

Crown Response to the Abuse in Care Inquiry

Briefing to the Incoming
Minister for the Public Service



Listening, learning, changing
Mā Whakarongo me Ako ka huri te tai
Crown Response to the Abuse in Care Inquiry

Foreword

Tēnā koe Minister

On behalf of the Crown Response Unit, I congratulate you on your appointment as Minister for the Public Service.

This briefing outlines your responsibilities and role as the Minister responsible for the Crown's response to the Abuse in Care Royal Commission of Inquiry. The briefing also summarises the key decision points and activity for the next six months.

I look forward to supporting you with your portfolio responsibilities in this area.



Isaac Carlson, Director
Crown Response Unit, Crown Response to the Abuse in Care Inquiry

Key messages

- The Crown Response Unit was established in 2019 as an independent unit to drive and coordinate the Crown's overall response to the Abuse in Care Royal Commission of Inquiry (the Royal Commission).
- The Royal Commission is nearing its conclusion and will release its final report in March 2024, with recommendations expected late November 2023.
- The final report will include findings on the nature, extent, and impacts of abuse and neglect, and recommendations for strengthening the care system. The response to the report will likely span multiple Ministerial portfolios and require a joined-up approach.
- Following Cabinet decisions in December 2021, the Crown Response Unit has been leading work on immediate changes to improve services for survivors of abuse in care and supporting Ministerially-appointed groups of survivors to develop proposals for the high-level design of an independent redress system.
- The work the Crown Response Unit is leading responds to the Royal Commission's findings about the impacts of abuse in care, survivors' longstanding struggle for justice, and the ineffective and re-traumatising nature of existing claims processes. Acknowledgment of and redress for people's experiences of abuse in care is an enduring issue spanning many decades and multiple administrations.
- The evidence provided to the Royal Commission spoke to the loss of personhood, harm, and trauma experienced by survivors of abuse in care. The proposed delivery of a public apology and a new independent redress system would provide short to medium term tangible evidence of how seriously the Crown regards the findings of the Royal Commission. Actions to ensure existing and future policy does not repeat harmful practices of the past will also be important in the Crown's response.

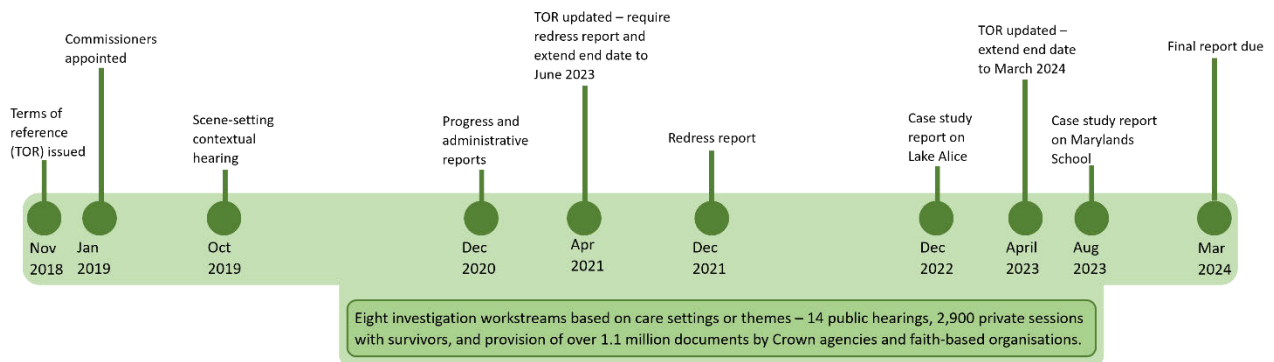
After five years of investigative work the Abuse in Care Royal Commission of Inquiry will reach its conclusion in March 2024

The Royal Commission was established in 2018 to investigate children, young people, and vulnerable adults’ experiences of abuse and neglect in State and non-State care in Aotearoa New Zealand between the years of 1950-1999. The final report is expected in March 2024, while recommendations are expected by the end of November 2023.

The Abuse in Care Royal Commission of Inquiry is the largest and most complex Inquiry established in Aotearoa New Zealand

The Royal Commission has held over 2,900 private sessions, where it has heard directly from people about their experiences and the impacts of abuse in care. Crown agencies have provided over 650,000 documents to the Royal Commission. Non-State care institutions have also provided a similarly large volume of information. The Royal Commission has held 14 public hearings that heard from people who experienced abuse in care (survivors), advocates, academics, and senior officials from Crown agencies, and faith-based organisations.

The Abuse in Care Royal Commission of Inquiry’s operational timeline



The Royal Commission has produced a number of interim reports about the scale and nature of abuse in care and the failings of existing claims processes

The Royal Commission has estimated between 30,000 – 250,000¹ people may have been abused in care between 1950 – 2019. This estimate includes people who experienced abuse and neglect in children’s homes, youth justice residences, foster care homes, community care providers, disability care settings, schools, churches, psychiatric and psychopedic hospitals, and borstals. Experiences of abuse include physical, sexual, emotional, psychological, cultural, and spiritual abuse and neglect.

With the disproportionate number of Māori, Pacific, Deaf, and disabled people in the population abused in care, the Royal Commission has also focused on the circumstances that led to the over-representation of these groups in care, the nature of the abuse and harm that took place, and the effects and consequences of that harm.

All reports produced to date by the Royal Commission are set out in Appendix One, with the three reports that contain findings or recommendations (on the Order of the Brothers of St John of God,

¹ The wide range in the estimated survivor population reflects the limited data available on abuse rates, the numbers of people who went through different care settings, and a time period that has spanned many decades.

Lake Alice Psychiatric Hospital Child and Adolescent Unit, and redress for survivors of abuse in care) summarised in Appendix Two.

The Royal Commission's 2021 redress report, *He Purapura Ora, he Māra Tipu: From Redress to Pūretumu torowhānui* is the only report to set out recommendations to date. The redress report found that existing claims processes and government responses to abuse in care have been ineffective and retraumatising for survivors. The redress report recommended immediate actions to improve redress and the establishment of a single, independent redress system to replace existing claims processes. The Crown's response to the redress report is discussed further below.

The Royal Commission's final report is due in March 2024, with draft recommendations expected in November 2023

The Royal Commission has concluded its investigative phase and is preparing its final report for delivery in March 2024. The Royal Commission is required to provide its recommendations to the Crown by the end of November 2023 to enable Government to respond promptly to the report when it is published.

The final report is expected to cover the nature, extent, and impacts of abuse and neglect and recommendations for further strengthening of the care system. This is likely to include recommendations relating to care system accountability and monitoring, safeguarding practices, and the rights of children and vulnerable adults, references to the Treaty of Waitangi, and issues related to human rights. There are also likely to be a small number of further redress recommendations, particularly focused on collective redress, for example redress for survivor groups, iwi, and hapū.

The Crown has a joined-up response reflecting the breadth and complexity of work to respond to the Royal Commission

This section sets out the arrangements by Cabinet to govern and guide the Crown's response to the Royal Commission.

As the Minister for the Public Service, you are responsible for overseeing the Crown's response to the Royal Commission

In December 2018, the Cabinet Social Wellbeing Committee agreed that the Minister of State Services (the portfolio title at the time) would be responsible for overseeing the Government's response to the Royal Commission's requests and recommendations. This was to reflect the broad and significant scope and impact of the Royal Commission, affecting the work of more than fifteen government agencies. In addition, the portfolio did not involve any current direct care responsibilities. The Minister of Internal Affairs is responsible for the resourcing of the Royal Commission.

The Crown's response is based on a strategic principles-based approach

In April 2019, Cabinet agreed a principles-based approach for the Crown's engagement with the Royal Commission and survivors of abuse in care. The six principles currently guiding the Crown are:

- **Manaakitanga** – treating people with humanity, compassion, fairness, respect, and responsible caring that upholds the mana of those involved;
- **Openness** – being honest and sincere, open to receiving new ideas and willing to consider how we do things currently and how we have done things in the past;
- **Transparency** - sharing information, which includes the reasons behind all actions taken;
- **Learning** – active listening and learning from the Royal Commission and survivors, and using that information to change and improve systems;
- **Being joined up** – means agencies work together closely to make sure activities are aligned, engagement with the Royal Commission is coordinated and the resulting actions are collectively owned; and
- **Meeting our obligations under Te Tiriti o Waitangi** – honouring the Treaty, its principles, meeting our obligations and building a stronger Māori-Crown relationship through the way we operate and behave.

Cabinet also agreed a set of outcomes to act as a focus for what the Royal Commission, survivors and the Crown want to achieve from the Royal Commission process:

- survivors are heard, and feel heard;
- harm is acknowledged;
- the government care system is improved;
- this type of harm never happens again;
- Māori experiences and their impacts are recognised and respected; and
- disabled peoples' experiences and their impacts are recognised and respected.

This work is governed by a Chief Executive Sponsoring Group and is driven by the Crown Response Unit

Strategic governance of the Crown Response to the Abuse in Care Inquiry (Crown Response) is provided by a Sponsoring Group made up of the Chief Executives of the Ministry of Education, Manatū Hauora – Ministry of Health, Ministry of Social Development, Oranga Tamariki – Ministry for Children, Whaikaha – Ministry of Disabled People and the Crown Law Office. The Sponsoring Group reports to you, as Minister for the Public Service. The Chief Executives collectively agreed that the lead Chief Executive for the Crown Response would be Iona Holsted, Secretary for Education. This was subsequently endorsed by the Minister for the Public Service.

The Crown Response Unit was established in early 2019 to drive and coordinate the Crown’s response to the Royal Commission. Further information on the Crown Response Unit can be found in Appendix Three.



The Crown Response, including the Crown Response Unit, is funded through a dedicated appropriation with you as responsible Minister. We report to you and the Minister of Finance quarterly on what has been delivered through this funding.

In 2023, Cabinet agreed to establish an interdepartmental executive board (IEB) to lift the standard of care and achieve operational improvements to the care system. The IEB, known as the Care System Board, is subject to confirmation by Order in Council. The Public Service Commission leads advice on the design and establishment of the Care System Board.

Work is underway to make immediate improvements to redress, design a new independent redress system, and prepare for the Royal Commission’s final report

The focus of the Crown’s response to the Royal Commission was initially on:

- responding to the Royal Commission’s requests for information and evidence. This has included agencies providing more than 650,000 documents to the Royal Commission;
- coordinating Crown witnesses, attendance at, and monitoring of Royal Commission hearings; and
- responding to survivor and media requests for information.

Since 2021, a significant focus has been responding to the recommendations in the Royal Commission’s redress report. Ahead of a redress system, immediate work is progressing or has been implemented to improve support for survivors. The immediate work is detailed in the table below.

The overall programme of work underway is set out in the diagram in Appendix Four.

IMMEDIATE PROJECTS	
RAPID PAYMENTS	<p>To improve survivors’ experiences in existing claims processes, the Crown Response Unit coordinated the development of a rapid payments approach. The approach is currently being delivered by the Ministry of Social Development, with the ability to be implemented by Oranga Tamariki, Ministry of Education and Ministry of Health if required.</p> <p>Legal proceedings have recently been lodged by survivor plaintiffs, suing the Attorney-General for and on behalf of the Ministry of Social Development and the Crown Response Unit, regarding one aspect of the operation of rapid payments. [REDACTED]</p> <p>Confidential advice 9(2)(f)(iv) [REDACTED]</p>
SURVIVOR EXPERIENCES SERVICE	<p>The Survivor Experiences Service was established in July 2023, for survivors to share their experiences of abuse in care following the conclusion of the Royal Commission’s survivor accounts process and will run until a new, permanent redress system is in place. The service is housed within the Department of Internal Affairs and is guided by an independent Board made up of survivors.</p> <p>We recommend you and the Minister of Internal Affairs meet with the independent Board’s co-chairs to discuss the progress of the Survivor Experiences Service. Officials will be in contact to arrange a suitable time in the new year.</p>
RECORDS IMPROVEMENTS	<p>Five initiatives are progressing to better enable survivors to request, receive and understand their care records, and have an improved sense of control over their personal narrative. The initiatives include:</p> <ul style="list-style-type: none"> • the development and implementation of a shared set of principles to guide record holders on trauma-informed and rights-based processes; • a new website on care records, to provide a central source of information on how to request records from the many different agencies and organisations that hold records, and advice on what such requests may involve; • a records support service, where survivors can access support to help navigate requesting and receiving records, to mitigate the potentially harmful impacts of accessing records; • bringing forward a records retention and disposal project, to protect and preserve key records through a review of disposal authorities; and • further cataloguing, indexing, and digitising of care records to improve survivor access to a broader range of existing records.

<p>PUBLIC APOLOGY</p>	<p>The Royal Commission recommended the delivery of a public apology to survivors by the Governor-General, Prime Minister, and heads of relevant non-State institutions. Following Cabinet decisions, Budget 2023 included funding for a public apology and accompanying tangible actions. Confidential advice 9(2)(f)(iv) [REDACTED].</p>
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Establishment of a new independent redress system for survivors of abuse in care

In December 2021, in response to the findings of the Royal Commission about the failures of and harm being caused by existing claims processes, Cabinet agreed to the development of a single independent redress system for implementation by July 2025. The new redress system would replace the multiple claims processes operated separately by the Ministry of Social Development, the Ministry of Health, the Ministry of Education, Oranga Tamariki, school Boards of Trustees and regional arms of Te Whatu Ora as well as potentially a diverse range of non-State institutions’ claims processes.

Independent Design and Advisory Groups, consisting primarily of survivors, were appointed by the Minister for the Public Service to produce high-level design proposals for a new redress system for Cabinet consideration. The Crown Response Unit has also been working in parallel to develop advice on matters relating to the scope of a new redress system. The scale of the abuse the Royal Commission has identified has significant implications for the scale, complexity, and cost of a new system, subject to decisions made during the design process.

A detailed design phase, where many of the key policy questions affecting scale and scope of the new redress system, would follow and be informed by Cabinet decisions on high-level design. As illustrated in the diagram below, major Cabinet decisions would be required at the transition points between design phases.



High-level design proposals will be delivered to you by 30 November 2023, and we recommend you meet with Design Group Co-Chairs to discuss these proposals. The Crown Response Unit can then provide you with options around next steps for redress design work. Survivor expectations for a new redress system are high, following the development of high-level proposals.

The Crown Response Unit is also engaging with non-State care providers on the development of the new redress system, including coverage and funding.


Responding to the Royal Commission’s final report

The Royal Commission’s final report is due March 2024, with recommendations expected in November 2023. The report will likely contain findings and recommendations spanning multiple portfolios, including machinery of government and Treaty of Waitangi-related matters, disability care settings, mental health, youth justice, family violence, and child wellbeing. The Crown Response Unit can, subject to your decisions on the overall process, facilitate the initial cross-agency advice to Cabinet on high-level options for responding to the Royal Commission’s full set of recommendations.

Areas for early decisions

Upcoming decisions for your consideration are set out below, in order of urgency. Separate, more detailed briefings will be provided on the different work areas to familiarise you with the issues involved.

Confidential advice 9(2)(f)(iv)



Challenges and opportunities

There are a number of challenges and opportunities associated with this work and options for how Government responds to those. Officials can meet with you to discuss the options in depth at an appropriate time. These include:

- Through survivor insights, the Royal Commission's investigations, and lessons from the establishment of independent redress systems in other countries, we have a good understanding of how to deliver positive redress change for survivors.
- Survivors and survivor advocates' concerns with access to justice are long-standing and have involved domestic litigation and representation to international bodies, including the United Nations Committee Against Torture. Expectations that Government will deliver meaningful change following the Royal Commission's redress report and subsequent Cabinet decisions are high.
- Abuse in care has created considerable social, cultural, and economic costs for survivors and the country as a whole. For many Māori survivors, these costs have compounded the impact of colonisation and the associated loss of language, identity, and belonging. There are significant opportunities for healing and to alleviate long-term impacts through a genuine acknowledgement of and response to survivors' experiences of abuse. The potential benefits of different options will need to be considered in light of Government priorities and the medium-term fiscal environment.
- The scale of abuse the Royal Commission has identified and the significant numbers of survivors that have and continue to lodge claims with agencies' historic abuse claims processes underscore the sizeable demand on a new redress system. There are potentially significant costs with a new redress system, and the pace and complexity involved in such a system's design, that could be managed through different approaches involving prioritisation and phasing of work.
- The Crown is viewed with significant distrust by many survivors, due to their experiences of abuse in care and the subsequent responses to acknowledge that abuse and its impacts. Continuing to engage survivors, including disabled, Māori, and Pacific survivors, in the Crown's response to the Royal Commission and in subsequent policy and design work will help enable trust and confidence.
- Following the Royal Commission's recommendation for a public apology there is significant expectation for an appropriate acknowledgement and expression of regret for the breadth of harm people experienced and the intergenerational impacts of that harm. Such an apology would be made in, and need to reflect, an environment in which there are still children, young people, and vulnerable adults experiencing harm in diverse settings.
- The Royal Commission's final report will provide recommendations on elements of the care system that require strengthening, with associated resource implications for agencies. Recommendations could inform work in a number of priority areas for Government.

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Appendix One: Reports produced to date by the Royal Commission

PUBLISHED	REPORT TITLE	REPORT DESCRIPTION
July 2023	Stolen Lives, Marked Souls - The Inquiry into the Order of the Brothers of St John of God at Marylands School and Hebron Trust	Examines the historic abuse at the Marylands School for Boys with Learning Disabilities, run by the Roman Catholic order the Brothers Hospitallers of St John of God from 1955 to 1984.
December 2022	Beautiful Children – Inquiry into the Lake Alice Child and Adolescent Unit	Examines the torture, tūkino (abuse, harm and trauma) and neglect suffered by children and young people admitted to Lake Alice Psychiatric Hospital’s child and adolescent unit from 1972 to 1980.
September 2022	Tell Me About You: A life story approach to understanding disabled people’s experiences in care (1950-1999)	Provides an insight into the lives of people with learning disabilities and neurodiversity, in State and faith-based care between 1950 and 1999.
August 2022	Care to Custody: Incarceration Rates Research Report	Analyses the interagency records of more than 30,000 children and young people spanning five decades.
December 2021	He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui	Outlines the struggle of many survivors of abuse in care to restore their lives, regain their mana and hold previous and current governments, State and faith-based institutions to account for the abuse survivors suffered.
July 2021	Hāhā-uri hāhā- tea, Māori involvement in State Care 1950-1999	This independent research was commissioned by the Crown Response to the Abuse in Care Inquiry and provided to the Royal Commission to help understand what sits behind Māori involvement with the State care system, its impacts, and how Māori involvement has changed over time.
April 2021	Issues faced by ACC Claimants	Identifies issues facing survivors of abuse in care when seeking cover, compensation, and rehabilitation from the Accident Compensation Corporation.
December 2020	Interim Report – Tāwharautia: Pūrongo o te Wā (Tāwharautia)	Identifies key themes and common issues from the experiences shared with the Royal Commission so far.
October 2020	Indicative estimates of the size of cohorts and level of abuse in State and faith-based care – 1950 to 2019	Provides indicative estimates of: i) the numbers of people who were in various settings of State care and faith-based care from 1950 to 2019; and, ii) the numbers of people who suffered abuse in State and faith-based care, to the extent known.
September 2020	Economic cost of abuse in care	Provides a high-level estimate of the cost of abuse in care of children, young people, and vulnerable adults in the care of State and faith-based institutions in Aotearoa New Zealand between 1950 to 2019.

Appendix Two: Outline of the Royal Commission's three interim reports

Appendix One sets out the full set of reports the Royal Commission has published to date. Three of the reports are formal thematic or case study interim reports (with 'interim' referring only to reports produced ahead of the final report). The findings and any recommendations set out in an interim report reflect the Royal Commission's formal views and are not provisional or temporary.

Two of the interim reports focussed on specific institutions: the Lake Alice Psychiatric Hospital's Child and Adolescent Unit and Marylands School (and Hebron Trust) run by the Order of the Brothers of St John of God.

The most recent interim report, *Stolen Lives, Marked Souls: the inquiry into the Order of the Brothers of St John of God at Marylands School and Hebron Trust* (July 2023) made 48 findings, some of which are highlighted below:

- extensive and extreme abuse and neglect at both Marylands School and Hebron trust which included repeated and prolonged sexual and physical abuse, emotional and psychological abuse, witnessing violence and sexual violence, religious and cultural abuse, educational neglect, racism, and ablism;
- criticism of the minimal monitoring the State carried out of Marylands, despite the Order's operating model being dependent on State funding;
- failure by the New Zealand Police to respond to allegations of abuse made by children;
- criticism of the investigations and prosecutions related to the Marylands school and Hebron Trust, in term of making the Order "accountable" for its abuse; and
- criticism that the State failed to ensure the care provided at both Marylands and Hebron was consistent with the principles of the Treaty of Waitangi.

The second report, *Beautiful Children: Inquiry into the Lake Alice Child and Adolescent Unit* (December 2022), made the following findings:

- criticism of the circumstances that led to individuals being placed in the unit, for example many were admitted for behavioural reasons, often arising from abuse and trauma, rather than mental distress;
- failure that the Department of Health, Department of Social Welfare, and staff at the unit did not have proper processes in place to ensure lawful admission, treatment, and detention of children and young people in the unit;
- nature and extent of the abuse at the unit, including the use of electroconvulsive therapy (ECT) as punishment on various parts of the body for example the head, torso, legs, and genitals, the injection of paraldehyde as punishment, physical, emotional, psychological, and sexual abuse, the misuse of solitary confinement, exposing patients to unreasonable medical risks, racism, ablism, and homophobia;
- that some of the use of ECT and paraldehyde injections was torture under the definition of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the impacts of abuse on survivors' physical and mental health, their psychological, cultural and spiritual wellbeing, and their educational and economic prospects and the intergenerational impact and harm this caused;

- failure of effective complaints, oversight, and monitoring system both within the unit and externally, which normalised abusive practices; and
- failure for appropriate accountability and flawed investigations into the unit by the Police, medical professional bodies, and the Crown's approach to responding to civil claims made by survivors.

The third report, *He Purapura Ora, he Māra Tipu: From Redress to Puretumu torowhānui* (December 2021), highlighted the inadequacies and harm being caused by existing State and non-State claims processes including the:

- failure to genuinely acknowledge and apologise to survivors and whānau for abuse in care;
- failure to investigate and hold perpetrators of abuse in care to account;
- lengthy, inconsistent and re-traumatising processes for accessing supports and payments to acknowledge harm;
- lack of transparency about the existence of claims processes, how they work, and what survivors could be eligible for;
- failure to have appropriate processes for Māori, Pacific, Deaf and disabled survivors, which are informed by their needs;
- criticism about the independence of existing claims processes;
- criticism about the lack of accountability taken by State and non-State institutions;
- failure to use insights from survivors of abuse in care to help prevent further harm and inform system change; and
- lack of supports and services offered to survivors and whānau to acknowledge the impacts and consequences of abuse in care.

Appendix Three: Information about the Crown Response Unit

The Crown Response Unit is a dedicated resource tasked with responding to the Royal Commission, with you as responsible Minister

The Crown Response Unit was established as an independent unit in 2019 to ensure the Crown responds to and engages with the Royal Commission in an effective and timely way.

The Crown Response Unit is leading the development of a new redress system, and coordinates and monitors the government-wide responses to the Royal Commission, this includes the final report.

The Crown Response Unit refers to the independent unit leading and coordinating the Crown's response to the Royal Commission. The Crown response to the Abuse in Care Inquiry (Crown Response) refers to the broader set of agencies involved and include ACC, Archives New Zealand, Crown Law Office, Department of Corrections, Manatū Hauora - Ministry of Health, Ministry for Pacific Peoples, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Justice, Ministry of Social Development, New Zealand Police, Oranga Tamariki-Ministry for Children, Te Kawa Mataaho, Te Puni Kōkiri, Whaikaha - Ministry of Disabled People.

The Crown Response Unit is funded through a dedicated appropriation (within Vote Oranga Tamariki, reflecting the Crown Response Unit's host agency) with you as responsible Minister. Five agencies also have dedicated appropriations for Crown response-related work.

The Crown Response Unit uses Oranga Tamariki's established IT, HR, and finance systems while being operationally independent. This operational independence helps retain survivor confidence.

Current Budget funding

Area	2023/24 (\$m)	2024/25 (\$m)	2025/26 (\$m)	Total (\$m)
Crown Response Unit funding				
Crown Response Unit – Development of new redress system and responding to Royal Commission's final report	11.084	–	–	11.084
Immediate projects funding				
Survivor Experience Service	7.010	6.946	–	13.956
Records improvements	4.825	3.384	–	8.209
Public apology and accompanying tangible actions	2.791	3.228	0.366	6.385
Crown response to the Abuse in Care Inquiry – agency specific funding				
Direct funding to agencies to support Crown response work	5.162	2.009	0.900	8.071
Total (\$m)	30.872	15.567	1.266	47.705

The Crown Response report to you and the Minister of Finance quarterly on what has been delivered through Budget 2023/24. A budget bid is also being prepared for Budget 2024/25 with options for Ministers around the scope of the work programme. The Crown Response Unit will provide a separate briefing on Budget related matters.

Key Crown Response Unit reporting

We propose to provide monthly status reports on the Crown Response to update you on general developments across the full programme. Briefings and aide memoires will be provided on specific items. The Crown Response Unit's Director would be happy to meet at your convenience to discuss your preference for further briefings. Given the cross-portfolio nature of the Crown Response it may be useful to discuss what reporting you may wish to share with your Ministerial colleagues.