work with the Royal Commission on ways the Crown can engage with survivors without affecting the Royal Commission's other investigations into historic abuse in different care settings and cross-cutting themes.
53. Including third-party care providers is likely to add complexity to the design process. The potential complexity arises from private organisations providing financial contributions and sharing records and personal information with an independent system, and in the system's ability to enforce follow up actions. These issues will be worked through to help inform design considerations and the April 2022 report back.

Careful consideration will be needed on how to ensure redress independence

54. The Royal Commission's draft recommendations include that the redress system should, operate independent of individuals or institutions responsible for survivors' hara, including institutions responsible for providing care or defending court proceedings for abuse in care. The Royal Commission notes the system may need to engage with such institutions to carry out its functions.

55. How independence is best achieved will require careful analysis as part of the design process, in particular around possible structural options. Initial issues on independence will be included in the April 2022 advice.
56. Subject to the detailed analysis, it is also expected the prosecution of alleged abuse perpetrators or complaints through other investigative or disciplinary bodies will be kept separate from support services to ensure survivors and their whānau can access those services without any delays or impediments. The redress system could support survivors to engage with Police and investigative bodies as required, and provide information for child safety systems, without affecting the broader services and supports being provided in parallel.

Flexibility to accommodate further information from the Royal Commission while moving at pace

57. The proposed approach lets the redress work proceed at pace while still taking on board the findings of the Royal Commission as it progresses. Subject to the analysis and proposals to be set out in the April 2022 report back, it is envisaged that detailed redress system proposals, including full implementation and transition plans, will come to Cabinet in July 2023 for consideration and approval.

Previously directed work on central assessment or review of historic claims has been overtaken by the need for a redress system

58. In December 2019, the Cabinet Social Wellbeing Committee directed officials to ‘commence consideration of potential options for the central assessment or review of historic claims’ [SWC-19-MIN-0193 refers]. The directive was part of the Crown’s consideration of whether the conduct of current historic claims litigation could better reflect the Crown Response principles (agreed by Cabinet in April 2019 [CAB-19-MIN-00139.01 refers]): manaakitanga, openness, transparency, learning, being joined up, and meeting our obligations under Te Tiriti o Waitangi/The Treaty of Waitangi. The directive recognised claimants’ frustration at the difficulties in pursuing claims through different agencies, which were either involved in the abuse in the first place or had a historic association with the agency or institution involved in the abuse.
59. It was considered that centralised assessment or review of claims might provide some distance from the agency identified with abuse, streamline claim resolution, and enable redress to be more consistent. Consideration was to be given to strategies to engage and partner with hapū and iwi in addressing complaints. The work considering centralised options was delayed while the Crown waited for the Royal Commission to complete its hearings into redress.
60. Given the demonstrated need for a more fundamental shift in the response to survivors, I seek your agreement that the work on developing a redress system (in response to the Royal Commission’s recommendations) supersedes the consideration of options for the central assessment or review of historic claims [Rec 10.1 SWC-19-MIN-0193 refers].
61. Cabinet also directed parallel work on options for the reform of the Limitation Act 2010 as it applies to litigation of historic abuse claims [Rec 10.2 SWC-19-MIN-0193 refers]. The Ministry of Justice is leading the policy work.

Being alert to intersections with other government priorities and work programmes

62. The design work will need to consider the redress system’s interface with other areas of work within government, in particular: the passage of the Oversight of the Oranga Tamariki System and Children and Young People’s Commission Bill, and the broader work on the independent children’s monitor and Ombudsman’s complaint functions; the health sector reforms; and, ongoing developments with the ACC scheme.
63. There are strong potential links with the Child Wellbeing Strategy, the Family Violence & Sexual Violence Joint Venture, and the Pacific Wellbeing Strategy. Abuse in care can cause rippling

effects across peoples' lives that lead to multiple forms of violence and harm. An integrated redress system has the potential to help address trauma for survivors and their whānau and communities, contributing to positive longer-term outcomes. These links will be explored further following Cabinet agreement to the broad design work.

64. In general, the design work will need to be alert to demarcations between redress and system monitoring. The redress system will be an important source of information and insight for care systems, and improving the safety and wellbeing of children, young people, and vulnerable adults in the different care settings (including child protection, disability, education, and mental health care). However, the redress system cannot in itself take on responsibility for the safety of current care systems.

Financial implications

65. There would be significant financial costs and prioritisation involved in creating and operating an integrated redress system, which will be quantified as part of the design process. There will, for example, be scale considerations with any third-party care providers to be covered by the system and the overall system demand. The Royal Commission contracted MartinJenkins to produce an estimate of the total numbers abused in care. The resulting report estimated ranges of 30,000–250,000 survivors of abuse, drawing on different assumptions and models. The Crown will need to model likely demand given the wide variation in the figures.
66. There are potential offsets that could be made through co-funding contributions from third party providers. In terms of longer-term offsets, there may be reduced litigation costs for the Crown with a redress system that offers a more meaningful pathway for acknowledgement and support. In addition, a redress system that helps address harm-related behaviour and intergenerational trauma will have positive long-term social benefit with reduced costs across the health, justice, and social welfare sectors.
67. The Crown Response's Budget 2022 bid will include the full funding to support the design process over 2022/23, with work up to June 2022 covered by the current Crown Response appropriation. The Budget 2022 bid will also include funding for the ongoing work to respond to the Royal Commission's other investigations. It is expected that any additional costs associated with changes to existing historic claims processes, in response to Royal Commission recommendations on priority items, should be able to be covered within existing historic claims appropriations or addressed through Budget 2023.
68. As noted earlier in the paper, I expect to bring detailed redress system proposals to Cabinet for consideration in July 2023. The proposals will set out cost options to allow Cabinet to make informed decisions on the full system. This will allow redress system funding to then be sought as part of Budget 2024.

Legislative implications

69. There are no immediate legislative changes proposed. The redress system design process is expected to identify potential legislative changes that will need to be considered as part of the eventual detailed design proposals. Areas potentially involving legislative considerations include information sharing and record creation and preservation, recognition payments being exempt from inclusion in means testing or other support systems, interfaces with the ACC scheme, and, system structure and governance.
70. In addition, there is separate work led by the Ministry of Justice examining the application of the Limitation Act 2010 to litigation related to historic abuse in care, which will be reported separately to Cabinet. There may be consideration of other legislation related to litigation arising from the Royal Commission's recommendations, which will be reflected in subsequent report backs to Cabinet.

Regulatory impact

71. Impact analysis is not required, since there is no proposal to amend, repeal or introduce new legislation at this time. Any legislative proposals arising from the detailed design work will be accompanied by impact analysis.

Population implications

72. Given historic issues with the care system, it is critical that both the development and operation of an integrated redress service responds to the needs of Māori, Pacific peoples, and disabled people. A range of consultative and co-design approaches based on partnership and open dialogue with Māori, Pacific communities, and disabled people will need to be used in the development of the detailed redress proposals that will be brought back to Cabinet. It is acknowledged that there is significant demand on these groups, particularly Māori and Pacific leaders and groups, around COVID-19 and other reform processes. As a high priority, the Crown Response will work with key agencies, including Te Arawhiti, Te Puni Kōkiri, the Ministry for Pacific Peoples, and the new Ministry for Disabled People (name to be confirmed) on an integrated engagement approach.
73. Māori have been and are overrepresented in the State care system and are therefore significantly more likely to have experienced abuse. In addition, historic State care approaches frequently alienated tamariki Māori, rangatahi, and vulnerable adults from their whakapapa and led to intergenerational disconnection and trauma. An integrated redress system therefore needs have mātauranga Māori and responsiveness to tikanga and te ao Māori deeply ingrained across all aspects of its operation. This will be a key area of consideration in the detailed design work.
74. Due to a lack of historic ethnicity data, the number of Pasifika children, young people, and vulnerable adults in care over time cannot be confirmed. However, evidence received by the Royal Commission highlights the racist treatment many Pasifika people experienced in historic care settings, and the alienation of children and young people from their culture. Within many Pacific cultures there are strong issues around shame, family reputation, and privacy that can make it difficult for Pasifika survivors to speak about their experiences or seek redress. An integrated redress system therefore needs to be designed with input from and drawing on Pacific community services, and reflect core values of family, collectivism and communitarianism, reciprocity, and respect to ensure it can be accessed by and responds to all Pacific peoples.
75. Many children, young people, and vulnerable adults were brought into the State care system due to their physical, intellectual, deafness, disability, or mental health status. That status then often made people more vulnerable to abuse and meant they often had difficulties in reporting abuse. It is important that an integrated redress system reflects those experiences and is designed from the start to be accessible to everyone, recognising that there will need to be specific responses to ensure deaf and disabled people have an equitable experience. There are also intersectional issues, with Māori overrepresented in disability population groups.
76. The work on an integrated redress system may also have gender implications. Women appear to be under-represented among those currently seeking redress for abuse in care – for example, women form just under 30 percent of claimants to the Ministry of Social Development's Historic Claims Unit. The reasons for the under-representation are not known. The Royal Commission's work in documenting experiences could help address whether there were gendered distinctions in where children and young people were placed or the abuse suffered, or whether the current claims systems have inherent gender issues. Irrespective, an integrated redress system needs to ensure all people seeking redress have appropriate pathways into and through the system that are sensitive to gendered experiences. There will be also issues of intersectionality, with wāhine Māori experiencing abuse that had both gendered and racial elements.

Te Tiriti o Waitangi implications

77. One of the core principles guiding the Crown Response is meeting the Crown's obligations under Te Tiriti o Waitangi/the Treaty of Waitangi – honouring Te Tiriti, its principles and building a stronger Māori-Crown relationship through the way the government operates and behaves.
78. While a redress system would in large part sit parallel to the care system (noting the care system must learn from the information and insights a redress system could offer), issues with the current care system highlight key considerations in developing redress. The Waitangi Tribunal's report *He Pāharakeke, He Rito Whakakīki Whāruarua* (on the urgent inquiry into Oranga Tamariki, WAI 2195) provides findings and expectations around partnership, active protection, equity, and options that must also be addressed in a redress system.
79. For example, the overrepresentation of tamariki Māori and rangatahi in State care and the cultural alienation Māori have experienced in care represents failures in terms of Articles 2 and 3 of Te Tiriti – not upholding tino rangatiratanga over kāinga (Article 2) and failure to protect children and vulnerable adults' rights (Article 3). It is imperative a redress system recognises and helps to address such historic failures.
80. The development, governance, and operation of a redress system must therefore reflect Te Tiriti. Without pre-empting the engagement needed as part of the Royal Commission recommendations and collaborative arrangements' analysis, reflecting Te Tiriti in redress could include, for example, having iwi and urban authorities as formal co-design partners, allocation of different support types' design and implementation to Māori service providers, and Māori co-governance of an independent redress body.

Human rights implications

81. The proposed high-level redress system outlined in this paper, being collaborative and survivor-focused, is intended to uphold human rights and are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. In addition, the development of an integrated redress system that provides survivors with a full range of supports and access to justice processes will support New Zealand to meet its obligations under relevant international treaties and conventions. These include the UN Convention on the Rights of the Child, the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of all Forms of Discrimination Against Women, the UN International Convention on the Elimination of All Forms of Racial Discrimination, and the UN Declaration on the Rights of Indigenous People.

Consultation

82. This paper was developed by the Crown Response to the Abuse in Care Inquiry. The ACC, Archives New Zealand, Crown Law Office, Department of Corrections, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of Social Development, New Zealand Police, Office for Disability Issues, Oranga Tamariki, Public Service Commission, Te Arawhiti, and Te Puni Kōkiri were consulted. The Department of the Prime Minister and Cabinet and the Treasury were informed.

Communications

83. I will work with the Minister of Internal Affairs to coordinate messages around the receipt of the Royal Commission's interim report on redress and the public release of this paper. The Royal Commission report will be of considerable interest to the many groups it affects, and will prompt questions about the Government's intentions. I therefore intend to issue a media release accompanying the publication of the report that makes clear reference to the:
 - a. Government's commitment to developing a compassionate, independent survivor-focused redress system;

- b. system being informed by the Royal Commission's full findings and recommendations; and
- c. system being developed in partnership with Māori, and guided by the views and experiences of survivors, Pacific peoples, and deaf and disabled people.

Proactive release

84. I intend to proactively release this paper as part of the communications outlined above. The paper will be published on the Crown Response website, with other agencies linking to the page as required.

Recommendations

85. It is recommended that the Committee:

- 1) **note** the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) provided caveated draft redress recommendations on 1 October 2021 and will provide its interim report on redress to the Governor-General on 1 December 2021, which will provide full recommendations, findings, and contextual information;
- 2) **note** the Royal Commission's draft recommendations set out the basis for an independent, integrated survivor-focused redress system and provide high-level guidance on the process for developing the redress system in partnership with Māori and guided by the views and experiences of survivors and key communities, including Pacific peoples and deaf and disabled people;
- 3) **note** the experiences of survivors heard by the Royal Commission that existing claims services for survivors of historic abuse in care are primarily bureaucratic settlement-based processes involving multiple agencies, which are not meeting the needs of survivors and in many cases are retraumatising survivors;
- 4) **agree** that through the Royal Commission's work there is an urgent and clearly demonstrated need for a significant shift from settlement-based claims processes to an integrated support-based approach to redress;
- 5) **agree** the intent is to develop an independent survivor-focused redress system, informed by the Royal Commission's findings and recommendations, with a clear vision, purpose and characteristics that ensure the system is compassionate, equitable and meets survivors' needs;
- 6) **note** that, to give a sense of the Crown's intent for redress, an example vision is:
 Kōrerohia i ngā mea kua nohopuku. Whakaorahia i ngā mea kua mamae. Whakahouia i ngā mea kua ngaro. Mai i te pō ki te ao mārama, me tū kaha, tū maia, tū manawanui tātou katoa;
Speak what has been silent. Heal what has been hurt. Restore what has been lost. From the dark to the light, let us all stand strong, brave and steadfast;
- 7) **note** that, to give a sense of what a redress system would involve, an example purpose statement is that redress is both an individual and collective experience of:
 - a) acknowledging and responding to the harm and trauma people have experienced;
 - b) supporting and empowering people to restore and enhance their wellbeing; and
 - c) helping prevent others being abused or neglected in care;

- 8) **note** that, to provide an initial sense of the potential scale of a redress system and the significant shift being sought, potential characteristics of a system are that it:
- a) covers people who were children, young people and vulnerable adults in child protection, disability, education, psychiatric and psychopaedic, and youth justice care settings, whether State or third-party providers (such as faith-based institutions and non-governmental organisations providing care);
 - b) is support-based, meeting a range of needs to help address the effects of abuse and neglect – including a range of joined up and community-based supports covering physical and psychological health, educational and living needs, cultural connections, and personal and collective history;
 - c) covers all survivors and their wider family and whānau, with the particular support provided reflecting differences between survivors and others;
 - d) operates within a Te Tiriti Partnership approach – upholding kāwanatanga in its structures and operation, supporting the restoration of survivors' connections to whakapapa, whānau and kāinga, and has kaupapa Māori woven throughout the system;
 - e) covers abuse that has occurred at any time, not set a limit on the time when people may seek redress, and allow people to access different types of support at different times;
 - f) is available for those who have already settled historic claims through existing agency processes, ensuring access to the services and approaches not currently provided through historic claims; and
 - g) has clear demarcations between the redress system and the systems governing the safety of children, young people, and vulnerable adults currently in care – the care system needs to learn from the redress system but those in care need to have a clear path for immediate access to safety;
- 9) **agree** that responses to the Royal Commission's recommendations and the development of the redress system as a whole will be underpinned by the Crown Response principles – manaakitanga, openness, transparency, learning, being joined up, and meeting our obligations under Te Tiriti o Waitangi/The Treaty of Waitangi – and informed by a survivor-centred approach;
- 10) **invite** the Minister for the Public Service to report back to SWC in April 2022 with:
- a) detailed analysis of the Royal Commission's interim redress report and proposed responses to the Royal Commission's full redress recommendations, which will inform both the development and eventual operation of a redress system as well as other potential changes to care systems;
 - b) priorities for immediate work, including those that could be undertaken to improve current claims services as a precursor to a full redress system; and
 - c) options for collaborative arrangements, including Māori and survivor partnerships and leadership, to design an independent survivor-focused redress system, along with options for Ministerial oversight and a recommended approach for approving subsequent detailed governance and operational support arrangements;
- 11) **note** there are potentially complex aspects of redress development that will require careful analysis, particularly around the inclusion of faith-based institutions, and significant financial and legislative implications that will need to be quantified as part of the redress design process;

- 12) **note** that, subject to the detailed analysis and proposed responses to be reported to Cabinet in April 2022, it is envisaged full redress system proposals, including implementation and transition plans, will be brought to Cabinet for consideration and decisions in July 2023;
- 13) **note** the proposed approach to responding to the Royal Commission's recommendations should ensure work on redress can proceed at pace, reflecting survivors' needs, while providing flexibility to take on board further information from the Royal Commission's other investigations;
- 14) **note** officials were directed in December 2019 to commence consideration of potential options for the central assessment or review of historic claims, with the timing of the report back to Cabinet to be determined based on the progress of the redress investigation of the Royal Commission; and
- 15) **agree** work on developing a redress system now supersedes the December 2019 directive on consideration of potential options for the central assessment or review of historic claims.

Hon Chris Hipkins
Minister for the Public Service

PROACTIVELY RELEASED UNDER THE COMMITMENT TO OPEN GOVERNMENT

Appendix A: The Royal Commission's draft redress recommendations, 1 October 2021

Please see the separate PDF attached.

PROACTIVELY RELEASED UNDER THE COMMITMENT TO OPEN GOVERNMENT

NGĀ TŪTOHI | RECOMMENDATIONS

KUPU WHAKATAKI | PREFACE

The Inquiry is on-going. In particular, we continue to look more closely at the specific experiences of Māori, Pacific, Deaf and disabled people including those with mental illness and intersections between these groups of people. This ongoing work will provide more important information on what is required to effectively redress the harm caused by abuse in care, and lead to further recommendations.

However, work must begin now to build a system that ensures survivors of abuse can access effective measures to restore their mana. Survivors of abuse in care and their communities have been waiting too long without adequate responses to the harm that has been caused to them, and this is causing continuing harm to many. Many have died. This work cannot wait any longer.

Please note that the recommendations are in draft and subject to further engagement to be undertaken in October 2021. Some of our recommendations may be affected by the ongoing engagement, and we flag in particular that there may be some revision or addition of areas including:

- The expression of the principles and values underpinning the redress system and scheme (in particular to allow targeted consultation with Māori).
- The relationship between the Crown, the Māori collective, the Survivor collective, and other groups in the system design process (to allow further engagement and consideration of the interplay among those groups).
- The recommendations relating to Limitation Act reform, waiver, immunities, the proposed right to be free from abuse in care, access to records, and whānau access to services (to allow targeted consultation with affected stakeholders).
- Recommendations on aspects of monitoring that fall within the definition of redress (again based on upcoming engagement).

Where text is in square brackets, this signals that particular work of this sort is underway to refine our thinking. We will highlight any changes and the reasons for them in accordance with clause 37D of the terms of reference when we report on 1 December 2021.

TE TŪĀPAPA | FRAMING THE SYSTEM

Te aronga | Purpose

1. To create an accessible, effective and fair system to address abuse in both state and faith-based care that:
 - (a) acknowledges and apologises for hara (harm and trauma);
 - (b) aims to heal and restore the inherent mana, tapu and mauri of people; and
 - (c) takes decisive, effective and active steps to stop further abuse in care happening.

[Ngā Mātāpono | Principles

2. The system should be founded upon the following fundamental interconnected values, principles and concepts:
 - (a) **Whakamana tangata** – where affected by hara the inherent power, dignity and standing of a person must be respected and restored.
 - (b) **Hara** – is a transgression or wrong. In this context, it includes historical, contemporary, on-going, or future abuse experienced by people (including their whānau, hapū, iwi and communities) in the care of state and faith-based institutions. This includes physical, sexual, emotional, psychological, cultural, and racial abuse and neglect (neglect may also include medical, spiritual and educational neglect).
 - (c) **Ea / Houhou i te rongō** – where there has been hara, action must be taken to whakamana tāngata, account for and restore the wrong, and achieve a state of balance and peace.
 - (d) **Teu le vā / tauhi vā** – the interconnected relationships or vā between people and places must be tended to and nurtured to maintain individual and societal wellbeing. Where there has been abuse, steps must be taken to heal or re-build the vā and re-establish connection and reciprocity.
 - (e) **Atawhai and Manaakitanga** – people must be treated with humanity, compassion, fairness, respect, generosity and responsible caring that upholds the mana and dignity of those involved (this includes being survivor-focussed and trauma informed).
 - (f) **Whakapapa and whanaungatanga** – the impact of abuse can be intergenerational and affect whānau, hapū, iwi and communities. The system should enable individual and collective well-being and mana, reconnection to whakapapa, and cultural restoration.
 - (g) **Oranga** – all dimensions of well-being must be provided for including physical, spiritual, mental, cultural, social, economic and whānau well-being.

As at 1 October 2021. May be subject to change. Any changes will be highlighted in accordance with clause 37D of the terms of reference.

- (h) **Autonomy** – The Crown should enable all survivors, individually and/or collectively, to chart their own course to ea / teu le vā / restoration. This requires properly resourcing a system that is flexible enough to allow for different pathways.
- (i) **Active Protection** – Responsive and active steps should be taken to seek out, empower and protect those who have been or who are being abused in care.
- (j) **Fairness and accessibility** – The system must be fair and accessible. This includes that access, support, services, and outcomes are tailored and culturally safe, culturally competent and culturally attuned to both individuals and collectives, including Māori, Pacific people, and those who are disabled or Deaf. The Crown should commit to equitable outcomes.
- (k) **Transparency** - The system must be open and accountable. This includes having clear, publicly available rules and other information about how the system works, and regular reviews of the system.
- (l) **Whakahaumarū** – systemic changes need to occur to safeguard and stop abuse happening in the care of state and faith-based institutions now and in the future.]

Me whakamana i te Tiriti o Waitangi | Give effect to Te Tiriti o Waitangi

3. Te Tiriti o Waitangi must be given effect to in both the process of designing the system and in the system itself. Central to this is tino rangatiratanga (self-determination and authority), including the right to organise and live as Māori and to make decisions to advance the well-being of people, including in the provision of care to whānau, hapū, and iwi by whānau, hapū, and iwi.

Me tauauru ki ngā ture o te ao | Be consistent with international law

4. The system must be consistent with Aotearoa / New Zealand's commitments under international human rights law, including the United Nations Convention on the Rights of Persons with Disabilities, and the United Nations Declaration on the Rights of Indigenous Peoples.

HANGA PŪNAHA | SYSTEM DESIGN AND DELIVERY

Whakamana i te hononga Tiriti | Work in partnership with Māori

5. The system should be designed and delivered in partnership with Māori exercising tino rangatiratanga and consistently with the United Nations Declaration on the Rights of Indigenous Peoples. To achieve this:

- (a) a Māori Collective should be established to:
 - (i) lead the design of the redress scheme;
 - (ii) work with survivors and their communities (including the Survivor Collective and Pacific, Deaf and disabled communities), whānau, hapū, and iwi, experts, service providers, stakeholders, and community leaders to develop a response to the Inquiry's recommendations including:
 - the exploration and implementation of a system framed by tikanga principles;
 - the exploration and, if decided, implementation of a separate scheme for Māori;
 - what support and services are needed for addressing hara, enhancing inherent mana, and achieving ea; and
 - the nature, timing and content of an apology to Māori for abuse in care and memorials; and
 - (iii) commission any reports, reviews, or expert advice on areas considered important to system and scheme design, include the expert services review referred to below; and
 - (iv) otherwise build on the work of the Inquiry to explore solutions to address harm from abuse suffered by Māori in care to enhance inherent mana, tapu and mauri;
- (b) to carry out its work, the Māori Collective should be:
 - (i) resourced by but independent from the Crown; and
 - (ii) comprised of Māori that have relevant expertise and / or lived experience and represent a mix of survivors, whānau, hapū and iwi, pan-tribal organisations and urban Māori with a fair mix of gender, rangatahi, and disabled persons.
- (c) The Māori Collective does not displace the Crown's Treaty partnership obligations in the design and implementation of the scheme.

Mahi tahi ki ngā mōrehu me ngā hāpori | Actively involve survivors and their communities

6. The Crown should closely consult with and actively involve survivors in the design and delivery of a system. This should include:
 - (a) the establishment of a Survivor Collective to:
 - (i) advocate for survivors during Crown decision-making on the Inquiry's recommendations;
 - (ii) ensure that the system is designed from a survivor journey perspective; and
 - (iii) together with the Māori Collective, commission the expert services review referred to below;
 - (b) to carry out its work, the Survivor Collective should be:
 - (i) resourced by but independent from the Crown;
 - (ii) include people with relevant expertise; and
 - (iii) include people with lived experience of disability.
7. The Crown should engage with survivors, experts and other interested people, including:
 - (a) *Pacific peoples* – to understand how the scheme should be designed and delivered consistent with Pacific cultures including, how the scheme and broader system can incorporate principles from Pacific restorative processes such as ifoga, fakalelei, and ho'oponopono.
 - (b) *Deaf and disabled people* – on how its obligations in the United Nations Convention on the Rights of Persons with Disabilities, including those in articles 4(3), 9, 12, 13 and 16(2) and 16(4), and the New Zealand Disability Strategy will be given effect to in the design and operation of the new scheme.
 - (c) *A cross-section of survivors and experts* –on how the scheme must work for a range of people including youth and LGBTQTTI+ not already represented in the engagement described above.
8. The Crown should also engage with faith-based institutions, other interested parties, and the public.

Tirohia ki te pūnaha whakawhānui | Take a systems approach

9. Addressing abuse in care cannot operate in a silo. Instead, the Crown should take a systems or all-of-government approach.

PAHUI WHAKAPĀHA | PUBLIC ACKNOWLEDGEMENT AND APOLOGIES

10. There should be public acknowledgement and apologies for [hara] at the national, community and individual level. This should include:
 - (a) a public acknowledgement and apology from the Governor-General in and over New Zealand, as the representative of the Head of State, and the Prime Minister to survivors of abuse in state and faith-based care within four months of the delivery of this report to the Governor-General; and
 - (b) where appropriate, specific public apologies to appropriate collectives, including Māori, on the recommendation of the Royal Commission, on the recommendation of the new scheme (as discussed below), or as a result of direct engagement with affected communities.
11. The content of apologies, and other matters related to them, including when and where it is made, should be determined in collaboration with survivors and be consistent with the principles of good apologies set out at [33] below.

HANGA ROOPU WHAKAMANA TĀNGATA | CREATE A NEW INDEPENDENT SCHEME FOR PEOPLE IMPACTED BY ABUSE IN CARE

Hanga roopu hou: Create a new scheme to transform redress

12. The way that redress is currently delivered should be transformed through the creation of a new independent scheme to assist people impacted by abuse in state and faith-based care in their journey to achieving ea / restoration or healing the vā, and contribute to prevention of abuse in care.
13. This scheme should be informed by the purpose, principles, Te Tiriti o Waitangi and international law commitments, and system design process recommendations above.

Ngā āhuatanga matua | Functions

14. To create an accessible, effective and fair process for those people impacted by abuse in state and faith-based care that:
- (a) provides an opportunity for survivors of abuse in care to share their abuse in a safe, supported way;
 - (b) facilitates acknowledgements and apologies for hara in care;
 - (c) facilitates access to services, to payments and to other measures to restore mana and assist with well-being;
 - (d) establishes and maintains high-quality and accessible communications about the scheme; and
 - (e) reports and makes recommendations on systemic issues relevant to abuse in care.

Noho tūhāhā | Be independent

15. People affected by abuse in care need to be able to engage with a scheme that, other than where required to carry out its functions, has no connection with individuals or institutions responsible for their hara. This includes individuals or institutions who:
- (a) were responsible for providing care to those affected by abuse;
 - (b) allegedly are responsible for the abuse of survivors in care; and
 - (c) would be responsible for defending any court proceedings for abuse in care.

Whakauru whānui | Be inclusive and responsive

16. The scheme should be inclusive and responsive to people affected by abuse in care. It should:
- (a) be open to all survivors of abuse in care, including those who have been through previous redress processes, people who are covered by ACC, and people who are in prison or have a criminal record;
 - (b) enable whānau/family members to continue a claim made by a survivor if the survivor dies, or make a claim on a survivor's behalf if there is clear evidence that the survivor intended to apply to the new scheme or had taken other steps to claim redress before their death; and
 - (c) give priority and urgency to claims from elderly or seriously ill survivors, including making interim payments to these survivors where appropriate.

17. The Inquiry will make recommendations in later reports on:
 - (a) the extent to which whānau members of a survivor can independently apply to the scheme for harm they suffered due to the abuse of the survivor; and
 - (b) how the scheme or the system can facilitate collective redress for groups.
18. The scheme should recognise a broad understanding of the hara caused by abuse in care. It should cover:
 - (a) [physical, sexual, emotional, psychological, racial and cultural abuse, and neglect (neglect may also include medical, spiritual and educational neglect)]; and
 - (b) historical, contemporary, and future claims of abuse in care.
19. The scheme should cover abuse suffered in any state and faith-based care setting. It should cover abuse that occurred in:
 - (a) any state agencies which had or have assumed responsibility either directly or indirectly for the care of the individual concerned, including state schools, and any individual, private, public or non-governmental organisation including a service provider to whom the state has passed on its authority or care functions, whether by delegation, contract, licence, or in any other way;
 - (b) any faith-based institutions that had or have responsibility either directly or indirectly for the care of the individual concerned; and
 - (c) any of the above institutions, regardless of whether the institution still exists and/or has funds.
20. Faith-based institutions and other private care providers should be given a reasonable opportunity to join the scheme voluntarily. If necessary, the Crown should consider options to compel participation, including:
 - (a) not offering contracts to institutions and providers who do not take that opportunity, or terminating contracts it has with them;
 - (b) revoking charitable status; and
 - (c) making participating in the scheme compulsory.

Te whakakakau | Communication and accessibility

21. People affected by abuse in care need to understand what is available to address the hara they have suffered and how to access it. Some survivors also need support understanding the impacts of this hara on their mana or dignity. To aid this, the scheme should:
- (a) extensively and proactively publicise, on an ongoing basis, the availability of the scheme, how to engage with the scheme, eligibility and assessment criteria, the types and levels of redress and support available and timeframes for decision-making;
 - (b) develop specific communication strategies in relation to hard-to-reach survivors including:
 - (i) strategies for Māori, Pacific peoples, Deaf and disabled people including those with mental illness, other culturally and linguistically diverse communities, homeless people, people in prison, people living overseas, and people with learning and neuro-linguistic disabilities, low levels of literacy, and communication support needs; and
 - (ii) specialist education sessions for disabled people (about what constitutes abuse, and about the scheme);
 - (c) proactively and effectively reach out to disabled survivors in long-term or life-long care; and
 - (d) offer easy read and accessible information about how the scheme works and what may be accessed under it in accordance with Aotearoa / New Zealand's obligations under international law, including ensuring a supported decision-making process is available under the United Nations Convention on the Rights of Persons with Disabilities (where necessary this should include the provision of navigator support and communication assistance).

Me atawhai tangata | Be trauma informed and flexible

22. The scheme should:
- (a) be trauma-informed, flexible, provide survivors with choices, and empower survivors to make decisions;
 - (b) minimise barriers to receiving redress and the time taken to provide redress;
 - (c) be timely, give accurate estimates of timeframes and keep in regular touch with survivors to provide progress updates;
 - (d) have the flexibility for people to start, pause and continue at their own pace without being 'set back';

As at 1 October 2021. May be subject to change. Any changes will be highlighted in accordance with clause 37D of the terms of reference.

- (e) be culturally responsive to all cultures including Māori, Pacific and Deaf cultures;
- (f) support people to make their own, informed decisions throughout the process (including as appropriate providing supported decision-making frameworks for people with decision-making impairments);
- (g) minimise the number of times that survivors have to relive or share their experiences and abuse; and
- (h) aim to have one primary point of contact for each survivor with sufficient capacity to engage and respond appropriately to that person's needs.

Me marama he aha te hara | Understanding the hara and its impact

23. Processes should be in place so that a survivor and their whānau are met with atawhai and manaakitanga and have access to trauma aware and healing informed support and services so that they can share and understand the hara and its impact in a safe way.

Provide wrap-around services

24. To share and understand the hara, a survivor [and where appropriate their whanau] should have access to skilled and accessible wrap-around services that are free, flexible, culturally appropriate and tailored according to individual needs including:
- (a) counselling and psychological care;
 - (b) social workers and navigators to assist in meeting any immediate unmet needs;
 - (c) interpreters, translators, supported decision-making, and communication assistance if required;
 - (d) access to free independent legal (irrespective of eligibility for legal aid) and non-legal advocacy (this should include appropriately trained lawyers and advocates for disabled people, as required by article 13(2) of the United Nations Convention on the Rights of Persons with Disabilities);
 - (e) access to a safeguarding framework to promote, enhance and protect the rights of disabled people and safeguard people against abuse;
 - (f) contact details for survivor support groups; and
 - (g) support to make complaints about alleged abusers.

As at 1 October 2021. May be subject to change. Any changes will be highlighted in accordance with clause 37D of the terms of reference.

25. A person affected by abuse in care should have support to obtain and understand personal records, including support of an advocate to interact with agencies, assistance making complaints to Privacy Commissioner or Ombudsman, and counselling and other appropriate psychological care when receiving records (including for a reasonable period afterwards). Specialist support should be available as necessary for disabled people.

Offer a listening service

26. The scheme itself should offer a listening service for survivors to share their experiences of abuse.
27. A survivor who accesses the listening service should be able to go on to make a claim for redress if they wish, and provide the information they have already shared to support their claim.

Me whakaea | Responding to the hara and its impact

Making a claim

28. A survivor should have a choice to:
- (a) make a standard claim for redress that also takes into account the abuse that occurred and the impacts of the abuse; and/or
 - (b) make a brief claim for redress that only takes into account the abuse that occurred.

Te whakautu | Responding to standard claims

29. If the scheme finds that there is a reasonable likelihood that hara in care occurred or is occurring, the scheme should work with the survivor to ascertain what is required to reach a state of ea / restoration, or to heal and rebuild the vā. This may include:
- (a) an acknowledgement and apology;
 - (b) restorative processes;
 - (c) access to well-being measures and services; and
 - (d) a monetary payment.
30. To assess a standard claim:
- (a) the starting point is that the survivor should be believed;
 - (b) any impact that is plausibly linked to the hara should be considered;

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- (c) there should normally be a meeting with the survivor, unless the survivor does not wish to meet and there is enough information to make a decision on the application without a meeting;
 - (d) participating agencies and alleged perpetrators should be notified and invited to comment in a way that:
 - (i) ensures safeguarding frameworks are in place, particularly for people currently in care, before any participating agency or alleged perpetrator is notified;
 - (ii) does not allow the agency or alleged perpetrator to be able to question the survivor directly;
 - (iii) does allow the survivor to respond to any comment; and
 - (iv) has clear timeframes for response, but allows decisions to still be made if comment is not provided within those timeframes.
31. If a survivor wishes it, representatives of the relevant state or faith-based agencies should be invited to attend any meeting to hear and understand the hara and its impact.

Whakapāha | Acknowledgement and apology

32. Where desired, the scheme should facilitate meaningful acknowledgements and apologies to people impacted by hara in care.
33. Apologies should:
- (a) acknowledge the abuse and the harm caused;
 - (b) accept responsibility for that harm;
 - (c) express regret or remorse for the abuse and the harm;
 - (d) be made by a person at an appropriate level of authority so that the apology is meaningful;
 - (e) commit to making amends;
 - (f) commit to taking all reasonably practicable steps to avoid any repetition of the wrong;
 - (g) be flexible, and respond appropriately to the wishes and needs of the individual survivor;
 - (h) be consistent, where appropriate, with tikanga Māori, or with Pacific cultural practices; and

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- (i) come directly from the relevant participating agency.
34. To give effect to these apology principles:
- (a) the agency should work with people impacted by hara in care to apologise in a way that is meaningful to them as part of their wider healing;
 - (b) the new redress scheme should, where appropriate provide guidance to participating agencies about the form and the delivery of an apology;
 - (c) the person making the apology should have received training about the nature and impact of abuse and the needs of survivors, including cultural awareness; and
 - (d) information should also be provided about the steps that are being taken, or will be taken, by the relevant participating agency to prevent further abuse.
35. If the survivor wishes it, acknowledgement and apology should be given as part of culturally based or other restorative processes. The scheme should arrange for such processes between the survivor (and, if they wish, their whānau) and:
- (a) the relevant participating agency (if the agency consents); and
 - (b) any perpetrator (if consent is obtained).

Whai oranga | Well-being measures and services

36. Survivors should have access to a package of measures to restore mana and well-being consistent with the principle of Oranga. What is required will be unique to the survivor but the measures available should at least include access for the survivor (and where appropriate their whānau) to the following:
- (a) counselling and other appropriate psychological care (in relation to the impacts of the abuse and any related issues such as drug and alcohol addictions);
 - (b) healers (including those trained in rongoa Māori);
 - (c) help with education and employment, healthcare, secure housing, financial advisory services, disability support services, and community activities;
 - (d) help to connect or reconnect survivors with their whakapapa, whānau, hapū or iwi their community and with other survivors;
 - (e) cultural redress and assistance with building cultural capacity and connecting with culture (including for example learning language);

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- (f) measures to help survivors navigate family and other important relationships after disclosing abuse; and
 - (g) support for survivors to build and maintain healthy relationships with their own families and children.
37. Survivors (and where appropriate their whānau) should be able to access support and services as needed, including where required through a navigator or advocate.
38. If a survivor wishes to engage directly with a participating agency (e.g. to take up an offer of pastoral or spiritual support from the agency to the survivor), the scheme should facilitate that engagement.
39. Survivors should also be offered a range of other redress options to allow flexibility and survivor choice including lower-level financial assistance to help fund one-off services or other purchases where these would assist a survivor and their whānau to achieve ea.

Moni hei utu | Monetary payments

40. The purpose of a monetary payment by the scheme should be to provide meaningful recognition of the hara suffered by a survivor. It should not be seen as compensation for the survivor's harm or loss.
41. The amount of money a survivor may receive should:
- (a) be set at a level which provides meaningful recognition of the abuse and reflects:
 - (i) the seriousness of the hara;
 - (ii) a recognition of the additional barriers faced by some survivors to protect themselves from abuse or risk of abuse;
 - (iii) the impact of the abuse on the oranga of the survivor (including lost opportunities and where relevant intergenerational impact); and
 - (iv) the principles of manaakitanga and atawhai.
 - (b) take into account the scheme's standard of proof;
 - (c) are high enough to make the scheme a reasonable alternative for a survivor to civil litigation;
 - (d) compare favourably with overseas redress schemes for abuse in care;
 - (e) take into account other payments a survivor has received for abuse in care (e.g. payments from previous redress processes, court cases, and settlements); and

- (f) be consistently applied to ensure fairness between survivors.
42. A payment of money by the scheme should not adversely affect a survivor's financial position including that it should not count as "income" or reduce or limit any entitlements to financial support from the State (including welfare and unemployment benefits, disability benefits and disability support services).
43. The monetary payments available under the scheme should be periodically reviewed and increased as necessary to ensure:
- (a) that payments continue to provide appropriate value to survivors, taking into account matters such as changes in the Consumer Price Index; and
 - (b) equity between survivors.

Aromatawai poto | Responding to brief claims

44. A brief claim will not normally require a meeting, unless requested by the survivor.
45. If the scheme finds that there is a reasonable likelihood that hara in care occurred or is occurring, the redress available should:
- (a) take into account the abuse that occurred, but not the impacts of the abuse;
 - (b) include a range of measures outlined above, including an acknowledgement and apology, well-being services, and a lower monetary payment than those available under a standard claim.
46. Any survivor who makes a brief claim can later choose to make a standard claim.

Hopu Kōrero | Record of claim outcome

47. The scheme should give survivors a record of its findings, including the abuse and harm accepted as having occurred, in plain English (or where required in te Reo Māori or New Zealand Sign Language). Communication assistance should be available as necessary to support people to understand this record.

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He kāhui moni utu | Common experience payment

48. If a fair investigation determines that an institution or other care setting was a place of systemic abuse (including neglect), any survivor who was placed in that institution / setting should be able to apply to the scheme for a common experience payment of a set amount. The scheme should:
- (a) develop criteria to determine what institutions/settings, if any, were places of systemic abuse that would make a common experience payment appropriate;
 - (b) develop these criteria based on evidence gathered as part of the ongoing monitoring of applications it receives, and based on the Inquiry's findings in its reports;
 - (c) ensure that once an institution/setting is identified a proactive outreach approach is taken to ensure as many eligible survivors as possible receive a common experience payment; and
 - (d) ensure that any outreach is tailored to reflect the specific needs of the identified cohort of survivors; and
 - (e) take into account any other payments a survivor has received for abuse in care (eg payments from previous redress processes, court cases, and settlements).
49. Survivors who receive a common experience payment should be able to access other forms of redress including: acknowledgement and apology; restorative processes; well-being measures and services; and individual monetary payment. Any common experience payment should be taken into account in assessing monetary payments.

Te hōnonga ki ētahi atu whakahaerenga | Effect of scheme on other proceedings

Relationship with civil proceedings

50. If a survivor accepts redress from the scheme this should not prevent the right to take civil proceedings or any other type of civil complaint (e.g. to the Ombudsman) against a participating agency for the hara covered. Any redress received from the scheme should be taken into account in any civil proceedings.

Effect on other proceedings and processes

51. If a survivor accepts redress from the scheme this should not:
- (a) affect any rights the survivor or other applicant may have against an individual responsible for abuse, or in relation to abuse not covered by the offer; or
 - (b) prevent any complaint to the Police, to a professional or faith-based disciplinary body, or to an employer of an alleged or known perpetrator.

Legal effect on others

52. A decision by the scheme to approve a redress application, and its findings on the application, should have no legal effect on an alleged perpetrator or institution named in the application (other than in relation to the institution's responsibilities in relation to the scheme).

Relationship with ACC

53. The scheme should exist in parallel with ACC, as each have different purposes. This includes that:
- (a) a survivor should be eligible for entitlements under the scheme and under ACC; and
 - (b) any monetary payment received by the survivor from the scheme or from ACC should not be taken into account by the scheme or by ACC in determining the survivor's entitlements.

Whai maia | Promoting trust and confidence

Me whakatinanatia e te ture | Established by law

54. The scheme should be established by legislation. Eligibility criteria and entitlements should be set out in statute or in regulations to provide certainty. Consideration should be given to whether timeframes for decision-making should also be set out in regulations.

Whakatau pai | Good decisions

55. The scheme should operate in a way that promotes trust and confidence. This includes:
- (a) making decisions that are predictable, transparent and consistent from survivor to survivor and from year to year;
 - (b) making decisions that are fair, equitable and timely;
 - (c) being adequately resourced so it can make good decisions on applications and resolve applications in as timely a manner as possible;
 - (d) having a fit-for-purpose Information Technology system; and
 - (e) having an oversight body responsible for receiving and making decisions on complaints about the scheme.
56. The scheme should have the power to:
- (a) require that participating agencies and any other relevant body provide it with information; and

- (b) provide information to survivors, participating agencies and any other relevant body without redaction where the scheme reasonably considers that is necessary to fulfil its functions.

Arotake | Reviews of decisions

- 57. People entitled to apply to the scheme and participating agencies should be able to apply to review a scheme decision. A review brought by a survivor or other person entitled to apply to the new redress scheme should not result in a decision less favourable to them.
- 58. A decision should also be able to be reviewed if, after it has been made, more information comes to light that would have likely had a significant effect on the outcome of the decision. In that situation, the scheme should be able to review the decision even if a survivor does not make an application.

Noho tapu | Confidentiality and referrals

- 59. Information that a survivor or other participant provides to the scheme should be kept confidential. The scheme should:
 - (a) clearly set out and explain any exceptions to this principle;
 - (b) not disclose any records or other information to any agency or institution not participating in the scheme without a survivor's consent unless:
 - (i) that disclosure is made according to a referrals process (see below); and
 - (ii) those records are redacted to remove any information which could identify any survivor, subject to any exceptions established by law; and
 - (c) be transparent and inform survivors how their records will be managed (including how long they will be kept, who can access them and when they can be accessed).
- 60. The scheme should redact any alleged perpetrator's name and any other identifying information from its decisions.
- 61. The scheme should establish consistent processes for the referral of allegations of abuse to police, employers of alleged perpetrators, professional or faith-based disciplinary bodies and other relevant third-party agencies. These processes should include as necessary safeguarding frameworks, particularly for people currently in care.
- 62. A survivor who has accepted an offer of redress from the scheme should be able to disclose to anybody the redress received, the scheme's decision, and the identity of the relevant participating agency. The survivor should also, subject to law, continue to be able to disclose their abuse to any person as they see fit.

Ngā pūrongo | Reporting

63. The scheme should publish a report at least annually setting out statistics on applications received and its work. These should include:
- (a) the number of applications received and the abuse and institutions to which they relate;
 - (b) the decisions made on those applications;
 - (c) average timeframes for decision-making on applications;
 - (d) payments and other entitlements made available;
 - (e) information regarding the survivors who have made applications to the scheme, including their age, ethnicity, sex/gender, and any disability;
 - (f) the number of applications received relating to each participating agency; and
 - (g) the number of applications for review received and the decisions made on them.

Aroturuki | Reviews of the scheme

64. The scheme (including redress-related services) should be reviewed after 2 years and then periodically after that to ensure continuous improvement. A specific agency should be designated to do this work.

Whakahaumarū | Improving practice and safeguarding for the future

65. The experience and lessons learned from people affected by abuse need to feed directly into reform of the provision of care including safety, investigation, and complaint processes. To ensure we learn from the past, the scheme should:
- (a) have the power to:
 - (i) report to care providers or any agency (including monitoring agencies) on information it receives about systemic issues it identifies or becomes aware of in the course of its work, and make recommendations on how such issues should be addressed;
 - (ii) require care providers or agencies to report on actions taken in response to recommendations; and
 - (iii) make recommendations and responses received public;

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- (b) provide information and recommendations to the Crown on areas of reform relevant to abuse in care, including health, disability services, adoption, Oranga Tamariki, ACC, education and housing; and
- (c) have the power to recommend an investigation take place to identify whether an institution or other setting was a place of systemic abuse for the purposes of determining a common experience payment.

Whakahaere rauemi | Supporting and operationalising the scheme

Pūtea | Funding

- 66. The Crown should fund the scheme and take overall responsibility for it.
- 67. Faith-based institutions and other private care providers (including those providing indirect state care) should contribute funding for the scheme. Resources should however be available from the Crown so that survivors can receive payments and other entitlements from the scheme in a timely way, whether or not the amount of these contributions has been determined or payment of them received.
- 68. The Crown should consider establishing a dedicated fund for any additional services recommended by the expert services review.

Ngā kaimahi | Responsive service delivery

- 69. The interface for survivors and the provision of service support needs to operate within communities. This means:
 - (a) a preference for design and delivery by collectives within communities, recognising the specific obligations under te Tiriti o Waitangi for Māori;
 - (b) localised services and delivery should be properly resourced, this may include:
 - (i) additional resourcing provided to existing service providers (such as holistic Whānau Ora health providers or iwi) to increase their capability and capacity; and
 - (ii) the creation and commissioning of new support services, particularly where gaps have been identified.
- 70. The state and the scheme should ensure that all points of contact (including scheme employees, advocates, navigators and lawyers) are trauma-informed and culturally responsive, and there are sufficient, skilled workforces to provide the well-being services. This will require a transformative workforce change strategy and resourcing training and workforce skill development, including:
 - (a) incentivising, upskilling and providing ongoing training of the existing work-forces;

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- (b) creating and including mandatory training for those entering the relevant work-forces;
- (c) ensuring that the workforces are provided with awareness raising and training addressing the rights of disabled people, in particular:
 - (i) disabled people's rights to access to justice under article 13 of the United Nations Convention; and
 - (ii) the development, design and provision of this training should include disabled people; and
- (d) a strategy for developing relevant skills amongst survivors, Māori, Pacific, and disabled people, to assist the relevant workforces to relate appropriately to survivors.

Service reviews

71. The Crown should immediately commission a stocktake of existing services currently available to deliver oranga to survivors of abuse in care (including counselling and other psychological care, educational services, and vocational services).
72. The Māori Collective, in conjunction with the Survivor Collective, should commission an expert review to evaluate the services identified in the stocktake, and make recommendations on any changes or additional services required. This should be completed well in advance of final decisions on the scheme.

Whakahaerenga pai | Efficient interactions and encouraging access to the scheme

73. Catholic dioceses, religious institutes and other Catholic entities should establish or nominate an entity which will provide a single point of contact between those bodies and the scheme for all redress-related purposes. That entity should establish and maintain a database recording all abuse and alleged abuse in these bodies, to assist responding to the new scheme and for safeguarding purposes. Other faith-based institutions and the state should also consider establishing or nominating similar entities (e.g. for schools) and databases.
74. State agencies should phase out their existing out of court redress schemes. Where faith-based institutions continue to offer out of court redress, these institutions should strongly encourage survivors to seek redress through the scheme.

ATU I TE ROOPU WHAKAMANA TĀNGATA | BEYOND THE REDRESS SCHEME

Whakamana mōrehu | Recognise survivors and raise awareness

Maumaharatanga | Memorials

75. Acknowledgements and apologies should where appropriate be accompanied by tangible demonstrations of goodwill and reconciliation. As part of this, the government and faith-based institutions should consider:

- (a) funding memory projects, other public memorials and/or ceremonies for survivors of abuse in care;
- (b) establishing archives to collect, preserve and present survivor accounts of their lives and the abuse they suffered, and accounts of their whānau, hapu and iwi, with the informed consent of these people; and
- (c) whether there are memorials to perpetrators that should be removed.

Whakakaha mōhio | Raising awareness

76. The government should take active steps to raise awareness in Aotearoa / New Zealand about the abuse that has occurred, its effects, and what has been done in response, as well as what abuse is and what people who are being abused can do to seek help. This should include widely disseminating the Inquiry's Interim Report, its Redress Report, and all subsequent Inquiry reports.

Whakakaha i te ture | Enforceable rights and duties

Noho kore hara | Right to be free from abuse

77. The Crown should ensure that there are enforceable obligations to protect people from abuse in care in the future. It should enact:

- (a) a right to be free from abuse in care;
- (b) a non-delegable duty to ensure all reasonably practicable steps are taken to protect that right, and direct liability for a failure to fulfil the duty; and
- (c) an exception to the ACC bar for abuse in care cases, so that survivors taking those cases may be able to obtain compensation through litigation.

78. If the Crown decides not to enact the changes referred to in [77], the Crown should consider:

- (a) empowering the new redress scheme to award compensation; or

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- (b) reforming ACC so it covers the same abuse the new redress scheme covers and provides fair compensation and other appropriate remedies for that abuse, including the facilitation of apologies.

Mahi Haumarū Aotearoa | Focus by WorkSafe on abuse in care

- 79. WorkSafe New Zealand should include abuse in care within its focus areas. This should include investigating and as appropriate prosecuting breaches by a care provider and its officers under the Health and Safety at Work Act 2015.

Transform civil litigation

Tangohia ngā ārai ture | Removing legal barriers

- 80. The Crown should ensure that legal barriers to survivors seeking and obtaining compensation and other civil remedies for abuse in care are minimised. This includes:
 - (a) removing some limitation periods that apply to abuse in care cases with retrospective effect by amending the Limitation Acts so that:
 - (i) any person who claims physical, sexual, emotional, psychological, cultural, or racial abuse, or neglect in care by any perpetrator while they were under the age of 18 is not subject to any limitation periods under the Acts;
 - (ii) a survivor who has had a judgment on such a claim may relitigate if the survivor was found to be time barred under either Limitation Act;
 - (iii) a survivor who has settled such a claim that was time barred under either Limitation Act may relitigate if it is just and reasonable to do so; but
 - (iv) the court may decide that a case cannot go ahead if in all the circumstances a fair trial is not possible.
 - (b) [reviewing and removing limitation periods that apply to vulnerable adults making claims of abuse in care.]
 - (c) deciding whether there should be any other conditions on a survivor's right to litigate or relitigate abuse in care cases which have been settled or on which a judgment has been issued; and
 - (d) tasking the Law Commission with reviewing other obstacles to the civil litigation of abuse in care cases by survivors, and recommending whether any steps should be taken in relation to them. The Law Commission should be asked to report on those obstacles and any recommendations for reform within 12 months of this report being delivered to the Governor-General.

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Awhina-a-ture | Legal aid

81. The Ministry of Justice should take steps to ensure availability of lawyers to work in abuse in care cases. The Ministry of Justice should:
- (a) review the rates available for abuse in care work, and other barriers or claimed barriers to undertaking this work, with the objective of incentivising more lawyers to work as civil litigators of abuse in care cases;
 - (b) work with New Zealand Law Society to provide training to lawyers wishing to work as civil litigators of abuse in care cases, including training consistent with article 13(2) of the United Nations Convention on the Rights of Persons with Disabilities; and
 - (c) establish, maintain and publicise a legal assistance panel for abuse in care cases.

Tauira kaiwawao | Model litigant

82. The Attorney-General's Values for Crown Civil Litigation should be replaced with new Model Litigant Guidelines which are consistent with the matters set out in the body of this report, within 12 months of this report being delivered to the Governor-General.
83. Government, faith-based institutions, and their lawyers should act consistently with the new Model Litigant Guidelines in responding to any abuse in care claim, including any claim to the new redress scheme and in any abuse in care litigation.

Whai kupu whakamahara | Improve responses to record requests

84. When responding to access to records requests from survivors (including requests from people acting on behalf of survivors), agencies should:
- (a) help survivors obtain their records in as full a form as possible while still respecting the privacy of others;
 - (b) help survivors to understand their records;
 - (c) favour disclosure wherever possible;
 - (d) make consistent disclosures wherever possible, irrespective of whether made under court discovery rules or on request;
 - (e) give specific, not general, explanations about why information must be withheld for privacy reasons; and
 - (f) be appropriately resourced to respond appropriately and in a timely way to access to records requests.

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85. Where redacting information about another individual or individuals from records will result in a significant amount of information being redacted from an agency's response to a survivor, the agency should consider seeking consent from the individual or individuals to the disclosure of the information to the survivor.
86. The Crown should develop guidelines to achieve the above which should apply to all agencies, in partnership with Māori and with the active involvement of survivors.
87. The Crown should continue its work on creating an integrated and seamless approach for obtaining survivor records and complete this within six months. This work should include work on the preservation of records, and the advantages and disadvantages of centralising records.

WHAKAWHITINGA | INTERIM STEPS

Me haere tonu | Continue to progress abuse in care claims

88. Until the new redress scheme is established, state agencies and faith-based institutions should use their best endeavours to resolve claims of abuse in care. Any settlement or other resolution should be without prejudice to survivors' rights under the new redress scheme or under legislation enacted by the government to implement the Inquiry's recommendations on civil litigation.
89. Until the Inquiry's recommendations regarding limitation reform are implemented, state agencies and faith-based institutions should only raise limitation defences in litigation on abuse in care claims if they form the reasonable view that a fair trial of the claim will not be possible.

Moni tōmuatanga | Provide an advance payment scheme

90. Before the new redress scheme is established, the government should provide a fully government-funded, advance payment scheme for survivors of abuse in care:
 - (a) with a terminal illness, or who are otherwise at significant risk of not being able to apply to the new redress scheme because of their health (e.g. where a survivor is very unwell with multiple co-morbidities); or
 - (b) who are at significant risk of not being able to apply to the new redress scheme because of their age.
91. The advance payment scheme should be established immediately, and should end when the new redress scheme is established.

Te tari whakarongo | Continue a listening and assistance service

92. An ongoing listening and assistance service should be provided for survivors after the Inquiry has been completed, and be operational when the Inquiry is completed until the scheme is established. For those in who have particularly urgent needs, this should include referral and assistance to access existing services.

WHAKAUTU KI NGĀ TŪTOHI | RESPONDING TO THESE RECOMMENDATIONS

93. As the Inquiry is on-going, and uniquely placed to understand the impact, scale, and complexity of people abused in care, the Crown should engage with Inquiry on its redress recommendations and the Crown's response to them, prior to any final decisions.

Me whewheo ana | Take prompt action

94. The Crown should publicly release an initial response to these recommendations within four months of their public release. That initial response should cover:
- (a) the Governor-General's and Prime Minister's acknowledgment and apologies to all people affected by abuse in care;
 - (b) the plan, including a timetable and committed resourcing for the Māori Collective and the Survivor Collective;
 - (c) the plan for engaging with survivors, the Survivor Collective, and representative survivor groups inclusive of Pacific peoples and Deaf and disabled people; and
 - (d) commitments to dates by when:
 - (i) the new redress scheme will be established and ready to receive applications for redress; and
 - (ii) the civil litigation reforms referred to above will be completed, including the enactment of legislation.



Cabinet Social Wellbeing 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.

Starting Work on a Trauma-Informed Redress System for Survivors of Abuse in Care

Portfolio Public Service

On 8 December 2021, the Cabinet Social Wellbeing Committee (SWC):

- 1 **noted** that the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) provided caveated draft redress recommendations on 1 October 2021 and provided its interim report on redress to the Governor-General on 1 December 2021, which will provide full recommendations, findings, and contextual information;
- 2 **noted** that the Royal Commission's draft recommendations set out the basis for an independent, integrated survivor-focused redress system and provide high-level guidance on the process for developing the redress system in partnership with Māori and guided by the views and experiences of survivors and key communities, including Pacific peoples and deaf and disabled people;
- 3 **noted** the experiences of survivors heard by the Royal Commission that existing claims services for survivors of historic abuse in care are primarily bureaucratic settlement-based processes involving multiple agencies, which are not meeting the needs of survivors and in many cases are retraumatising survivors;
- 4 **agreed** that through the Royal Commission's work there is an urgent and clearly demonstrated need for a significant shift from settlement-based claims processes to an integrated support-based approach to redress;
- 5 **agreed** that the intent is to develop an independent survivor-focused redress system, informed by the Royal Commission's findings and recommendations, with a clear vision, purpose and characteristics that ensure the system is compassionate, equitable and meets survivors' needs;
- 6 **noted** that, to give a sense of the Crown's intent for redress, an example vision is:
 Kōrerohia i ngā mea kua nohopuku. Whakaorahia i ngā mea kua mamae. Whakahouia i ngā mea kua ngaro. Mai i te pō ki te ao mārama, me tū kaha, tū maia, tū manawanui tātou katoa;
Speak what has been silent. Heal what has been hurt. Restore what has been lost. From the dark to the light, let us all stand strong, brave and steadfast;

- 7 **noted** that, to give a sense of what a redress system would involve, an example purpose statement is that redress is both an individual and collective experience of:
- 7.1 acknowledging and responding to the harm and trauma people have experienced;
 - 7.2 supporting and empowering people to restore and enhance their wellbeing;
 - 7.3 helping prevent others being abused or neglected in care;
- 8 **noted** that, to provide an initial sense of the potential scale of a redress system and the significant shift being sought, potential characteristics of a system are that it:
- 8.1 covers people who were children, young people and vulnerable adults in child protection, disability, education, psychiatric and psychopaedic, and youth justice care settings, whether State or third-party providers (such as faith-based institutions and non-governmental organisations providing care);
 - 8.2 is support-based, meeting a range of needs to help address the effects of abuse and neglect – including a range of joined up and community-based supports covering physical and psychological health, educational and living needs, cultural connections, and personal and collective history;
 - 8.3 covers all survivors and their wider family and whānau, with the particular support provided reflecting differences between survivors and others;
 - 8.4 operates within a Te Tiriti Partnership approach – upholding kāwanatanga in its structures and operation, supporting the restoration of survivors’ connections to whakapapa, whānau and kāinga, and has kaupapa Māori woven throughout the system;
 - 8.5 covers abuse that has occurred at any time, not set a limit on the time when people may seek redress, and allow people to access different types of support at different times;
 - 8.6 is available for those who have already settled historic claims through existing agency processes, ensuring access to the services and approaches not currently provided through historic claims;
 - 8.7 has clear demarcations between the redress system and the systems governing the safety of children, young people, and vulnerable adults currently in care – the care system needs to learn from the redress system but those in care need to have a clear path for immediate access to safety;
- 9 **agreed** that responses to the Royal Commission’s recommendations and the development of the redress system as a whole will be underpinned by the Crown Response principles – manaakitanga, openness, transparency, learning, being joined up, and meeting our obligations under Te Tiriti o Waitangi/The Treaty of Waitangi – and informed by a survivor-centred approach;
- 10 **invited** the Minister for the Public Service to report back to SWC in April 2022 with:
- 10.1 detailed analysis of the Royal Commission’s interim redress report and proposed responses to the Royal Commission’s full redress recommendations, which will inform both the development and eventual operation of a redress system as well as other potential changes to care systems;

- 10.2 priorities for immediate work, including those that could be undertaken to improve current claims services as a precursor to a full redress system;
- 10.3 options for collaborative arrangements, including Māori and survivor partnerships and leadership, to design an independent survivor-focused redress system, along with options for Ministerial oversight and a recommended approach for approving subsequent detailed governance and operational support arrangements;
- 11 **noted** that there are potentially complex aspects of redress development that will require careful analysis, particularly around the inclusion of faith-based institutions, and significant financial and legislative implications that will need to be quantified as part of the redress design process;
- 12 **noted** that, subject to the detailed analysis and proposed responses in the April 2022 report back above, it is envisaged that full redress system proposals, including implementation and transition plans, will be submitted for Cabinet's consideration in July 2023;
- 13 **noted** that the proposed approach to responding to the Royal Commission's recommendations should ensure work on redress can proceed at pace, reflecting survivors' needs, while providing flexibility to take on board further information from the Royal Commission's other investigations;
- 14 **noted** that in December 2019, SWC directed officials to commence consideration of potential options for the central assessment or review of historic claims, with the timing of a report back to be determined based on the progress of the redress investigation of the Royal Commission [SWC-19-MIN-0193];
- 15 **agreed** that work on developing a redress system outlined above supersedes the directive in paragraph 14 above.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Peeni Henare
Hon Willie Jackson
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC