

The New Zealand Government submits the following information to the United Nations Committee Against Torture in response to the Decision adopted by the Committee concerning communication No. 934/2019.

Introduction

1. On 12 May 2022, the Committee Against Torture (**Committee**) adopted its decision under article 22 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**Convention**), concerning communication No. 934/2019 (**Communication**).
2. The Committee, acting under article 22(7), decided that the State party violated articles 12, 13 and 14 of the Convention.
3. The Committee urged the State party to:
 - (a) Proceed with a timely consideration by the courts of all allegations of torture made by the complainant including, where appropriate, the application on perpetrators of the corresponding penalties under domestic law;
 - (b) Provide the complainant with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the trial;
 - (c) Make public the present decision and disseminate its content widely, with a view to preventing similar violations of the Convention in the future.
4. The Committee has requested the State party to inform it of the steps it has taken in response to the above findings.

Update on the New Zealand Government's response

5. The New Zealand Government's response to each of the Committee's requests is detailed below.
6. In summary, a trial of a former staff member of the Child and Adolescent Unit on eight counts of wilful mistreatment of a child is scheduled to take place in August 2023. While this trial will not directly relate to the abuse Mr Richards suffered, the fact that prosecutions in the New Zealand criminal justice system are conducted publicly should afford Mr Richards some sense of vindication that justice is being done regarding the events in the Child and Adolescent Unit.
7. Further, in response to an interim report by the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions (the **Royal Commission**), the New Zealand Government is undertaking

significant work to develop a survivor-focused redress system for the victims of abuse in state care. The Committee's request that the New Zealand Government provide Mr Richards with access to redress reinforces the need for this work, and the New Zealand Government will continue its consideration of the Committee's decision as it develops the new redress system and responds to any related recommendations of the Royal Commission.

(a) Proceed with a timely consideration by the courts of all allegations of torture made by the complainant

8. In its previous responses to this Communication, the New Zealand Government explained that:

8.1 Mr Richards had been part of a class action lawsuit filed in 1999 against the New Zealand Government for the abuse he suffered while in the Child and Adolescent Unit. The New Zealand Government settled this class action. In doing so, it accepted publicly and personally to the victims that what had occurred in the Child and Adolescent Unit was unacceptable and issued individual apologies to the victims and paid them compensation.

8.2 In response to the Committee's decision concerning Mr Zentveld's communication, New Zealand Police (**Police**) commenced a new investigation into the Child and Adolescent Unit at Lake Alice.

8.3 This investigation was thorough. Police:

8.3.1 Reviewed its previous investigations and all the allegations that had been made to Police that might be reinvestigated.

8.3.2 Interviewed previously identified victims and newly identified former patients of the Child and Adolescent Unit. In total, it conducted 63 interviews and obtained permission from 20 additional former patients to use the previous statements they had made in connection with civil litigation against the New Zealand government.

- 8.3.3 Interviewed former staff members of the Child and Adolescent Unit, who were either alleged perpetrators of abuse or witnesses of abuse.
- 8.3.4 Assessed all of the evidence and considered whether to bring charges against Dr Leeks and other former staff members.¹
- 8.4 Mr Richards was interviewed again during the course of this investigation.
- 8.5 As a result of this investigation, eight counts of wilful ill treatment of a child were laid against one former staff member of the Child and Adolescent Unit.
- 8.6 Police consider they had a basis to lay charges against two other former staff members, one of whom was Dr Leeks. However, both were medically unfit to stand trial. Dr Leeks has since died.
9. Further to this, the New Zealand Government adds that:
- 9.1 The criminal prosecution of the former staff-member of the Child and Adolescent Unit is ongoing, with pre-trial arguments scheduled for November 2022, and a trial currently scheduled for August 2023.
- 9.2 While Mr Richards was interviewed in Police's most recent investigation, his claims of abuse are not the foundation of any of the charges that have been laid against the staff member.
- 9.3 Nor is it possible for his claims to be pursued further by Police. This is because:
- 9.3.1 Mr Richards claimed that Dr Leeks was the one who applied electroconvulsive therapy to his genitals while he was in the Child and Adolescent Unit. Mr Richards first

¹ Noting, as set out in the previous communications, the abuse in the Child and Adolescent Unit had to be investigated under the laws as they stood at the time of the offending, such as the Crimes Act 1961. There was no legislation at the time that established specific criminal charges for torture.

made these claims in his communication to the Committee. They were not in his original statements to Police. Police sought additional details about these claims when it interviewed him during the course of its recent investigation. Charges were not able to be laid against Dr Leeks as he was medically unfit and he has since died.

9.3.2 Mr Richards claimed that he received paraldehyde injections as a form of punishment while he was in the Child and Adolescent Unit.² However, he has not been able to provide any information to Police about who administered the injections. As a result, Police were not, and are not, able to investigate this claim further and therefore cannot pursue criminal proceedings through the Courts.

9.3.3 Mr Richards claimed that he was indecently assaulted by another patient at the Child and Adolescent Unit. However, he has not been able to identify or provide any information to Police about the perpetrator of this assault. As a result, Police were not, and are not, able to investigate this claim further and therefore cannot pursue criminal proceedings through the Courts.

10. As such, the New Zealand Government submits that Mr Richards' claims have been thoroughly investigated by Police. The New Zealand Government has acknowledged the suffering experienced by Mr Richards and others at the Child and Adolescent Unit. However, absent any additional information about the offending that took place, the matter cannot be taken any further.

(b) Redress, compensation and access to the truth

11. The Committee's second recommendation was for the State party to:

² Mr Zentveld made similar claims.

Provide the complainant with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the trial.

12. By “trial”, the New Zealand Government understands the Committee to be referring to the trial of the former staff member of the Child and Adolescent Unit. As set out above, this is scheduled to occur in August 2023.
13. While the criminal charges that have been brought against this individual do not directly relate to the abuse Mr Richards suffered, the New Zealand Government hopes that this process will bring Mr Richards additional access to the truth as to the events in the Child and Adolescent Unit.
14. In addition to this trial, as set out in the New Zealand Government’s previous responses, the abuse in the Child and Adolescent Unit is being inquired into by the Royal Commission.
15. A Royal Commission is the highest form of inquiry available to the New Zealand Government and is reserved for investigating matters of the greatest importance. The Royal Commission has significant powers to inquire into the truth regarding events at the Child and Adolescent Unit and make recommendations, including about appropriate redress. In addition, although established by the New Zealand Government, it is independent from the Government and will report to the Governor-General.
16. The Royal Commission has confirmed that it is aware of the Committee’s views in respect of Mr Richards’ communication and has released a statement:³
 - 16.1 acknowledging Mr Richards and confirming that he provided valuable evidence at the Royal Commission’s hearing into the Child and Adolescent Unit;
 - 16.2 confirming that it is conducting a full, independent and impartial

³ Royal Commission of Inquiry “Royal Commission statement on UN Lake Alice report” (27 June 2022) Abuse in Care <abuseincare.org.nz> at <https://www.abuseincare.org.nz/our-progress/news/royal-commission-statement-on-un-lake-alice-report/>.

- investigation into the abuse in the Child and Adolescent Unit;
- 16.3 confirming that it has “extensive powers to ensure a thorough examination of what occurred at Lake Alice, the Government’s response and the adequacy of the subsequent Police investigations”;
- 16.4 confirming that it can make findings of fault and recommendations for further steps to determine liability; and
- 16.5 confirming that it would be releasing its report on the Child and Adolescent Unit in the second half of 2022.
17. The New Zealand Government expects, based on evidence at the June 2021 public hearing, that the Royal Commission’s report will bring Mr Richards greater access to the truth about what happened at the Child and Adolescent Unit. The New Zealand Government will also carefully consider the recommendations of the Royal Commission in respect of the victims of the Child and Adolescent Unit, alongside the recommendations of the Committee. This is in line with the Government’s in-principle commitment, announced in May 2019, to consider the Royal Commission’s recommendations as they are made.⁴
18. As outlined in the New Zealand Government’s previous response to the Communication, Mr Richards, together with other victims of the Child and Adolescent Unit, previously received a settlement, including personal apologies and compensation, as part of the government’s existing Lake Alice redress process. The New Zealand Government also publicly acknowledged to the victims that what had occurred was unacceptable by any standard, in particular the inappropriate use of electric shocks and injections.⁵
19. The Royal Commission released an interim report in December 2021, part

⁴ Hon Chris Hipkins “Historical abuse in state care – Government sets out how it’ll respond to inquiry” (press release, 9 May 2019) at <https://www.beehive.govt.nz/release/historical-abuse-state-care-government-sets-out-how-it%E2%80%99ll-respond-inquiry>.

⁵ Helen Clark “Settlement for former Lake Alice patients” (press release 7 October 2001) at <https://www.beehive.govt.nz/release/settlement-former-lake-alice-patients>.

of which assessed the redress the Crown has provided to victims of abuse in state care. In this report, the Royal Commission identified:⁶

- 19.1 the significant types of harm many people experienced in State and faith-based care, and the serious life-long, and intergenerational, effects that harm has had on individuals, whānau, hapū, iwi, and communities;
 - 19.2 the failures of previous State and faith-based responses to that harm, including the current historic abuse claims processes (for example, legal assistance has been limited, survivors have struggled to access their records, processes have not been independent or transparent, decisions have taken too long, remedies have been inconsistent and amounts well out of step with those paid for other human rights breaches, and other forms of support have been limited); and
 - 19.3 the need for, and functions of, a future independent, holistic redress system that is developed through a survivor-led process.
20. The Royal Commission outlined its current views on the general principles required of an effective redress process:
- 20.1 being consistent with the Crown’s obligations under Te Tiriti o Waitangi⁷ and the United Nations Declaration on the Rights of Indigenous Peoples;
 - 20.2 being open and transparent about how the redress process works;
 - 20.3 offering effective support and assistance to empower claimants;
 - 20.4 setting a reasonable threshold for proving abuse or demonstrating harm;
 - 20.5 acting independently, and making fair and consistent decisions;

⁶ Royal Commission of Inquiry “From Redress to Puretumu Torowhānu” (December 2021) Abuse in Care <[abuseincare.org.nz](https://www.abuseincare.org.nz)> at <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/>.

⁷ A Treaty signed between Māori and the British Crown in 1840, the founding document of Aotearoa New Zealand.

- 20.6 being timely and communicate with claimants;
- 20.7 helping claimants get records that are as complete as possible;
and
- 20.8 being consistent with international human rights principles by providing effective and accessible remedies, and including elements of restitution, rehabilitation, compensation, prosecution and guarantees of non-repetition.
21. The core functions of the future redress system outlined by the Royal Commission are that it is widely known and trusted, to:
- 21.1 provide a safe, supportive environment for survivors to talk about their abuse;
- 21.2 facilitate acknowledgements and genuine apologies by the relevant institutions;
- 21.3 facilitate access to support services, financial payments and other measures that enable te mana tangata;
- 21.4 provide redress that helps restore the health and wellbeing of survivors' redress; and
- 21.5 make recommendations on identified issues, to help prevent further abuse in care.
22. The Royal Commission recommendations included that:
1. The Crown should establish a puretumu torowhānui [holistic redress] system to respond to abuse in State care, indirect State care and faith-based care that:
 - › acknowledges and apologises for tūkino,⁸ or abuse, harm and trauma, done to, and experienced by, survivors, their whānau, hapū, iwi, and hapori or communities
 - › aims to heal and restore individuals' mana, tapu and mauri
 - › takes decisive and effective steps to prevent further abuse.

⁸ Tūkino is, in this context, abuse, harm and trauma. It includes past, present or future abuse, whether physical, sexual, emotional, psychological, cultural or racial abuse; or neglect, which may also include medical, spiritual or educational neglect, experienced by individuals and their whānau, hapū, iwi and hapori or communities in the care of State and faith-based institutions

[...]

12. The Crown should set up a fair, effective, accessible and independent puretumu torowhānui scheme to help survivors and their whānau affected by abuse in State care, indirect State care and faith-based care to achieve utua kia ea or heal the vā, heal the relational space between all things, and help prevent abuse in care.
13. The principles, values, concepts, te Tiriti obligations and international law commitments that will guide the design of the puretumu torowhānui system should guide the design and implementation of the puretumu torowhānui scheme.
14. The membership of the governance body for the puretumu torowhānui scheme should give effect to te Tiriti o Waitangi, and reflect the diversity of survivors, including disabled survivors, as well as including people with relevant expertise.
23. As a result of its ongoing investigations, the Royal Commission may issue further findings and recommendations related to redress in future interim reports and/or its final report, due in June 2023.
24. Although such further recommendations on redress may be issued, the New Zealand Government recognised that the Royal Commission’s December 2021 interim report identified an urgent need for a significant shift from current settlement-based claims processes to an integrated support-based approach to redress. At the time the interim report was released, the Government announced that it would develop an independent survivor-focused redress system.⁹ The Committee’s recommendations in respect of Mr Richards have confirmed the need for this work.
25. Work on a new redress system is being coordinated by the Crown Response Unit (**the Unit**), which was established to organise the Crown’s response to the Royal Commission.¹⁰ The Unit operates under a set of six principles that

⁹ Hon Chris Hipkins and Hon Jan Tinetti “Survivors of abuse in state and faith-based care will have access to new independent redress process” (press release, 15 December 2021) at <https://www.beehive.govt.nz/release/survivors-abuse-state-and-faith-based-care-will-have-access-new-independent-redress-process#:~:text=15%20December%202021-,Survivors%20of%20abuse%20in%20state%20and%20faith%2Dbased%20care%20will,to%20new%20independent%20redress%20process&text=The%20Government%20has%20today%20released,%2C%20survivor%2Dfocused%20redress%20system.>

¹⁰ The Crown Response Unit is governed by a steering group of the Chief Executives of Oranga Tamariki (the Ministry of Children), the Ministry of Health, The Ministry of Education, the Ministry of Social Development and the Crown Law Office. The Unit reports to the Minister for the Public Service and works across all relevant “care system” agencies. The Unit’s role is to:

- coordinate the supply of information and evidence from government agencies to the Royal Commission;
- develop frameworks and templates for agency responses on specific issues;

the Crown committed to in guiding its engagement with the Royal Commission and with survivors. They are:

- 25.1 Manaakitanga (treating people with compassion, fairness and respect);
 - 25.2 openness (to reconsidering how agencies operate now);
 - 25.3 transparency (sharing knowledge and information);
 - 25.4 learning (listening attentively to survivors, and using that information to improve systems);
 - 25.5 being joined up (agencies working closely together); and
 - 25.6 meeting obligations under the Treaty of Waitangi.
26. The Unit is engaging with various survivor representatives (including Māori, Pacific people, deaf and disabled people, rangatahi/youth, and survivors of abuse in State and faith-based care) to assess options for the survivor-focused arrangements to design a new redress system. Mr Richards has been in contact with the Unit about the development of the new system. These options will be put to Cabinet in late September or early October 2022 for a final decision. The Unit will then coordinate the establishment of the chosen arrangements.
27. It is recognised that developing the new redress system will take some time, given the complexity and range of survivor interests involved. In terms of immediate steps to assist survivors, the Royal Commission recommended that the Crown:
- 27.1 establish a listening service to provide a confidential avenue for survivors to share their care experiences once the Royal Commission concludes in June 2023;
 - 27.2 improve records processes for survivors to more easily request, receive, and understand information about their time in care, and

- be the Government response's primary contact-point with the Royal Commission; and
- co-ordinate the response to the Royal Commission's reports and recommendations as these are released.

To facilitate this work the Unit has established several working groups involving ten core government agencies.

- to have an improved sense of control over their care narratives;
- 27.3 set up advance payments to survivors who, due to serious ill health or age, may not be able to engage with the new redress system; and
- 27.4 deliver a national apology after the Royal Commission’s final report has been published.
28. The New Zealand Government has agreed to these recommendations, and the Unit has commenced work on them. Engagement with survivors will be a key part of this work.
29. The New Zealand Government is therefore undertaking significant work to improve the redress available to survivors of abuse in state care, such as Mr Richards. The Committee’s recommendation that the New Zealand Government provide redress to Mr Richards reinforces the need for this work and the New Zealand Government will continue its consideration of this recommendation as it:
- 29.1 develops a new redress framework;
- 29.2 implements the immediate steps recommended by the Royal Commission; and
- 29.3 considers any specific recommendations made by the Royal Commission in respect of the Child and Adolescent Unit.
30. With regard its Convention obligations in this context, the New Zealand Government notes its reservation to article 14, which provides:
- The Government of New Zealand reserves the right to award compensation to torture victims referred to in Article 14 of the Convention against Torture only at the discretion of the Attorney-General of New Zealand.

(c) Publicising Committee’s decision

31. Police and the Ministry of Foreign Affairs and Trade have published the Committee’s decision on their websites.¹¹ The Ministry of Justice will also

¹¹ New Zealand Police “Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions” at www.police.govt.nz/about-us/investigations-and-reviews/commissions-inquiry/royal-commission-inquiry-historical-abuse. Ministry of Foreign Affairs and Trade “Human Rights” at [Human rights | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](http://Human%20rights%20|%20New%20Zealand%20Ministry%20of%20Foreign%20Affairs%20and%20Trade%20(mfat.govt.nz)).

shortly publish the decision on its website.

32. The Committee's decision has also been publicised through various media reporting.