


# Briefing



# Listening, learning, changing

## Mā Whakarongo me Ako ka huri te tai

Crown Response to the Abuse in Care Inquiry

The option of a stepped redress payment for torture at the Lake Alice Unit			
Date:	13 September 2024	Security level:	
Priority:	High	Report number:	CRACI 24/059 

### Actions sought

<p>Hon Erica Stanford  <b>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</b></p>	<p>This briefing outlines the option of a stepped payment for survivors of torture at the Lake Alice Unit and seeks your feedback on which payment option(s) to include in an upcoming Cabinet paper seeking agreement on the overall torture redress package.</p>
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### Contact for discussion

Name	Position	Telephone	1 <sup>st</sup> contact
Isaac Carlson	Director, Crown Response Unit	s9(2)(a)	
Rebecca Martin	Head of Policy and Strategy, Crown Response Unit	s9(2)(a)	✓

## Agencies consulted

N/A
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## Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> See Minister's notes <input type="checkbox"/> Needs change <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) _____	<input type="checkbox"/> Comments
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# Briefing



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Crown Response to the Abuse in Care Inquiry

## The option of a stepped redress payment for torture at the Lake Alice Unit

**For:** 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

**Date:** 13 September 2024

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### Purpose

1. This paper outlines a stepped payment option that could be part of a redress package for survivors of torture at the Lake Alice Hospital Child and Adolescent Unit (the Lake Alice Unit) and seeks decisions on which options to include in the upcoming Cabinet paper.

### Recommendations

2. It is recommended that you:

- a. **provide feedback** at the Crown Response Unit officials' meeting on 16 September on a potential stepped torture payment (set out in Table One of this paper) reflecting different survivor experiences; and
- b. **indicate** which payment option(s) should be included in the upcoming paper seeking Cabinet's agreement to the components of the Crown's redress package for Lake Alice Unit torture survivors:

**Option 1:** a consistent one-off payment of \$100,000, \$80,000, or \$50,000, with Cabinet to agree the payment level (the current proposal); and/or YES / NO

**Option 2:** a stepped payment with three tiers reflecting different survivor experiences at the Lake Alice Unit – with your **feedback sought** on the potential steps and monetary payment levels, as set out in Table One. YES / NO

Rebecca Martin  
Head of Policy, Crown Response Unit  
Crown Response to the Abuse in Care Inquiry

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

13 / 09 / 2024

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## **A consistent payment for all Lake Alice Unit survivors of torture had been recommended to avoid a payment process that might retraumatise survivors**

3. Previous advice provided to the Ministerial Group recommended a consistent, one-off financial payment as part of the Crown's redress package for survivors of torture at the Lake Alice Unit. This was based on two factors:
  - a. Lake Alice Unit survivors have received or are entitled to receive a stepped payment recognising the abuse they experienced in the Unit through the current Lake Alice Unit claims process. The differentiated payments explicitly factored in the abuse (the application of ECT and paraldehyde injections) that has now been acknowledged as torture, as well as other forms of abuse at the Unit, but did so without explicitly treating those two elements as torture; and
  - b. to assess a claim for redress, some information needs to be accessed either through information shared by survivors and/or records that the Crown holds about survivors. Consideration of a stepped payment, which recognises different experiences, requires the sharing of more information than is needed for a single consistent payment. The sharing of additional information can be retraumatising for survivors.
4. Guidance published by the UN Committee Against Torture (UNCAT) on how to discharge obligations under the Convention Against Torture notes that redress for victims of torture should be individualised and tailored to the needs of each victim. Previous advice noted the proposed financial payment is only one part of the Crown's redress package, with the intention to allow tailoring of the overall package, particularly with access to support services.
5. The Ministerial Group provided its initial endorsement of a torture redress package that consists of:
  - a. a new apology provided to individual survivors which explicitly acknowledges torture;
  - b. a consistent one-off financial payment of \$100,000 (subject to Cabinet decision on the payment level); and
  - c. access to tailored support and rehabilitative services.
6. Since then, and following your discussions with Lake Alice survivors, we have undertaken further work to understand the range of matters that Lake Alice survivors consider should be included in a redress package. This has identified a wider range of issues including the contemporary use of ECT, the correcting of records and access to independent legal advice.

## **Engagement with Lake Alice Unit survivors has highlighted many of them feel recognition of different experiences outweighs the risk of re-traumatisation**

7. Since these discussions with the Ministerial Group, you have met with a number of Lake Alice Unit survivors. In their engagements with you they have highlighted that they consider it important to recognise the different experiences of torture in the Unit, including through the payment to be made as part of a redress package. The survivors consider the need for such recognition to outweigh the risk of re-traumatisation associated with sharing the level of detail needed to enable decisions on different levels of payment.
8. To provide a very high level of specific recognition, survivors would need to be asked questions about how many times they were tortured (frequency), the nature and extent of

the torture (severity), and what the impacts of the torture were (consequences). Medical records from the Lake Alice Unit can be unreliable and inconsistent, limiting their use as alternative sources of information. The questions are highly invasive and, given the young age of some survivors compared to others when they were in the Lake Alice Unit, may be difficult to answer due to limited recall, potentially leading to incomplete recognition.

9. A compromise would be a set of stepped payments that reflect a combination of factors that are more easily able to be shared or determined and which would allow for different broad levels of experience to be recognised.

**A potential stepped payment for torture at the Lake Alice Unit would focus on time spent in the Unit, and could also respond to how often ECT and/or paraldehyde was administered**

10. We propose that if you elect a tiered option, that the following criteria are used to determine the torture payment:
  - a. attestation by a survivor that they experienced the administration of unmodified ECT and/or paraldehyde injections; and
  - b. the (cumulative) length of time spent at the Lake Alice Unit.
11. The rationale for focusing on length of time is:
  - a. time spent in the Unit generally correlates to severity of abuse on the basis that the use of ECT and paraldehyde was widespread. It should also be noted that people who were in the Unit over a longer period time were also more likely to be exposed to the torture of others and UNCAT guidance sets out that exposure to the torture of others should be one of the factors included in determining what level of redress is owed to a survivor of torture; and
  - b. time spent in the Lake Alice Unit can be confirmed with relative confidence from survivors' medical records, as admissions and discharges were noted consistently. Cumulative time spent would be considered as opposed to continuous time, as many survivors went in and out of the Unit during the period it was open.
12. We also propose that the payment framework has scope for discretion to make higher payments in the situation where a survivor was in the Lake Alice Unit for a shorter period but had unusually higher levels of torture in that period, so this situation could also qualify for a higher payment level.
13. A survivor wanting to establish this would need to share how often they recall receiving ECT and/or paraldehyde injections, which is more limited information than a full recounting of their experiences in the Lake Alice Unit. Survivors' medical records could be reviewed to see if any additional ECT or paraldehyde injections were administered that the survivor may be unable to recall, although as noted previously the records can be incomplete or inaccurate and therefore would need to be treated with caution.
14. We considered another option of basing torture payment levels on the level of previous settlements for abuse at the Lake Alice Unit, on the basis that these could be taken as an indication of the extent of the abuse experienced that is now acknowledged as torture. We do not recommend this approach however as previous payments also factored in abuse that was not part of the Crown's acknowledgement of torture (for example, sexual abuse).

## The breakdown of previous Lake Alice settlements indicates the likely distribution of torture-redress payments if a stepped approach is chosen

15. A stepped payment approach would retain the endorsed apology and access to tailored support services, as per the package set out in paragraph 5.
16. Based on time spent in the Lake Alice Unit, Table One outlines a potential three-step payment framework. Three indicative examples of payment ranges are provided for each step, based on the advice previously provided on what might be an appropriate redress payments for torture:
  - A. uses the Ministerial Group's endorsed one-off payment (\$100,000) as the top step with larger gaps between the lower steps (\$50,000 and \$30,000); and
  - B. uses a mid-range payment level, with three steps (\$,000, \$75,000 and \$50,000); and
  - C. uses the Ministerial Group's endorsed one-off payment (\$100,000) as the first step, with higher payments for the more severe steps (\$150,000 and \$200,000).
17. We have reviewed the spread of payments made to Lake Alice Unit survivors through the second group settlement and in the subsequent one-off claims to get some sense of the different levels of experience recognised through the payments. This is summarised in Appendix One. Information on payments made through the first group settlement is held confidentially by Grant Cameron and Associates.
18. This analysis of previous Lake Alice payments shows approximately 10 per cent of survivors have received the highest payments (over \$100,000), 30 per cent have received payments less than the highest group but above the average (\$70,000-99,000) and 60 per cent have received a payment at or below the average (less than \$70,000). Based on the spread of previous settlement payments, Table One includes an estimate of the number of survivors that might be expected at each payment level if 100 survivors came forward.

**Table One: A possible stepped payment approach to torture at the Lake Alice Unit**

Step and description	Payment level options (per paragraph 16)	Estimated number of survivors
<b>Step 1:</b> Less than 1 year at the Lake Alice Unit and attestation of a single application of unmodified ECT or paraldehyde injection.	A: \$30,000 B: \$50,000 C: \$100,000	60
<b>Step 2:</b> 1-2 years at the Lake Alice Unit, but discretion for less than 1 year with attestation of frequent applications of unmodified ECT or paraldehyde injections.	A: \$50,000 B: \$75,000 C: \$150,000	30
<b>Step 3:</b> 2 or more years at the Lake Alice Unit, but discretion for less than 2 years with attestation of very frequent applications of unmodified ECT or paraldehyde injections.	A: \$100,000 B: \$150,000 C: \$200,000	10

19. Table Two provides the estimated costs associated with these different options and payment levels. Stepped payment would largely fall within the range of costs that have previously been discussed with joint Minsters.

**Table Two: Impact of stepped payment options on the overall cost of providing payments for torture at the Lake Alice Unit**

Option	Consistent payment	Stepped payments		
		Option A	Option B	Option C
Number of claimants and payment level	100 x \$100,000	60 x \$30,000	60 x \$50,000	60 x \$100,000
		30 x \$50,000	30 x \$75,000	30 x \$150,000
		10 x \$100,000	10 x \$150,000	10 x \$200,000
Total cost	\$10,000,000	\$4,500,000	\$6,750,000	\$12,500,000

### Next steps

20. Based on your feedback on these options, we will confirm these options with Crown law and the Ministry of Health, update the Cabinet paper, and provide you with draft on that paper on 19 September, with a view to commencing Ministerial consultation in the week of 23 September. We will also amend the out of cycle funding request for you to submit to the Minister of Finance for agreement before Ministerial consultation begins.



## Appendix One: Breakdown of previous payments made to Lake Alice survivors

1. The Ministry of Health has provided the Crown Response Unit with an anonymised list of payments made to Lake Alice Unit survivors. The list includes 98 payments from the second-round settlement process and made through the ongoing process.
2. The highest payment is \$120,467.83 and the lowest is \$37,134.51. The average payment is \$70,411.15.
3. Across the 98 payments there are 16 different payment levels. The number of recipients has been summarised in \$20,000 intervals, along with the breakdown by the 16 separate levels.

Payments in \$20,000 intervals	
Payment range	Number of recipients
More than \$100,000	8
\$80,000 – \$99,999	24
\$60,000 – \$79,999	28
\$40,000 – \$59,999	37
Less than \$40,000	1

Detailed list of payments	
Payment amount, \$	Number of recipients
120467.83	1
114912.28	3
109356.72	1
103801.16	3
98245.61	1
92690.05	6
87134.50	7
81578.94	10
76023.39	12
70467.84	6
64912.28	10
59356.73	12
53801.17	9
48245.62	6
42690.06	10
37134.51	1