

Hon Erica Stanford

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

Decisions relating to the acknowledgement of torture at the Lake Alice Psychiatric
Hospital Child and Adolescent Unit

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These documents have been proactively released:

- Acknowledgement of torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit, Cabinet Paper;
- SOU-24-MIN-0072, Cabinet Social Outcomes Committee Minute, 26 June 2024; and
- CAB-24-MIN-0234, Cabinet Minute, 1 July 2024.

Any information redacted in this document is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of redactions:

- Section 9(2)(f)(iv) – to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials:
 - Paragraph 35, 49f – Cabinet Paper – Acknowledgement of torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit
 - Paragraph 6 - SOU-24-MIN-0072, Cabinet Social Outcomes Committee Minutes, 26 June 2024
- Section 9(2)h – to maintain legal professional privilege
 - Paragraphs 14, 29 – Cabinet Paper – Acknowledgement of torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit
- Not relevant to the work of the Crown Response to the Abuse in Care Inquiry
 - Report of the Cabinet Social Outcomes Committee: Period Ended 28 June 2024 minutes from Cabinet Minute CAB-24-MIN-0234

Office of the Minister responsible for coordinating the Crown Response to the Abuse in Care Inquiry

Cabinet Social Outcomes Committee

Acknowledgement of torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit

Proposal

- 1 This paper seeks agreement for Cabinet to acknowledge that some children and young people experienced torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit (the Lake Alice Unit).
- 2 This paper contains descriptions of the abuse that occurred at the Lake Alice Unit, including acts which meet the definition of torture.

Relation to government priorities

- 3 The proposals in this paper do not relate to any government priorities.

The Abuse in Care Royal Commission of Inquiry has set out the significant abuse children and young people experienced at the Lake Alice Unit, including some experiences that Crown Law considers meet the threshold for torture

- 4 The Lake Alice Unit operated from 1972 until 1978 (although it was not formally closed until 1980) and was the site of significant abuse and cruel treatment of children and young people, under the operation of its head Dr Selwyn Leeks. The Lake Alice Unit has been the focus of sustained survivor and advocate efforts seeking accountability and redress.
- 5 The Abuse in Care Royal Commission of Inquiry (the Royal Commission) held a case study hearing in June 2021 into the Lake Alice Unit as part of its investigation of State psychiatric care. The Royal Commission produced a report on the Lake Alice Unit, *Beautiful Children: Inquiry into the Lake Alice Child and Adolescent Unit*, in December 2022. A summary of the report's findings, including on past investigations into events at the Lake Alice Unit, is set out in Appendix One. The report did not include any recommendations.
- 6 The Royal Commission's report on the Lake Alice Unit contains testimony and findings that are harrowing. It details how Dr Leeks and staff at the Lake Alice Unit inflicted serious abuse, some amounting to torture, on the children and young people in their care. There was a culture of mistreatment, physical violence, sexual and emotional abuse, neglect, threats, and degradation. The Royal Commission found that many of the children and young people at the Lake Alice Unit did not have a mental illness at all and should never have been there in the first place.

- 7 While the Royal Commission does not have the authority to make a definitive finding of torture, it concluded that some of the experiences at the Lake Alice Unit, specifically the way electroconvulsive therapy (ECT) and paraldehyde injections were used to punish children and young people, meet the definition of torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). New Zealand is a signatory to the Convention, which was implemented in domestic law through the Crimes of Torture Act 1989.
- 8 The three elements of torture in the Convention are:
- a) any act causing severe pain or suffering, whether physical or mental; and
 - b) intentionally inflicted for such purposes as:
 - i. obtaining from the victim or a third person information or a confession;
 - ii. punishing them for an act they or a third person has committed or is suspected of having committed;
 - iii. intimidating or coercing them or a third person; or
 - iv. for any reason based on discrimination of any kind; and
 - c) the pain or suffering is inflicted by or at the instigation of or with the acquiescence of a public official or person acting in an official capacity.
- 9 As the Royal Commission details, some children and young people at the Lake Alice Unit were subjected to electroconvulsive therapy without anaesthetic, applied to their limbs, torso, and genitals as improper aversion therapy, punishment for misbehaviour, and/or as a tool of emotional control. Some of the same children and others were administered excruciatingly painful and immobilising injections of paraldehyde as a punishment and improper form of aversion therapy. None of these actions were for legitimate medical purposes.
- 10 It has been determined that the acts described above caused severe pain and suffering, were used for the purposes of punishment, and were inflicted at the hands of public officials. As per the Convention, this means that any children and young people who had these experiences were tortured. The Solicitor-General testified to this point at the Royal Commission's June 2021 Lake Alice Unit hearing.
- 11 Due to the limited nature of information set out in medical records, it is not definitively known which children and young people at the Lake Alice Unit received ECT and/or paraldehyde injections as punishment. The Royal Commission has identified 362 children and young people who spent time at the Lake Alice Unit. This total includes children and young people who only spent short periods in the Unit, as well as others who spent much longer periods there (in some cases, years). Through survivor testimony, the Royal Commission has identified at least 15 people who experienced such punishment as a child or young person.

- 12 In the final recommendations received by the Minister of Internal Affairs on 30 May 2024, the Royal Commission has made one further recommendation regarding the Lake Alice Unit in its final report. The recommendation relates to the payment of legal fees by one group of Lake Alice Unit claimants and is not related to the issue of torture. The new recommendation will be considered as part of the Crown's response to the Royal Commission's final report.
- 13 As part of the final recommendations the Royal Commission has also made recommendations to the New Zealand Police regarding the prompt and transparent conduct of investigations into allegations of torture, and to care providers to assist in the prompt and independent conduct of investigations and to make appropriate redress available.
- 14 At this stage, the Royal Commission is yet to make any findings or set out similar events at other psychiatric institutions. s9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Ministry of Education and Ministry of Social Development have internal processes in place to review claims for possible torture, as many historic claims are made directly to agencies and so they are not filed in court. These processes have also not found any experiences that could meet the high threshold required for torture.
- 15 However, the Royal Commission's final report may include information on additional institutions that require further investigation by the Crown. If other experiences are alleged to meet the threshold for torture, a thorough investigation by the Police will be required, followed by an assessment by Crown Law in order to determine if what occurred meets the Convention's definition, and what subsequent action the Government may need to undertake. Cabinet will be informed if there are any new allegations of torture after the Royal Commission's final report has been received.

Findings by the United Nations Committee Against Torture create a further expectation on the Crown to specifically acknowledge torture

- 16 Separate to the Royal Commission, two survivors of the Lake Alice Unit, Paul Zentveld and Malcolm Richards, submitted cases in 2017 and 2018 to the UN Committee Against Torture (CAT) regarding their experiences in the Unit, subsequent investigations, and the settlements they received in the early 2000s.
- 17 The CAT determined that in each case New Zealand had breached Articles 12, 13, and 14 of the Convention for each survivor. Articles 12 and 13 of the Convention require states to have complaint processes and to conduct prompt and impartial investigations by competent authorities. Article 14 of the Convention requires states to provide redress with a right to fair and adequate compensation, although it should be noted that when New Zealand ratified the Convention, the Government reserved the right to award compensation only at the discretion of the Attorney-General.
- 18 The CAT decision report on Mr Zentveld's claim, issued in 2020, urged New Zealand to:

- a) conduct a prompt, impartial and independent investigation into all allegations of torture and ill-treatment made by Mr Zentveld, including considering filing charges against the perpetrators;
 - b) provide Mr Zentveld with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the investigation; and
 - c) make the decision publicly and widely known, to help prevent similar violations of the Convention in the future.
- 19 The CAT decision report on Mr Richards' claim, issued in 2022, had similar recommendations and urged New Zealand to:
- a) proceed with a timely consideration by the courts of all allegations of torture made by Mr Richards including, where appropriate, the application on perpetrators of the corresponding penalties under domestic law;
 - b) provide Mr Richards with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the trial; and
 - c) make the decision publicly and widely known, to help prevent similar violations of the Convention in the future.
- 20 The New Zealand Police commenced a new investigation into allegations of ill treatment of children at the Lake Alice Unit in February 2020 which was completed in December 2021. The head of the unit and main suspect in the investigation, Selwyn Leeks, was unable to be interviewed owing to his mental incapacity and subsequently died in Australia in January 2022. Charges were filed against one former nurse but criminal proceedings were halted in June 2023 as the New Zealand High Court was not satisfied that the defendant's physical and mental impairments could be accommodated to enable a fair trial (in part due to the individual having advanced terminal cancer). The investigation identified that all former Lake Alice senior staff and most other former staff are deceased. Investigatory options have therefore been exhausted.
- 21 The Crown Response Unit and New Zealand Police have published the CAT reports on their websites to help make the decisions widely known. It is also anticipated that the public apology by for abuse in care agreed by Cabinet [SOU-24-MIN-0019 refers] will speak directly to the experiences in the Lake Alice Unit as well. It is also anticipated that the Government will formally acknowledge that torture occurred at Lake Alice when the Royal Commission's final report is tabled in Parliament in July.

Given the Royal Commission's findings and the CAT decisions, it is important for many Lake Alice Unit survivors and their families that the Government formally acknowledges their experiences of torture

- 22 To date the Government has not explicitly acknowledged that torture occurred at the Lake Alice Unit. The Crown's previous statements reflect the serious nature of the events at the Lake Alice Unit, although do so in broadly worded terms that do not include reference to torture.

- 23 There have been queries from the Royal Commission, media, survivors, and survivor advocates about whether the Crown accepts the Royal Commission's finding of torture. The most recent response to media in October 2023 was: 'The Royal Commission, in its report on Lake Alice, found that the use of electric shocks and paraldehyde to punish meets the definition of torture as outlined in the evidence provided by the Solicitor-General to the Royal Commission. The Crown does not dispute this finding.' The lack of a formal acknowledgement limits what Ministers and officials can state when responding to questions about the Lake Alice Unit.
- 24 Crown Law advises that the matters around the experiences at the Lake Alice Unit have been clearly set out by the Royal Commission, and previous investigations, and are not disputed. The three elements of torture have been met, as outlined by the Royal Commission and CAT, and in evidence the Solicitor-General gave to the Royal Commission at its Lake Alice Unit hearing in June 2021.
- 25 A formal, unequivocal acknowledgement by the Government that some children and young people experienced torture at the Lake Alice Unit is seen by a number of survivors as an important part of their search for justice and healing. It would also allow Ministers and officials to respond to questions more fully, would demonstrate Government is committed to recognising historic abuse, and avoid criticism from the Royal Commission or the CAT of the Crown avoiding giving due weight to what occurred at the Lake Alice Unit.
- 26 New Zealand has been asked to update the CAT on its progress in responding to the Committee's findings in a one-year, follow up report in July 2024. The Committee is likely to expect that action has been taken since New Zealand's periodic review by the CAT in July 2023. Crown Response Unit officials are working closely with the Ministry of Justice, who are preparing the follow up report, to ensure the report back appropriately communicates the decisions sought in this paper. The Committee may request further information if it considers any of the information or actions noted in the follow-up report to be inadequate.

There is no prescribed process for the Government to acknowledge that torture occurred, so I am bringing this paper to Cabinet in reflection of the serious nature of the matters involved

- 27 I have been advised that formal acknowledgement of torture requires appropriate Ministers to agree that Ministers and officials can, and should, publicly state that torture occurred at the Lake Alice Unit.
- 28 I consider the acknowledgement of torture through a Cabinet decision is the most appropriate option given the seriousness of the events at the Lake Alice Unit, the testimony of the Solicitor-General to Royal Commission in June 2021, and the findings of the Royal Commission and the CAT. As Cabinet is the Government's highest decision-making body, formally acknowledging torture at this level strongly signals New Zealand's collective acceptance and deep regret of what occurred at the Lake Alice Unit.

- 29 s9(2)(h)

- 30 Accordingly, this paper recommends that Cabinet agree that there is undisputed evidence that, based on the criteria set out in the Convention, some children and young people were tortured at the Lake Alice Unit. Cabinet is also asked to agree that public acknowledgement of the torture experienced at the Lake Alice Unit is made when the Royal Commission's final report is tabled in Parliament in July, included in relevant communication to and with Unit survivors, in public statements, reports to the CAT, and in any other forums as appropriate. As noted previously, it is also expected that the Crown's public apology for abuse in care will include appropriate references to the Lake Alice Unit.

Previous settlements have been made between the Crown and Lake Alice Unit survivors, but these did not specifically acknowledge torture

- 31 There have been two settlement rounds between the Crown and groups of Lake Alice Unit survivors, the first in 2001 and the second in 2002/2003. The first round of settlements was in response to a joint statement of claim filed in the High Court by a group of survivors. The second round of settlements was in response to a Government decision to take steps to settle any outstanding or potential claims. The Ministry of Health also continues to operate an ongoing claims process for historic abuse, which remains open to new claims from other survivors of the Lake Alice Unit who may choose to come forward. To date, 202 claims have been settled and there are five claims currently being considered by the Ministry of Health. A detailed overview of the settlement rounds and ongoing process is provided in Appendix Two.
- 32 The 2001, 2002/3 and ongoing individual claims process consist of a written apology, signed by the Prime Minister and Minister of Health at the time of settlement, and a payment calculated using an approach developed in 2000 by retired High Court judge Sir Rodney Gallen. The first settlement round payments were handled by the survivors' lawyers, Grant Cameron & Associates, and the Crown does not have visibility over the individual amounts paid to each of those survivors. The Crown holds information on subsequent payments. The settlements are in confidence, but early in the Royal Commission's investigations the Crown waived its expectation of confidentiality to allow all survivors to share settlement information with the Commission.
- 33 Since the apologies provided as part of the settlements were prepared prior to subsequent findings of torture at the Lake Alice Unit, they did not specifically acknowledge torture. An example of an existing apology provided to Lake Alice Unit survivors is included in Appendix Two. Subsequent Crown statements have similarly not explicitly addressed torture at the Lake Alice Unit.
- 34 The acknowledgement of torture is an important step in allowing Ministers and officials to develop and make appropriate statements and the decision would be proactively communicated through survivor networks. In addition, once decisions are made on potential specific redress for torture, a new apology that specifically addresses torture could be made directly, either in writing or in-person, to those survivors who were tortured.

Officials are preparing advice for Ministers on specific redress that could be provided to survivors who experienced torture

- 35 Crown Response Unit officials are currently preparing advice for the Crown Response Ministerial Group on specific redress for torture as a priority for Ministers to consider at our July meeting. It is important to note that any separate redress for torture would be entirely specific to Lake Alice and not dependent on decisions related to abuse in care redress more broadly s9(2)(f)(iv)
- 36 The Government's acknowledgment that some survivors of the Lake Alice Unit experienced torture, as described in this paper, does not create any new liability on the Crown to provide redress. Nor does an acknowledgement limit the options available to Cabinet on what redress could be provided and when it might be offered.

Proceeding with an acknowledgement of torture at this time supports clear statements to an aging group of survivors, but we will need to manage expectations for some of those survivors

- 37 I believe it is important that the Crown's acknowledgement of torture proceeds while work on specific torture-related redress progresses. I am advised that there are some survivors of Lake Alice who place great importance on the Crown acknowledging that what happened to them was torture. I am also advised that a number of Lake Alice survivors have died this year and that there are others in very poor health. Given this context, I believe it is vital the Crown is able to speak freely and without equivocation about what happened at the Lake Alice Unit, and that the Government should be able to publicly acknowledge torture for Lake Alice Unit survivors, before more pass away, in a manner that reflects the gravity and importance of the matters
- 38 In making this decision, we need to be aware that proceeding with an acknowledgement of torture when the Royal Commission's final report is tabled in July, with decisions on redress still to be considered, will likely result in questions or criticism from some Lake Alice Unit survivors about why decisions about redress are not accompanying the acknowledgement given it has been 18 months since the Royal Commission's findings were published. Several survivors and advocates have made it clear that they see the CAT findings as requiring specific redress for torture, in addition to that already provided through previous settlements. The CAT itself has been clear, in the original decisions on the claims by Mr Zentveld and Mr Richards and in observations in response to New Zealand's seventh periodic review in July 2023, that it considers specific redress must be provided. These expectations do create risks for the Government that must be carefully navigated in public statements and as consideration of any specific redress proceeds.

Cost-of-living implications

- 39 The proposals in this paper have no cost-of-living implications.

Financial implications

- 40 The proposals in this paper have no financial implications.

Legislative implications

41 The proposals in this paper have no legislative implications.

Impact analysis

42 Impact analysis is not required as this paper contains no proposal to amend, repeal or introduce legislation.

Population implications

43 The Lake Alice Unit survivors represent a specific cohort, reflecting the limited time the Unit was operating. They are men and women aged in their late 50s to late 60s, and include both Māori and Pacific peoples, and disabled people. As a specific cohort there are no broader population implications associated with the recommendations set out in this paper.

Human rights

44 The experience of torture represents a contravention of Section 9 the Bill of Rights Act (the right not to be subjected to torture or cruel treatment) and invokes the Crimes of Torture Act. New Zealand has international obligations regarding the investigation and prosecution of crimes of torture, as a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Use of external resources

45 No external resources have been used in the preparation of the advice in this paper.

Consultation

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

Communications

47 Following the Cabinet decision, proactive communications will be made by officials to Lake Alice Unit survivors informing them that the Government will be acknowledging torture at the Unit. Survivors will be informed before a public statement is made when the Royal Commission's final report is tabled in Parliament in July. There will also be statements included in New Zealand's report back to the CAT. Statements will need to reflect work is still underway on the matter of redress but that this is being progressed as a priority.

Proactive release

48 I intend to proactively release this paper following the Government's public acknowledgment of torture at Lake Alice, with appropriate public statements in

line with the communications approach outlined above. The paper will be published on the Crown Response Unit's website.

Recommendations

49 It is recommended that the Committee:

- a) **note** the Abuse in Care Royal Commission of Inquiry concluded that some of the experiences of children and young people at the Lake Alice Unit meet the definition of torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention);
- b) **note** the United Nations Committee Against Torture has made findings in response to claims lodged by two Lake Alice Unit survivors that found New Zealand in breach of three articles under the Convention and urged New Zealand to provide appropriate redress;
- c) **note** Crown Law considers that the matters around the experiences at the Lake Alice Unit have been clearly set out and are not disputed;
- d) **agree** that the Government formally accepts that there is undisputed evidence that, based on the criteria set out in the Convention, some children and young people were tortured at the Lake Alice Unit;
- e) **agree** that appropriate acknowledgement of the torture experienced at the Lake Alice Unit is made in public statements and proactively communicated to survivor networks; and
- f) s9(2)(f)(iv)

Authorised for lodgement

Hon Erica Stanford

Minister responsible for coordinating the Crown Response to the Abuse in Care Inquiry

Appendix One: Summary of the Royal Commission's findings on the Lake Alice Unit

The Royal Commission released the report *Beautiful Children: Inquiry into the Lake Alice Child and Adolescent Unit* in December 2022. The report's summary of findings follows.

Circumstances that led to individuals being placed in the unit

1. Most children and young people at the Lake Alice Hospital child and adolescent unit were admitted for behavioural reasons, often arising from tūkino - abuse, harm or trauma, rather than mental distress.
2. Social welfare involvement was a common pathway of admission to the unit, disproportionately affecting Māori. About 41 percent of those admitted from social welfare residences were Māori, and about 29 percent of those admitted from home with social welfare files were Māori. Poor quality records make precise figures impossible.
3. The Department of Health, Department of Social Welfare and staff at the unit did not have proper processes in place to ensure the lawful admission, treatment and detention of children and young people in the unit.

Nature and extent of abuse at the unit

4. Extensive tūkino - abuse, harm and trauma - at the unit included:
 - electric shocks as punishment, administered to various parts of the body, including the head, torso, legs and genitals
 - the injection of paraldehyde as punishment
 - physical and sexual abuse by staff and other patients
 - the misuse of solitary confinement
 - emotional and psychological abuse
 - exposing patients to unreasonable medical risks.
5. Survivors experienced systemic racism, ableism and homophobia in the unit.
6. The use of electric shocks and paraldehyde to punish met the definition of torture as outlined by the Solicitor-General.

Impacts of abuse

7. The abuse in the unit harmed survivors' physical and mental health, their psychological, emotional, cultural and spiritual wellbeing, and their educational and economic prospects.
8. Many survivors turned to crime and were imprisoned.
9. The harm to survivors has been transferred over generations.

Factors that caused or contributed to abuse in the unit

10. Staff at the unit held largely unchecked power over vulnerable patients.

11. The unit's isolated physical environment separated patients from their families, culture and support networks.
12. Staff training and resourcing were inadequate.
13. Staff's prejudiced attitudes devalued patients.
14. The institutional culture at the unit normalised abusive practices and contributed to a culture of impunity.
15. The Department of Social Welfare routinely failed to evaluate whether the unit was an appropriate environment for the children and young people in its care.
16. Internal oversight and monitoring at the unit was inadequate, including ineffective complaint and whistleblowing mechanisms.
17. Complaints to the Department of Education and Department of Social Welfare were not adequately investigated or responded to.
18. External monitoring and oversight mechanisms were limited: district inspectors and official visitors held part-time roles with institutional limitations that reduced their effectiveness.

Attempts to learn lessons from abuse: accountability and redress

19. Inquiries by the Ombudsman and a commission of inquiry in the late 1970s had limited scope and duration, and inadequate access to information.
20. The first New Zealand Police investigation, in 1977, was flawed.
 - The investigating officer reached a conclusion before obtaining key evidence.
 - The scope of the investigation was narrow and important witnesses were not interviewed, including most of the patients at the unit.
 - NZ Police did not recognise the deficiencies in the expert opinion they obtained.
21. The investigations and actions by medical professional bodies in 1977 were flawed.
 - The Medical Association prioritised fairness to Dr Leeks over the safety and wellbeing of patients.
 - The Medical Association and the Medical Council accepted much of Dr Leeks' response to allegations without question.
 - The New Zealand branch of the Australian and New Zealand College of Psychiatrists learned of Dr Leeks' conduct in the late 1970s but did not confront Dr Leeks or forcefully advocate for change.
22. The Crown's response to civil claims by survivors in the 1990s and 2000s was flawed.
 - The information available to the Ministry of Health and Crown Law from the early stages showed the claims were meritorious, but officials were more focused on defending liability than acknowledging the merits of the claims.
 - In the late 1990s, Ministers decided to defend the claims in court, despite the merits, to establish the parameters of Crown liability.

- A newly elected Government directed officials to settle the Lake Alice claims in 2000, but officials continued to place obstacles in the way of settlement, requiring a further direction to settle from the Prime Minister.
 - Even after proceeding with settlement, the Crown treated survivors unfairly and wrongly deducted amounts from the payments to survivors.
 - The legal process had many other flaws.
 - The legal process was slow, made worse by inexcusable delays on the part of the Crown.
 - The legal system placed many legal and practical barriers in the way of survivors, which put them at a disadvantage.
 - Crown lawyers exploited every legal advantage to try to defeat the claimants, with an adversarial mindset, despite the merits of the claims.
 - Many officials and others in power had a resistant attitude to the claims and the claimants and their legal representatives.
 - The settlements did not acknowledge physical and sexual abuse.
 - The settlements were 'without prejudice'; that is, with no admission of wrongdoing.
 - The process did not lead to criminal or professional disciplinary accountability.
 - Human rights breaches were not recognised nor was the State's obligation to carry out a prompt and impartial investigation into the allegations of torture.
 - No effort was made to engage with Māori survivors in a way that recognised their culture, language and tikanga.
 - No effort was made to recognise Pacific peoples' cultures and languages.
 - No effort was made to recognise the needs of disabled people.
23. The Medical Council declined to carry out a fresh investigation into Dr Leeks' conduct in 2000, wrongly believing earlier investigations had adequately addressed the issues.
 24. The Royal Australian and New Zealand College of Psychiatrists had the power to censure, suspend and expel members, but it had no powers to investigate or require the production of information or evidence in relation to misconduct of psychiatrists.
 25. The Accident Compensation Corporation failed to refer evidence of medical misadventure by Dr Leeks to the Medical Council for investigation as it was required to do – a serious oversight.
 26. Despite a request to do so, the Crown did not provide the Children's Commissioner with material it held about former Lake Alice staff in 2002 and the Commissioner took no further action.
 27. In 2005, the Health and Disability Commissioner took no further action on a Lake Alice complaint, believing little would be gained by another investigation. The office of the Health and Disability Commissioner should have disclosed a potential

perceived conflict of interest to the complainant, even though the outcome complied with internal processes.

28. The second NZ Police investigation, from 2003 to 2006, was flawed.

- The officer in charge did not think an investigation was warranted and was not aware of the previous investigation file.
- NZ Police did not give the investigation priority or adequate resources and did not actively progress the investigation for four years (2003 to 2006).
- NZ Police obtained advice from Crown Law based on just one complainant's evidence, despite having 33 other statements.
- NZ Police did not follow Crown Law's advice to carry out further investigation into the use of electric shocks and paraldehyde as punishment.
- NZ Police did not properly manage the file, losing key evidence.
- NZ Police did not carry out basic investigative steps such as interviewing complainants or staff, seeking records or interviewing potential defendants.
- The officer in charge formed an adverse view about the credibility of complainants without interviewing them or investigating their complaints.

29. The third NZ Police investigation, in 2006 to 2010, was flawed.

- NZ Police did not afford adequate priority or resources to the investigation.
- NZ Police did not designate it a 'specialist investigation', which would have ensured specialist staff and greater resources were allocated to it.
- NZ Police reduced the investigation's scope to the misuse of the machine used to deliver electric shocks, overlooking physical and sexual abuse and the punitive use of paraldehyde.
- NZ Police did not interview relevant complainants or investigate serious sexual allegations.
- NZ Police focused on Dr Leeks, overlooking other staff.
- NZ Police obtained legal opinions based on an incomplete and inaccurate summary of the file.
- NZ Police adopted a biased attitude against those who had been admitted to the unit, treating them as unreliable and troublesome. NZ Police assumed staff were well-meaning and dedicated professionals.

30. The Crown Law Office did not consider Aotearoa New Zealand's obligations under the Convention against Torture when dealing with the Lake Alice claims in the 1990s and 2000s. The United Nations Committee against Torture found New Zealand in breach of the convention for failing to ensure a prompt and impartial investigation into the unit.

Appendix Two: Previous and current Lake Alice Unit settlement processes

The Crown has engaged in two rounds of settlements for Lake Alice survivors to date, the first in 2001 and the second in 2002/3. The Ministry of Health maintains a process for assessing and settling any new claims that arise.

A. Round one settlement

- In 1999, 88 former Lake Alice Unit patients, represented by Grant Cameron & Associates, filed a joint statement of claim in the High Court. The claim had four causes of action: breach of fiduciary duty, unlawful confinement/false imprisonment, assault and battery, and negligence.
- The causes of action related to allegations of the use of electroconvulsive therapy and paraldehyde injections as punishments, sexual and physical abuse by staff, staff permitting sexual and physical abuse by other patients, unlawful confinement, administration of medical treatments without consent, and perpetrating and maintaining an environment of extreme fear.
- In early 2000, the Government determined it would compensate and apologise to former Lake Alice Unit patients rather than defend the claim in the High Court.
- In October 2000, \$6.5 million was approved for settlement with 95 claimants (the 88 former patients that had filed and seven other former patients that had since come forward). The Crown appointed retired High Court judge Sir Rodney Gallen to determine how the settlement monies should be divided among the claimants.
- Sir Rodney considered the claimants' described experiences to determine how the settlement funds might be distributed. He produced a report about his assessment, which provided general comment on the experiences and the methodology he had used to allocate the settlement monies. Grant Cameron & Associates deducted approximately 40 per cent of the settlement amount in legal costs. The amounts paid out to individuals was strictly confidential and the Crown does not have specific details of individual amounts paid to claimants.
- Following the settlement, the then Prime Minister and Minister of Health wrote to each claimant and apologised on behalf of the Government for their treatment in the Lake Alice Unit (see below for the text of round one apology letter).

B. Round two settlement

- The Government decided in 2001 to take steps to settle any outstanding or potential claims by former patients of the Lake Alice Unit. The process was to involve an apology and a confidential settlement process broadly similar to the round one settlement of the class action.
- Sir Rodney was again instructed by the Crown to consider claimants' experiences and make a determination on the payment amount to be made in line with the principles and criteria he established for the round one process. Sir Rodney was instructed to take into account the absence of substantial legal costs to new applicants.
- The round two settlement saw 98 former Lake Alice Unit patients collectively receive \$6.3 million in compensation up until 2008. The average settlement was approx. \$70,000.

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

C. Individual claims

- The Ministry of Health maintains an ongoing process for any new Lake Alice Unit claims that come forward. There have been 9 further settlements since round two was completed in 2008 – an average of one new Lake Alice Unit claim per year.
- Claims are assessed against the principles and criteria established for the round two settlements, with the payment determined by the Ministry of Health's Chief Legal Advisor. The average settlement is \$68,000. The payment is accompanied by a written apology from the Prime Minister and Minister of Health.
- Lake Alice settlement funding has been exhausted and costs for the ongoing claims process are currently met from the Ministry of Health's Legal Services budget on the estimate of two settlements per year maximum.
- The Ministry currently has five outstanding new claims under consideration.

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

Dear [survivor name]

We are writing to you personally on behalf of the Government of New Zealand to apologise for the treatment you received and may have witnessed in the Child and Adolescent Unit of Lake Alice Hospital during the 1970s. We are apologising to all those who were mistreated. We believe it is important to take this step, to enable us to move on from shameful practices in mental health care in New Zealand.

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

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

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

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

Yours sincerely

Rt Hon Helen Clark

Hon Annette King

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Cabinet Social Outcomes Committee

Minute of Decision

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

Acknowledgement of Torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit

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

On 26 June 2024, the Cabinet Social Outcomes Committee:

- 1 **noted** that the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions concluded that some of the experiences of children and young people at the Lake Alice Unit meet the definition of torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention);
- 2 **noted** that the United Nations Committee Against Torture has made findings in response to claims lodged by two Lake Alice Unit survivors that found New Zealand in breach of three Articles under the Convention, and urged New Zealand to provide appropriate redress;
- 3 **noted** that Crown Law considers that the matters around the experiences at the Lake Alice Unit have been clearly set out and are not disputed;
- 4 **agreed** that the Government formally accepts that there is undisputed evidence that, based on the criteria set out in the Convention, some children and young people were tortured at the Lake Alice Unit;
- 5 **agreed** that appropriate acknowledgement of the torture experienced at the Lake Alice Unit be made in public statements and proactively communicated to survivor networks;
- 6 s9(2)(f)(iv)

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters
Hon David Seymour
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Brooke van Velden
Hon Dr Shane Reti
Hon Erica Stanford
Hon Paul Goldsmith
Hon Louise Upston
Hon Matt Doocey
Hon Melissa Lee
Hon Nicole McKee
Hon Casey Costello
Hon Penny Simmonds
Hon Chris Penk

Officials present from:

Office of the Prime Minister
Officials Committee for SOU
Crown Response Unit

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Cabinet

Minute of Decision

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Report of the Cabinet Social Outcomes Committee: Period Ended 28 June 2024

On 1 July 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 28 June 2024:

- | | | |
|-----------------|---|-----------|
| SOU-24-MIN-0068 | Royal Commission of Inquiry into Abuse in Care: Initial Response to the Final Report
Portfolios: Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions / Internal Affairs | CONFIRMED |
| SOU-24-MIN-0072 | Acknowledgement of Torture at the Lake Alice Psychiatric Hospital Child and Adolescent Unit
Portfolio: Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions | CONFIRMED |

Withheld as not part of Crown Response to the Royal Commission of Inquiry into Abuse in Care

Withheld as not part of Crown Response to the Royal Commission of Inquiry into Abuse in Care



Rachel Hayward
Secretary of the Cabinet

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