

Briefing



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

'Independent' and 'expedited' pathways to redress for Lake Alice torture survivors			
Date:	18 September 2024	Security level:	
Priority:	High	Report number:	CRACI 24/062

Actions sought	
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	This briefing provides material to support a discussion with Crown Response Unit officials on the timeframe for seeking Cabinet decisions on Lake Alice and matters raised in relation to a potential independent, individualised redress option for Lake Alice torture survivors.

Contact for discussion			
Name	Position	Telephone	1 st 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

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) <hr/>	Comments
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Crown Response to the Abuse in Care Inquiry

'Independent' and 'expedited' pathways to redress for Lake Alice torture survivors

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: 19 September 2024

Security level:

Priority: High

Report number: CRACI 24/060

Purpose

1. This paper provides material to support your discussion with Crown Response Unit officials on 19 September regarding redress for survivors of torture at the Lake Alice Unit. This paper should be read alongside Briefing CRACI 24/059, *The option of a stepped redress payment for torture at the Lake Alice Unit*, dated 13 September 2024.

Recommendations

2. It is recommended that you:
 - a. **note** Crown Law are due to provide advice to you on 23 September 2024 on the option of an independently arbitrated redress process for Lake Alice torture survivors that operates within parameters established by the Crown and alongside of an expedited pathway; and
 - b. **discuss** the initial considerations raised in in this paper around the design and operation of the two pathway options and the options outlined for seeking Cabinet decisions on this matter at the officials' meeting on 19 September 2024 or at a subsequent meeting.

Rebecca Martin
Head of Policy and Strategy
Crown Response Unit

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

18 / 09 / 2024

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Purpose

3. Crown Law is preparing advice on an option of a fully individualised redress process for Lake Alice torture survivors, referred to in this paper as the 'independent arbiter pathway'.

s9(2)(h)

4. This briefing:

- a. Provides some initial thinking on how these two pathways might operate alongside of each other if you chose to progress this proposal, including illustrative costs designed to show how the design of the pathways will influence costs.
- b. Provides options for a revised timeframe for seeking decisions on this matter from Cabinet.

Key matters for consideration if an independent arbiter assessment of claims pathway operates alongside an alternative 'expedited' pathway

5. We understand the independent arbiter pathway is designed to respond to the priority some Lake Alice survivors attach to having independent legal representation within the redress process. Eligible survivors would be able to select legal representation from a panel of lawyers and would have their torture-redress claim assessed by an independent arbiter, likely a judge or senior lawyer. Crown Law are due to provide this advice to you on 23 September 2024.

6. s9(2)(h)

. This pathway would also be likely less costly to administer, enabling more of the total cost to be directed towards survivor payments at the earliest possible time.

7. Alternatively, you could consider a single tiered pathway administered by the Crown with survivors able to access a lawyer from a panel to represent them through that process. Another option would be for the Crown to set a sum to be distributed by a judge and involving a panel of lawyers. Given the uncertainty about torture claimant numbers, the sum could be set after opening a window within which claimants would need to register and this information could then be used to inform the total amount of funding set aside for torture redress. This would of course involve some delay for survivors.
8. The expedited redress pathway would not involve detailed, individualised assessment of claims and would offer a more straightforward redress pathway for survivors. Drawing on the briefing on stepped payments [CRACI 24/059 refers], the expedited redress pathway could offer a three-tiered payment based on an easily verifiable factor of time spent at the Lake Alice Unit as well as survivor attestation of their experiences of torture or it could offer a flat redress payment.
9. If you elect to recommend a two-pathway option to Cabinet, key decisions will include:

- a. The relative value of the payments available through the two pathways. We understand from Crown Law that the independent arbiter pathway would still be bound by parameters agreed by Cabinet on the minimum and maximum payment possible and that the minimum amount payable would need to be same as the minimum available through the expedited pathway.
 - b. What level and form of evidence and assessment would be required for the two pathways. One of the challenges in this context is that we understand from the Ministry of Health that health records are not a reliable source of information on the administration of unmodified ECT and paraldehyde and that there is little in the way of eye-witness evidence available to corroborate survivor evidence.
10. Both of these factors will significantly influence decisions by survivors about which pathway to elect and the overall costs of the torture redress package.
 11. Appendix One provides an initial view of how these two pathways might operate alongside of each other. There are a couple of matters that would require careful consideration. For example, the independent arbiter pathway is based on the previous Lake Alice settlement rounds, but these did not provide survivors access to support services – something which is being considered for the torture-redress package. The reasons why a survivor might elect each pathway would also need to be articulated in a way which enabled survivors to make an informed decision about which route was best for them.
 12. The costs associated with a two pathway option would depend on the level of awards available through the different pathways, the percentage and profile of survivors electing each pathway, and the administrative costs associated with the pathways. The independent pathway would have higher operational costs - the Crown's second round settlement process assumed legal costs of 30 per cent on top of the total settlement amount (noting the total settlement depends entirely on how many survivors choose this pathway versus the expedited pathway). We have developed two illustrative scenarios to show how this might operate and these are provided in Appendix Two.

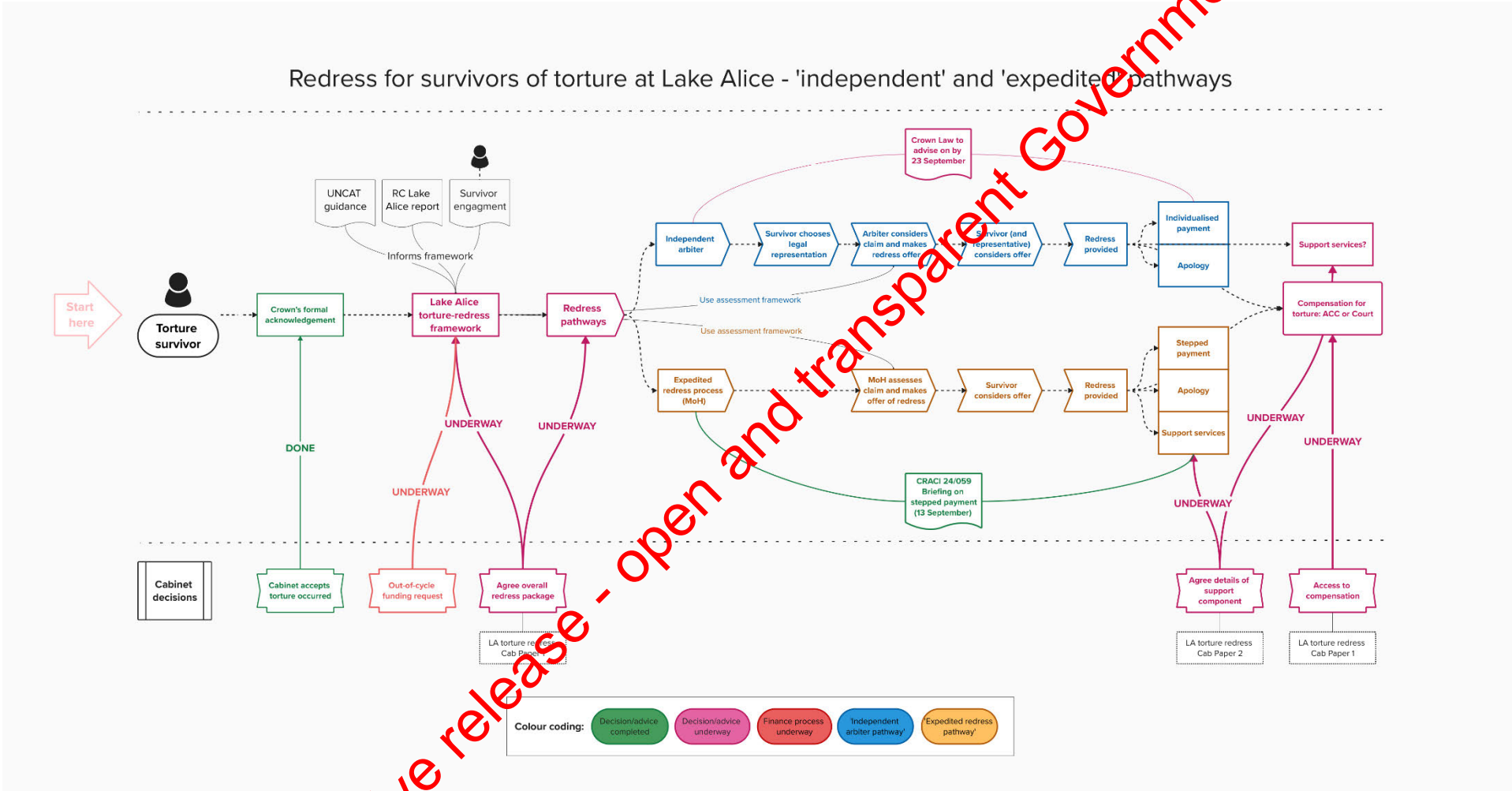
Two options for extending the timeframe for seeking Cabinet decisions on Lake Alice torture are provided for your feedback

13. The table below provides two options for extending the current plan for Cabinet decisions on Lake Alice torture redress. Note that the second option will also depend on your preference for which Cabinet Committee considers the first Lake Alice redress paper.

Table One: timeline options for Cabinet consideration of the first torture-redress paper

Milestone	Current plan	Option 1	Option 2
Ministerial Consultation begins	24 September	1 October	8 October
Paper lodged	10 October	17 October	24 October (for CBC) 31 October (for SOU)
Cabinet Committee	16 October (SOU)	23 October (SOU)	28 October (CBC) 6 November (SOU)
Cabinet	21 October	28 October	4 November (if CBC) 11 November (if SOU)

Appendix One: Diagram of two redress pathways for Lake Alice torture-survivors – early thinking



Appendix Two: Illustrative costs showing how pathway design could impact costs

14. For the purposes of these illustrative costings, we have assumed 100 claimants, noting however that we have, to date, modelled costs on a range of between 50 – 200 potential claimants. Also note, to date, we have discussed a total package of around \$20 - \$25 million for Lake Alice redress with joint Ministers.
15. Scenario One below uses stepped payments of \$50,000, \$75,000 and \$150,000 and uses \$50,000 and \$200,000 as the minimum and maximum which could be awarded through the independent arbiter pathway. The average payment for the independent pathway is assumed to be \$155,000.
16. Scenario Two below assumes 50 claimants elect either pathway. It also increases the maximum possible payment in the independent pathway to \$250,000 and lowers the top step in the expedited pathway to \$100,000 (from \$150,000).
17. Operational funding was previously based on an agency-provided redress only. This was estimated to require \$0.1-0.2m. \$0.1m was expected to be needed by the Ministry of Health to administer payments and apologies; \$0.1m was expected to be needed by the agency that provides the support component, subject to Cabinet decisions on supports.
18. The tables below provides an initial analysis of how the two-pathways approach might impact the overall funding requirements of Lake Alice torture redress if 100 survivors sought torture redress. Further technical details on the assumptions which inform the breakdown are provided below.

Table One: Potential impacts on required fundings from the two-pathway approach – scenario one

Costs	<i>Single redress pathway (100 claims)</i>	Two-pathway approach	
		Expedited redress pathway (90 claims)	Independent arbiter pathway (10 claims)
Redress payments:	\$6.750m	\$6.120m	\$1.550m
Operational costs:	\$0.200m	\$0.200m	\$0.465m
Support costs (est.):	\$2.000m	\$1.800m	\$0
		Subtotal: \$8.120m	Subtotal: \$2.015m
Total cost:	\$8.975m		\$10.135m

Table Two: Potential impacts on required fundings from the two-pathway approach – scenario two

		Two pathway approach	
Costs	<i>Single redress pathway (100 claims)</i>	Expedited redress pathway (50 claims)	Independent arbiter pathway (50 claims)
Redress payments:	\$6.750m	\$3.150m	\$12.500m
Operational costs:	\$0.200m	\$0.200m	\$3.750m
Support costs (est.):	\$2.000m	\$1.000m	\$0
		Subtotal: \$4.350m	Subtotal: \$16.250m
Total cost:	\$8.975m		\$20.600m

Assumptions informing breakdown of funding impacts

Refers to: Table One: Potential impacts on required fundings from the two-pathway approach

1. Both scenarios assume 100 eligible survivors of torture redress make a successful claim.
2. Regarding the current proposal:
 - 2.1. Redress costs = 60 x \$50,000, 30 x \$75,000 and 10 x \$150,000
 - 2.2. Support costs = 100 x \$20,000
3. Regarding the expedited pathway:
 - 3.1. Redress costs = 54 x \$50,000, 27 x \$75,000 and 9 x \$150,000
 - 3.2. Support costs = 90 x \$20,000
4. Regarding the independent arbiter pathway:
 - 4.1. It is assumed that survivors who elect the independent arbiter are **not** provided with access to support services. If survivors who elected independent assessment could then access support services through the Crown process, 10 x \$20,000 would be added.
 - 4.2. The inverse of the anticipated distribution of payments has been applied to the 10 survivors who choose the independent pathway, on assumption that claims in this pathway will receive a higher payment (on average) – 10/30/60 lowest to highest.
 - 4.3. Redress costs = 1 x \$50,000, 3 x \$100,000 and 6 x \$200,000,
 - 4.4. Operational costs = 30% of \$1.550m