

# Pūtahi te mauri, he wai ora e Connected we find vitality

High-level design for an effective survivor-led and  
survivor-centred redress system

Redress Design Group

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## Pūtahi te mauri, he wai ora e

### Connected we find vitality

We flow into the world with potential and promise. This potential and promise can either thrive and be realised, or not. Like a river, our journey through life traverses rapids and flat stretches, bends and convergences, culminating in our flow out into an eternal ocean. *Ki uta ki tai (from land to sea).*

Wai (water or fluid) connects us from conception to our return back to nature. Our wairua (spirit) is formed in the joining of two waters, our maternal and paternal genealogical lines. As forms of life, wairua and mauri (life essence) are important sources of wellbeing.

The experience of tūkino (abuse, harm, neglect and trauma) in State and faith-based settings has battered the wairua and mauri of survivors. This is the take (issue) at the heart of redress. Redress (utu) is about supporting survivors to restore and heal (ea), so that they may move towards, and realise, wai ora (well-being) and mauri ora (state of flourishing). Pūtahi means to converge or come together. *Pūtahi te mauri* means that through connectedness and collective support, all parts of the individual, the whānau (family), or community are whole and thriving. This can involve survivors healing themselves to move forward, and connecting with whānau or communities to strengthen each other.

Ora is life, to thrive, to prosper, to be well and much more. *He wai ora e* is the manifestation of holistic wellbeing and vitality in which a person's mauri is thriving, and through this, their wairua, tinana (body), and hinengaro (mind) are well.



The green koru of mauri, encased by the two waters of wairua

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E tau nei ki runga i a tātou katoa, te wairua o ngā mātua tūpuna.  
Nā rātou i whakatakoto i te ara hei hīkoinga mā tātou ko ngā uri.  
Kia whakatōkia o tātou ngākau ki ngā tikanga hei arataki i a tātou  
Kia ngākaunui ki te hāpai i a tātou mahi katoa i roto i te pono,  
i te tika, me te māramatanga.  
Me te aroha anō o tētēhi ki tētēhi.  
E Rongo whakairihia ake ki runga.  
Tūturu whiti whakamoua kia tīna! Tina! Haumi e, hui e, tāiki e!

May the spirits of our ancestors be with us all.  
They paved the way for us to follow.  
Let our hearts be guided by our values and what is right.  
Let us be brave in all that we do, uphold what we know to be  
true and just.  
Most of all, let us remember to love and take care of one another.  
Rongo, suspended high above us.  
Let this be my commitment to all! Draw together! Affirm!

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## Prologue

We acknowledge the commitment of the Crown in setting up the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (Royal Commission) in 2018. We also mihi to government for committing to a survivor- and Māori-led high-level design process. We recognise this as innovative and world-leading in laying the strongest foundations for redress, healing, and the prevention of future abuse in care, as well as intergenerational harm. We implore the incoming government to enable these foundations to continue to be built from, so that survivors' hopes are not once again dashed, harm is not further perpetuated, and trust is able to grow.

Above all, we mihi (acknowledge) to all the survivors who have shared their experiences with the Royal Commission. We acknowledge their bravery and leadership in driving change. We see the cumulative power of their sustained calls for inquiry, and the painstaking efforts by many through the Royal Commission to prevent future tūkino (abuse, harm, neglect and trauma) from being perpetrated. We have worked our hardest in developing these proposals to support their drive and leadership to the same goals.

We also mihi to those who are not included in the expanded scope we have proposed. We debated prisoners' eligibility for redress vigorously, recognising that their abuse while incarcerated is a breach of the safety and care that they might reasonably expect from the State and other institutions. The issue of jurisdiction ultimately compelled our decision, but we would ask that this is reconsidered in the redress detailed design and implementation planning.

The majority of people appointed by the Minister for the Public Service to the Design and Advisory Groups are survivors of abuse in State care and faith-based settings. We have undertaken this difficult and confronting work seeking to support our fellow survivors. We recognise that our advice needs to put forward the most compelling case to the Ministers who will make decisions on it, as well as to government agencies and to the Crown Response Unit as they lead through the detailed design phase. But our primary audience throughout is always our fellow survivors and advocates, who we have been asked to work on behalf of and who are the intended users of our complete set of detailed proposals.

We have therefore set out our full response to each of the Terms of Reference, in order to give instructions for the detailed design phase that are as clear as possible. This is important to ensure the expedience and efficiency of the detailed design phase, and to ensure a survivor-led view is both clearly understood and prioritised. Moreover, we need to ensure survivors see the full range of our considerations so the rationale for these and any trade-offs we have had to recommend are also clear. We hope that our proposals will be able to be widely shared in full with survivors as soon as possible.

Achieving an effective and supportive *Survivor-Led Redress System* (System) for survivors is our overarching focus and concern, and that is the question we have challenged ourselves with throughout the development of our proposals – how is this going to work better for survivors? While we cannot expect to achieve a perfect System, and inevitably there will be some who fall outside the criteria for support, we believe that our proposals will support a

much wider range of survivors to receive greater degrees of justice, healing, and resolution through redress than will be attained otherwise, and most certainly than will be achieved in the current circumstances, which lack a cohesive system. We have endeavoured throughout our work to answer our Terms of Reference both as ambitiously and as practically as possible, so that survivors have the greatest chance of being supported in what they need, in a timely, sustainable, and sustained way.

Survivors have borne the considerable costs of abuse and harm perpetrated by the State and faith-based settings over decades. This tūkino has taken a grave toll on survivors' health and wellbeing, their quality of life, and their opportunities. Investment in an effective Survivor-Led Redress System now will save ongoing costs across the care, health, justice, and disability systems, through alleviating and addressing these high levels of need and curbing harm to future generations. As redress work transitions into detailed design, we would like work to be undertaken to forecast demand and need scenarios that will help set the scale of the system, so that the right investment can be made at the right times.

We provide our responses to each of the Terms of Reference in the second part of our report, setting out our specific proposals against each of the five Terms of Reference. Part 2 outlines the background, context, and essence of our proposals as a whole. Our summary view is intended not only to provide the essence of our proposals but to show the overarching connections between them, drawn together into one cohesive view. In particular, we want to stress that, while the Terms of Reference provide a linear framework, we do not wish our proposals to be understood as linear or in isolation from one another. They are a combined package and need to be understood as such.

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## Executive summary

In response to the report from the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions (Royal Commission) on redress, *He Purapura Ora, he Māra Tipu: From Redress to Pūretumu Torowhānui*, Cabinet, following an independent selection panel process, appointed us, the Redress Design Group (Design Group), to represent the diversity of survivors of abuse in State care and faith-based settings. We were tasked with leading the high-level design of a new redress system. The *Survivor-Led Redress System* (System) has been designed to enable us to determine our own paths to healing and is in deliberate contrast to the many care settings that harmed us.

Enabling us to determine our own paths to healing will also enable collective healing for whānau (families) and communities harmed because of the abuse of parents, elders, and whakapapa (genealogy). Harm – which, like the Royal Commission, we name throughout this report as tūkino (abuse, harm, neglect and trauma) – impacts not only individually, but also collectively. It is clear in Aotearoa New Zealand that tūkino caused by State and faith-based settings has been passed on to next generations. We cannot afford, as a nation and as a society, to let this continue. Effective redress therefore, beyond being the just and right thing to do by survivors, offers an efficient investment and return to the wider public.

The harm needs to stop. Therefore, we have seized this critical opportunity that has arisen from being asked to lead this work. It has been a challenging and confronting process at times. However, through this process, we believe we have arrived at a set of proposals that, if implemented, will deliver effective pathways for healing for survivors and therefore also for Aotearoa New Zealand as a whole.

We have been gifted the name *Pūtahi te mauri, he wai ora e* for our report by Che Wilson. This whakataukī (proverb) is particularly fitting because it represents what each survivor brings from their life experiences and their journeys so far, and how, through personalised redress, they may be supported to realise vitality and wellbeing, mauri ora (state of flourishing) and wai ora (well-being).

### Terms of Reference

Our Terms of Reference for High Level Design asked us, the Design Group, to produce independent, high-level design proposals for the new Survivor-Led Redress System, that covers:

- a. feedback on the System's intended principles, purpose, functions, and scope, drawing on the recommendations of the Royal Commission and agreed in principle by Cabinet;
- b. how the System should safely connect with and support survivors and whānau to navigate their redress journey – how redress needs to “look and feel” to give survivors confidence in the System and to provide them with a safe, accessible, trauma-informed, and culturally responsive redress experience;
- c. the types and mix of services and supports that should ideally be provided as part of each of the System's functions;

- d. feedback on apology and payment frameworks, and any draft redress models and example proposals, provided by the Crown Response Unit with a focus on what is needed to support meaningful recognition of the harms people have experienced; and
- e. an outline of the critical issues that will need to be considered as part of the detailed design and implementation planning in order to give effect to the overall design.

### How we have responded to the Terms of Reference

We have responded in two complementary ways to the Terms of Reference. Following the linear format of the Terms of Reference, we have responded specifically, and in some detail, to each component in Part 2 of our report, in order to provide the detailed design phase as much guidance as possible, as they work towards implementation by 2025. We provide deliberations, insights, and recommendations to minimise re-litigation of the various complexities navigated in high-level design. We intend that Part 2 can be utilised repeatedly throughout the next two to five years as detailed design transitions into implementation and the System is in its first years of operation.

We have also felt it necessary to communicate the collective sum of our proposals. We do this in Part 1 so that the deliverables are understood as more than component parts. The individual responses to the Terms of Reference must be understood as a whole so that both survivors and the nation get the returns that are desperately needed from effective redress.

### Our proposals summarised

#### **Our vision for redress**

Our over-riding vision is for the establishment of a Survivor-Led Redress System that supports the reclamation of survivor mana, healing, and justice through survivors exercising autonomy and control over their redress and healing journeys. Survivors will have access to seamless support that recognises the harm done to them and provides resources to address the long-term consequences. This will also inform the System to prevent intergenerational harm and future harm from care settings.

#### **The management and governance entity**

We envision the Survivor-Led Redress System as comprising a hub and spoke model for service and support coordination, and delivery, with the following features:

- a structure of devolved decision-making and power sharing, while being centrally coordinated and managed;
- an entity with an empathetic central intelligence system, which delivers support and connection out through its multiple arms, enabling the arms to deliver through their independent intelligence and explore new options while feeding back in for coordinated activity and evaluation of their collective impact; and
- the reach and breadth that management and governance entities will need, as well as the depth of heart and commitment needed to serve survivors.

We recognise, however, that as part of detailed design, a process will be needed to agree the form of governance and how it is mandated, and to ensure that all key survivor groups are represented in its decision-making and oversight.

We know that survivors want the maximum amount of resourcing and support to go to survivors' needs rather than to bureaucratic structures and processes. We agree that bureaucracy needs to be kept to a minimum, but inevitably a central entity is essential to managing redress and coordinating and delivering the Survivor-Led Redress System. Establishing the central entity is one of the first tangible steps that needs to be taken in building the System.

The central entity will be responsible for ensuring that the Survivor-Led Redress System can deliver for survivors. However, outside of payments, navigation services, and personal apologies and acknowledgements, it should be possible to implement much of the delivery through various commissioned external services and supports that are closer to survivors (both geographically and based on existing trusted relationships within unique survivor communities).

The central entity should be located close to the Crown agencies that it will need to negotiate with. This will be necessary to simultaneously connect the Survivor-Led Redress System with relevant government systems, for example, the Accident Compensation Corporation (ACC), Ministry of Social Development, Oranga Tamariki, and other agencies, while protecting the integrity of the System on behalf of and for survivors. It will be charged with managing the performance of the System, from outreach aimed at proactively raising awareness of redress for survivors, through the *whakatau (welcome) payment*, to connecting survivors to existing services and innovating for new services and supports, through to apologies and further monetary payment options. It will also be responsible for enabling public confidence as to the integrity, effectiveness, and ultimate value of the System.

We believe that the value of the Survivor-Led Redress System will be amplified by not only responding to survivors, and thereby reducing intergenerational harm, but also identifying and reporting current abuse patterns and themes. Identifying the risks of further harm so that it can be prevented is of critical importance to many survivors.

#### *Proposed funding for the entity*

To ensure long-term sustainability, we recommend that the Crown appropriates a significant capital amount, to be managed by the Survivor-Led Redress System, which uses investment earnings to fund the operating budget (see our response to ToR 5). The initial endowment would need to comprise capital sufficient to enable the programme to become self-funding. This would probably need to be accompanied by significant funds to meet startup costs and the first few years of monetary claims. Relevant models include the NZ Super Fund and ACC.

The capital fund should be survivor-governed, and having the redress programme that become self-funding out of investment earnings would eventually provide significant and real independence from government.

## Responding to and supporting survivors

The Survivor-Led Redress System represents a fit-for-purpose system that supports past, current, and future survivors of abuse in achieving redress. This will require an independent survivor-led entity, with survivor-facing and system-facing functions to deliver monetary payments and personal apologies, coordinate access to survivor-elected services and supports, and monitor and report on the System's performance as well as progress towards the eradication of abuse in care.

The Survivor-Led Redress System is future focused while equally addressing past and current abuses. As part of being survivor-led, it must also be both Te Tiriti o Waitangi-led and Māori-centric. The System will give effect to the provisions of Te Tiriti o Waitangi through ensuring honourable *kāwanatanga* (government), *rangatiratanga* (self-determination), and equity, underpinned by Māori ways of knowing, being, and doing (*mātauranga*, *te reo*, *me ōna tikanga*).

The Survivor-Led Redress System will be founded on core principles that reflect and build on those identified by the Royal Commission. Our **first and foundational principle** is that redress must be **survivor-led, mā tātou, mō tātou, by survivors and for survivors**. It is critical that the process is survivor-led, both through supporting each survivor to develop and achieve their individual, self-determined path forward and through the management and governance needed to oversee the System. Our principles also reflect that the System must be Māori- and Tiriti-informed and centred, considering the considerable disparity in the targeting of State abuse of Māori over many decades. **Mana motuhake**, or **autonomy and self-determination**, is a core guiding principle of and for the System, reinforcing the necessity of being survivor-led with each survivor able to design and determine their own path of redress. These broad principles are situated within a more detailed set of principles, all of which we believe are necessary to guide a System that can deliver what survivors need.

Our principles sit alongside our outline of the purpose of the Survivor-Led Redress System, its scope, and its functions as requested in our Terms of Reference. To these, we have added a proposal for a lead role in monitoring the System. This is in response to the concern expressed universally by survivors that systems of care must not perpetuate abuse and produce further/future survivors.

We envision that the monitoring aspect of the Survivor-Led Redress System will have an inward focus on monitoring the System itself and its delivery of redress, as well as an outward focus on monitoring the provision of support by the System and in State and faith-based settings. We propose creating new legislation to give the System the ability to monitor, investigate, and advocate for system-level improvements in the provision of care, including the eradication of abuse. This would include powers such as the ability to request information from any State or faith-based setting, and the ability to monitor the progress and action on any recommendations made by the System to other entities responsible for people in care.

In response to the second through to fourth terms of the Terms of Reference, we provide our overarching vision as set out above. We believe our vision captures the overall look and feel needed of the Survivor-Led Redress System and requested under our second term of

reference. Specifically, survivors are provided a safe, accessible, trauma-informed, and culturally responsive redress experience in place, as well as the apology and monetary payments we believe are needed to support meaningful recognition of tūkino.

To achieve our vision, we propose that each survivor will start their journey through receiving a *whakatau (welcome) payment*. We purposefully name this opening payment as ‘whakatau’, as to us this means to make welcome, to be informed, and to help settle within. We want survivors to feel they are welcome, valued, and believed, and can trust they will be supported appropriately and in the way that works for them.

We recommend a flat rate payment of \$10,000. We rigorously debated the amount the whakatau payment should be set at, challenging ourselves to identify an amount that would be meaningful for survivors, enable them to believe the promise of redress, and encourage them to engage. At the same time, we did not want to set the amount so high that degrees of assessment would be required; this would risk retraumatising survivors from the outset of their engagement. It is essential that a survivor can start to access redress provided they can establish, through filling in a brief and non-intrusive form independently or with the support of kaimahi (personnel), that they were in State or faith-based care and were abused in that care.

Once the survivor is provided with a whakatau payment, they will be able to access support and services matched to their needs and as determined by the survivor. Integral to accessing support is the provision of navigators who will support them through their individual redress journey, if required. This person could be a navigator employed by the Survivor-Led Redress System or someone the survivor is already working with who could be resourced and trained by the System to be the navigator. As well as helping to access services and supports, the navigation role can include supporting the survivor to design a personal apology from the State and/or faith-based setting/s that harmed them, and to access a monetary payment (see below for further details on our proposals for apologies and payments).

### **Functions of the central entity**

The central entity will be needed to build and deliver a range of functions, including:

- initial proactive engagement and promotion of the Survivor-Led Redress System to survivors so they are aware of the system and how they can easily engage with it;
- initial conversations with survivors to begin the redress journey and unlock the whakatau payment;
- a workforce of navigators to provide advocacy and support to survivors to design their own individual redress journey. Notably, training will be needed to ensure the workforce of navigators is trauma-informed and trauma-competent, as well as to ensure more specialised skills that some survivors will need from their navigators are in place;
- facilitation of personal apologies for each survivor who wishes to receive one or more apologies or acknowledgements from the State and/or faith-based settings responsible for their tūkino;

- a monetary payments system for survivors who wish to pursue further payments, including a system for assessment, review, and calculation to ensure payments are made in an equitable and sustainable manner; and
- the skills and capacity to hold the investment funds the System will need, to ensure certainty of funding and ability to invest in order to maintain a sustainable fund for future survivors.

To break down the workforce requirements further, once a survivor has entered the Survivor-Led Redress System, they will be offered the support of a navigator to work with them to design their individual redress journey. It is vital that the survivor is comfortable with, and confident in, their navigator so that a trusting and enabling relationship can build.

There will therefore need to be a significant pool of navigators in place who are trained in trauma and in advocacy. Navigators within this pool will need some specialist skills; for example, some will need to be able to support survivors who want to know and connect with their whakapapa. There should also be pathways for survivors to be trained to become navigators themselves, as the lived experience of survivors will be valuable, offering a level of understanding and advocacy that some survivors will want. The survivor must be able to choose their own navigator; this includes bringing in their own navigator and/or changing to someone who they relate to best so that there is the right fit in support for them.

### **The organisational form of the *Survivor-Led Redress System***

The Design Group recommends a flat-structured system in which the central entity operates a range of high-level national functions and commissions the delivery of specific services to entities regionally, nationally, and internationally.

Predicated on the Royal Commission's concept of a Puretumu Torowhānui scheme, our recommended system involves a central entity responsible for:

- facilitating survivor redress activities;
- holding and managing some redress resources;
- holding and managing relationships with external suppliers who will provide redress services;
- delivering redress services where appropriate;
- ensuring redress is delivered in the way that a survivor needs it to be;
- responding to the needs of diverse survivors; and
- maintaining distance between the State, faith-based settings, and survivors.

### **Importance of personal apologies and acknowledgements**

Receiving a personal apology and/or acknowledgement of their abuse is an absolute priority for many survivors. Accordingly, facilitating meaningful personal apologies and acknowledgements is a key purpose of the Survivor-Led Redress System. This will require both system-facing and survivor-facing components. Navigators within the redress entity will work

to secure accountability from State agencies and faith-based settings, including by State agencies and faith-based settings apologising directly to survivors.

Navigators will work directly with survivors in the development of a personal apology or acknowledgement (or series of apologies or acknowledgements if more than one State agency or faith-based setting is responsible for the tūkino endured by the survivors) that is meaningful for each survivor and meets their needs and wishes. We recommend that seeking apologies from individual offenders/perpetrators is outside the scope of the Survivor-Led Redress System; however, navigators will be available to support survivors who wish to pursue legal or other proceedings.

### **Monetary payments**

Many survivors have been tremendously affected by ongoing impacts from their abuse, which for many include the unquantifiable but serious loss of ability to readily fulfil their potential. For example, many have received little to no formal education while in care, leaving them with often significantly reduced employment options. This in turn has substantial related impacts, such as being unable to enter the housing market. As a result, many survivors are now nearing retirement with no assets or income to support them and their whānau to have a reasonable standard of living in older age. Others remain without a stable and safe home; we know many of the homeless in our cities and towns will be survivors of abuse. Because of the terrible tūkino caused to so many, we recommend significant monetary payments on behalf of our fellow survivors.

We propose three forms of monetary payments.

1. The *whakatau payment* should be set, we believe, at \$10,000 for each survivor.
2. A *standard claim payment* falls within a broad range from \$30,000 to \$400,000 per survivor. That broad range enables meaningful payments, including options for survivors to have the impacts of their specific tūkino acknowledged. To enable survivors to have clarity and transparency as to what they will potentially be entitled to within this range, and to reach their own level of meaningful payment for their tūkino, assessors will use two matrices, each with six levels of severity. We have set constituent criteria that meet the core underlying principles we recommend for redress, particularly the principles of mana motuhake (self-determination) transparency, while we believe the principles of equity and manaaki (ethos of care) mean that, where survivors are just below the cusp of a category, they should be levelled up into that next category.

We recommend additional sums of \$5,000 and \$10,000 for survivors who were seriously and extremely vulnerable, respectively. Those values acknowledge circumstances in which there was a greater need for care and/or that could make the abuse suffered a greater betrayal.

3. The *whānau harm payment* is available for members of whānau who have been cared for by survivors and thereby potentially impacted by their tūkino also, to help prevent further intergenerational harm. We recommend this is set at \$10,000, so that it is neither more nor less than the whakatau payment that survivors will receive.

Reflecting our foundational principle of survivor-led, we believe that the first focus of monetary payments is to ensure money can start flowing to survivors. Therefore, the mechanisms for accessing and distributing the whakatau and standard claim payments need to be prioritised so they are up and running as quickly as possible, as survivors must be the priority. It is very important in particular that the whakatau payment can begin to be rolled out to survivors who were tortured in care; this will include a substantial number of Lake Alice survivors and may also include survivors tortured in other care settings. Other survivors who are elderly or unwell should also be able to receive the whakatau payment as soon as possible. To us, this means that the whakatau payment should be up and running in 2024 if at all possible; otherwise some alternative mechanism for early payments will be needed.

### **Next steps to activating redress**

Our fifth term of reference asks that we set out matters for detailed design. In response, we consider that, for the opportunity of a survivor-led redress system to be realised as quickly as possible, a number of steps need to be taken in sequence.

These steps are within the imperative that the mindset for detailed design must be founded on survivor leadership. This means that a first step in moving into detailed design should be the establishment of an interim survivor-led kaitiaki leadership group.

The kaitiaki (guardian) leadership group would work with the Crown Response Unit, starting as soon as possible, to build and maintain survivor confidence in next steps and to guide detailed design. This will include:

- gathering the information needed to decide on the scale of the system, considering the significant information gaps that exist now and that must be bridged if the right investment is to be made at the right times;
- guiding information flows out to survivors as to the process for responding to the Royal Commission's final report, due in March 2024;
- establishing regular, transparent communications and information flows to survivors as to progress in establishing the system, and how they will be able to input to it. This should include regular surveying of survivor views as to what they want from the redress system, as well as checking what is working well for them from existing services and supports and what could be built on;
- leading development of system prototyping, including for options to have whakatau payments in place as quickly as possible;
- developing the form and function of the central entity and establishing the strategy and principles for its long-term governance and management;
- through a significant scoping exercise that builds a detailed understanding of existing services and supports, identifying where the gaps are and what the opportunities to expand or extend existing effective services and supports are;
- using this scoping exercise as a critical input to informing the workforce and training strategy that the Survivor-Led Redress System will need, particularly for the scale of

the navigator workforce that will be needed to deliver individual pathways to healing and justice for survivors;

- developing the requirements for making monetary payments and establishing early redress funding; and
- identifying the range and sequencing of legislative changes that will be needed to enable the System.

As the detailed design progresses, moving closer to June 2025 we would expect to see:

- delivery of prototypes testing to deliver insights and learning, which will form part of a process of continuous improvement and evaluation of impacts from the system;
- high-level project planning moving into planning for the long-term development of the system;
- an adequate navigator workforce in place for the system going live by June 2025, with a plan agreed as to the ongoing building of the necessary workforce, both in terms of volume and training standards;
- development of both a procurement and an investment strategy and principles; and
- the initial bulk investment made, together with the establishment of ongoing system survivor-led governance to oversee the system and management and reporting on its performance and fund management.

With the above in place, we expect to see the Survivor-Led Redress System up and running from June 2025. After that, we expect to see a culture of continuous improvement driving innovation and high performance for survivors, proving the return on the public investment.

As the system reaches maturity in its delivery and performance, we would expect to see a comprehensive review undertaken. This should commence by 2030, to inform any strategic or performance shifts needed thereafter.

#### Summary of our key recommendations

We end our executive summary by providing our core recommendations. These should be read within the context of the comprehensive recommendations provided in our responses to our individual Terms of Reference (TOR) in Part 2.

**ToR 1 asks us to provide “feedback on the system’s intended principles, purpose, functions and scope”.**

In response, we recommend amending and expanding the purposes, functions, scope, principles, concepts, and values recommended by the Royal Commission as follows.

- The purposes, functions, principles, concepts, and values developed by the Design Group underpin the establishment of a Survivor-Led Redress System.
- We stress that, within the principles we recommend for adoption, first and foremost is the foundational principle of survivor-led, mā tātou, mō tātou, by

survivors and for survivors. This is supported by the principle of mana motuhake, or autonomy and self-determination for survivors.

- We recommend an amended definition of tūkino to refer to abuse, neglect, harm, and trauma. In this context it includes past, present, or future abuse, whether physical, sexual, emotional, psychological, cultural, spiritual, and/or racial abuse; and/or neglect, which may also include medical, spiritual, and/or educational neglect, experienced by individuals and their whānau(families), hapū (sub-tribe), lwi (tribe), and hapori or communities in the context of their care being entrusted to the State, faith-based settings or other organisations responsible for providing care (including pastoral care) and support services in Aotearoa New Zealand.
- An independent survivor-led entity with survivor-facing and system-facing functions is established to deliver monetary payments and personal apologies and acknowledgements, coordinate access to survivor-elected services and supports, and monitor and report on the Survivor-Led Redress System's performance as well as progress towards the eradication of abuse in care. The system will be forward looking as well as concerned with addressing past and current abuses.
- Aligned with a slightly expanded scope, the Survivor-Led Redress System supports past, current, and future survivors of abuse, non-State survivors, and their whānau (families) who have also been harmed, in achieving redress.
- The Survivor-Led Redress System is both Te Tiriti o Waitangi-led and Māori-centric. The system will give effect to the provisions of Te Tiriti o Waitangi through ensuring honourable kāwanatanga (government), rangatiratanga (self-determination), and equity, underpinned by Māori ways of knowing, being, and doing (mātauranga, te reo, me ōna tikanga).

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**ToR 2 asks us to make recommendations on “how the system should safely connect with and support survivors and whānau to navigate their redress journey – how redress needs to ‘look and feel’ to give survivors confidence in the redress system and to provide them with a safe, accessible, trauma-informed, and culturally responsive experience”.**

In response, we make the following recommendations.

- The Survivor-Led Redress System puts survivors at the centre of its governance and executive. This means that clear survivor and Māori identity and leadership must be omnipresent and sustained.
- The Survivor-Led Redress System must be highly agile and responsive, enabling redress to innovate according to survivor needs and to be tailored to survivor needs. There is no ‘one size’ of redress that fits all survivors.
- At all levels, the Survivor-Led Redress System reflects the diversity of the survivor population and is accessible, effective, timely, communicative, and flexible.
- Key performance indicators are survivor-centric and co-designed with survivors. Systemic success and failure are measured in relationship to how operations and delivery work for survivors.

- Proactive outreach informs and engages with survivors, so they know about the system and that is for them, and can start to access redress.
- The central entity sits within, monitors, and facilitates a comprehensive and responsive range of survivor-led redress experiences.
- The Survivor-Led Redress System recruits and trains navigators, advocates, and other specialised support roles that will be needed for the workforce.
- Survivors can choose navigators, advocates, and supports appropriate to their needs. Recruitment of navigators, advocates, and support people looks to build on existing relationships and expertise.

**ToR 3 asks us to identify “the types and mix of services and supports that should ideally be provided as part of each of the redress system’s functions”.**

In response, we recommend the following.

- The Survivor-Led Redress System supports access to existing services, while also developing survivor-specific services and supports that it will deliver directly.
- The Survivor-Led Redress System facilitates easy and free access to critical services and supports for survivors, and provides navigation, coordination, and advocacy to ensure survivors have access to services and receive full entitlements. This will include ensuring broad awareness of existing services.
- Where required services and supports do not exist, the Survivor-Led Redress System commissions and/or invests in innovation in new services and supports. Similarly, where services and supports do exist but could be more effective and accessible, the System will challenge them and require them to become more accessible and fit for purpose for survivors.
- The Survivor-Led Redress System invests and partners to deliver workforce training and capability building to better support survivors.
- If existing providers have lengthy wait time or capacity issues, the Survivor-Led Redress System should support them so they can prioritise survivors. Similarly, if there are existing services that survivors wish to access, for example, Whānau Ora, the System will work to ensure they have the capacity and capability to deliver to survivors.
- We want to stress that delivery partners do not have to be through established non-government organisations; they could include individuals or organisations that do not necessarily view themselves as traditional providers. Survivors need innovation in services and supports.

**ToR 4 asks us to provide “feedback on apology and payment frameworks, and any draft redress models and example proposals, provided by the Crown Response Unit (CRU) ... with a focus on what is needed to support meaningful recognition of the harms people have experienced.”**

The Crown Research Unit provided us with two frameworks to consider in our work on ToR 4. In response, we make the following recommendations.

#### **Personal apologies and acknowledgements**

- The Survivor-Led Redress System comprises a personal apologies and acknowledgements function that entails system-facing and survivor-facing components.
- We include acknowledgements in addition to apologies if this is what the survivor prefers, reflecting our principle of survivor led.
- Apologies may be made to survivors as part of a process to receive a payment or support services, or may be made in isolation.
- An apology or acknowledgement does not need to come first in the redress process. A survivor may wish to access support services first, to enable them to be in a suitable space to consider an apology or acknowledgement.
- Some survivors may never wish to receive an apology or acknowledgement. It is important that those accessing the Survivor-Led Redress System have options as to which redress functions they can access and when.
- With regard to the national apology workstream, the principles of the Survivor-Led Redress System identified in our response to ToR 1 are equally relevant and must be applied.
- Apologies must not be approached as 'full and final' or conditional. The apology or acknowledgement is not an endpoint; it is a starting point to help survivors and their whānau move towards ea (healing). There has to be the possibility for further dialogue with the Crown and/or with faith-based setting/s regardless of whether or when an apology or acknowledgement is made.
- Apology-related processes should be simple, trauma-informed, accessible, age appropriate, and culturally sensitive to avoid retraumatising survivors and undermining the intent of the apology and/or acknowledgement.
- All survivors, including disabled survivors, need to understand and be able to fully participate in the process. Comprehensive guidance and/or capability building are needed.
- Apology-related processes should draw on and be informed by meaningful apology and acknowledgement principles.

#### **Monetary payments**

- Monetary redress is facilitated by the central entity, with assessments of applications undertaken on the primary foundation of, above all, believing survivors.
- Survivors receive a whakatau (welcome) payment of \$10,000 to welcome them to and support them in starting on their individual redress pathway.
- Personal apologies are facilitated for each survivor who wishes to receive one or more apologies from the State and/or faith-based settings responsible for their tūkino.

- Further monetary payments can be accessed to reflect degrees of tūkino and consequential harm, within a range from \$30,000 to \$400,000; noting that as monetary payments increase, so will the intrusiveness of assessment, in order to apply the correct multipliers and to protect the integrity of the system.
- The significant impact of tūkino on whānau of survivors is recognised through the option of a monetary payment to whānau members who one or more survivors have cared for, to provide support to redress the harm that may have been passed on to them and to prevent further intergenerational harm.
- An investment fund held by the central entity is established to ensure certainty of funding and the ability to invest to maintain a fund for future survivors. We note this will require the central entity to have the skills and capacity to securely hold the investment funds for setting up the Survivor-Led Redress System.
- Whakatau payments start to flow to survivors as soon as possible. Ideally this would be from 2024, but if this is not possible despite best efforts there will need to be alternative monetary payment mechanisms identified and implemented in 2024 for survivors who have pressing need for support. This is important, as some survivors are older people or receiving end-of-life care or living with multiple and complex comorbidities and need support to access redress immediately.
- Monetary payments must be inclusive of survivors of abuse in faith-based settings from the time when the Survivor-Led Redress System is established. Cost recovery from faith-based settings is a matter for the State to pursue and cannot be a reason for failing to provide survivors of abuse in faith-based care with the redress they need as quickly as possible.

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**ToR 5 asks us to provide “an outline of critical issues for detailed design and implementation planning”.**

In response, we make the following recommendations.

- The mindset for detailed design must be founded on the necessity of survivor leadership. This means that a first step in moving into detailed design should be the establishment of an interim survivor-led kaitiaki (guardian) leadership group.
- The interim kaitiaki leadership group will work with the Crown Response Unit, starting as soon as possible, to build and maintain survivor confidence in next steps and to guide detailed design.
- First steps in the detailed design should:
  - focus on gathering the information needed to inform the scale of the system, considering the significant information gaps that exist now and that must be bridged if the right investment is to be made at the right times;
  - guide information flows out to survivors as to the process for responding to the Royal Commission’s final report, due in March 2024;
  - establish regular, transparent communications and information flows to survivors as to progress in establishing the Survivor-Led Redress System, and how they will be able to input to it. This should include regular surveying of survivors’ views on

what they want from the redress system, as well as checking what is working well for them from existing services and supports and could be built on;

- lead development of system prototyping, including for options to have whakatau payments in place as quickly as possible;
- develop the form and function of the central entity, and establish the strategy and principles for its long-term governance and management;
- through a significant scoping exercise that builds a detailed understanding of existing services and supports, identify where the gaps are and what the opportunities to expand or extend existing effective services and supports are; and
- use this scoping exercise as a critical input to informing the workforce and the training strategy that the Survivor-Led Redress System will need, particularly for the scale of the navigator workforce that will be needed to deliver individual pathways to healing and justice for survivors.

Proactively released under commitment to open government

## Part 1 – Context

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### *Poem – Where will we land?*

*How do we keep our hearts in place as we rise up for the recognition that is our life?*

*Will our hearts be lost to the system?*

*As the System groans on its axis to respond*

*Bleeding out across our faces as we expose ourselves to the harshness of the four winds.*

*Will the winds sweep us up together,*

*placing us gently in a way we've never felt before,*

*or will the winds be fierce,*

*howling its justification for its brutality back at us.*

*But as the winds die down what will be left*

*In the stillness of the day*

*Where will we land?*

*Who are we now?*

## Survivor voices

The poem above is one in a series composed by a member of our Redress Design Group (Design Group). The poet captures the essence of the group's process as we revisited our own survivor experiences in order to appropriately reflect the impact of abuse suffered by all survivors in the work we were tasked with. These poems express our collective feelings, grief, and hopes. We include a selection throughout our report. The full set of the poems is included in Appendix 1.

Integral to our high-level design has been the need to consult with specific survivor groups. We specify these perspectives because these survivor groups have been particularly marginalised, while noting many survivors might identify across several of them. The *Survivor-Led Redress System* (System) must be purposefully designed to be able to meet all survivors' needs. It is because there is such diversity of survivors and survivor experience of tūkino (abuse, harm, neglect and trauma) that a maximum degree of flexibility and agility is an absolute requirement of the new System, with no predetermined pathways or entry points. The outcomes needed will simply not be achieved without flexibility for each survivor to identify and be supported to travel their own unique path through redress.

Through our deliberations, the invaluable input of survivors from the Advisory Group, and broader consultation, the unique experiences of a variety of survivor cohorts were shared, specifically the survivor cohorts of: Māori; disabled people; Lake Alice, State care, and faith-based setting survivors; Pacific peoples; tangata takatāpui, MVPFAFF, and LGBTIQ+; adoptees; and rangatahi (youth). While survivors share common experiences of tūkino, they are also heterogeneous, and specific cohorts will have specific experiences and needs. Further,

while each cohort may share common experiences, individuals within that cohort will have their own unique journeys.

The following survivor voices are included to remind decision-makers of the people who must always be kept at the forefront of their considerations of our high-level design proposals. The tūkino done to survivors, as expressed in their poems and reflections, has brought about the need for redress. It is important that decision-makers always remember that these proposals are for New Zealanders who were hurt terribly by State and faith-based settings, when they should have received care, respect, and dignity instead.

- Māori survivors were disproportionately targeted to be taken into State care, and purposely dislocated from whakapapa (genealogy), tikanga (customs), and reo (language), from their hapū (sub-tribe), Iwi (tribe), and hāpori (communities), as well as from their whānau (family). Māori survivors' rights under Te Tiriti o Waitangi were breached in numerous ways, repeatedly and over long periods of time. We heard from tangata whenua (indigenous peoples) survivors that, in order to address this experience, redress must:

*"be survivor-friendly and not based in government or faith-based settings. Te Pūretumu Torowhānui will be in regional areas, small towns, and rural locations. That is, the system will be established everywhere survivors live throughout Aotearoa. Buildings will reflect the creative cultural integrity of Māori survivors and their whānau. The mana (dignity) of Māori survivors will be upheld whereby people can easily access Te Pūretumu Torowhānui and feel safe, supported, and valued. It should be a fair, transparent, and non-hierarchical process led by our 'pā harakeke' (generational) communities."*

- Disabled survivors told us that, *"Mana motuhake (self-determination) supports our voice over the voices of others: disabled survivor-led and no barrier to access. The mana is that it is available to everyone. [There needs to be] an increase in understanding that disabled survivors are part of the survivor community. Currently there is not enough fundamental understanding of disabled people being part of the redress system."*
- Lake Alice survivors told us that, *"People don't believe Lake Alice survivors because it seems too far-fetched to believe what happened there."* Some survivors of torture at Lake Alice asked us to name what happened to them in the words they use. The experience of many was not an abstract, legally or euphemistically contained experience; it involved the violent rape of and experimentation on children and young adults, designed to hurt them and make them afraid, powerless, and unvalued.
- For this reason, it is very important – as we have already noted – that the *whakatau (welcome) payment* can roll out to survivors who were tortured in care as soon as possible; this will include a substantial number of Lake Alice survivors and may also include survivors tortured in other care settings. Other survivors who are elderly or unwell should also be prioritised to receive the whakatau payment in the first tranche.
- State care survivors experienced the State not as the parent in lieu of the family they had been removed from, but as an indifferent agent or harmful perpetrator of the tūkino they suffered in many residences and placements, residential schools, psychiatric hospitals, and

other health settings. This tūkino cuts deep, expanding to subsequent generations, and leading to considerable distrust of the State:

*“It’s specifically important to advocate for the rights of survivors of state care abuse and neglect. The children, adults, and elderly share the common thread of having endured immense suffering, which resulted in the loss of education, career opportunities, financial stability, and the ability to pass on family legacies. Children, initially placed in state care for protective purposes, are now facing the harsh reality of earlier abusive experiences – finding ourselves constantly hindered within our personal growth which is intergenerational. It’s crucial He Pūretumu Torowhānui has the ability to offer specific resources to abuse survivors of state care to help survivors and their families rebuild their lives and regain the opportunities they were unjustly denied.”*

- Faith-based setting survivors shared the wide-ranging physical, sexual, emotional, cultural, and spiritual abuse they were subjected to, as well as the desecration of their spiritual wellbeing. We heard that *“It is also important that those assessing the evidence and determining the impacts of abuse have an understanding of the particular depth of harm caused by abuse in faith-based institutions. When the abuser was viewed by the survivor as a representative of God, the consequences are often devastating for them – it is sometimes referred to as soul murder.”* The impact of spiritual abuse has complicated some survivors’ ability to recover a sense of spiritual wellbeing, and has caused ongoing pain in their faith journeys, or as they seek to be part of faith-based communities.
- Pacific survivors of abuse spoke to the deep disconnection and isolation from their aiga, fono, communities, culture, and languages. These connections are essential where identity is generated from collective action in families, villages, and communities. Acts of interpersonal and institutional abuse leave Pacific survivors in a precarious state, seeking to uphold their identity without the backing of family and community. As noted by Pacific survivors:

*“Concepts of belonging, like that expressed in the Samoan term fa’asinomaga, are disrupted by abuse, causing harm to both the abused individual and their aiga and their place and belonging in a network of family relationships and culture. Tui Atua Tupua Tamasese Efi describes fa’asinomaga in this way:*

*‘I am not an individual; I am an integrated part of the cosmos. I share divinity with my ancestors, the land, the seas and the skies. I am not an individual, because I share a tofi (inheritance) with my family, my village, and my nation. I belong to my family and my family belongs to me. I belong to my village and my village belongs to me. I belong to my nation and my nation belongs to me. This is the essence of my sense of belonging.’*

*Abuse is intricately intertwined with spiritual abuse or imbalance of the vā and as an abuse to the essence of belonging.”*

- Tangata takatāpui, LGBTIQ+ and MVPFAFF survivors often experienced targeted physical, sexual, cultural, and spiritual abuse because of their sexual orientation. This includes conversion therapy:

*“... when the pastor found out about my sexuality, I was told that I would go to hell if I ‘gave into the temptation’. The pastor and my parents made me attend conversion therapy.*

*I had therapy twice a week. There were multiple deliverance sessions. I lost my leadership position in the church. They treated me like I was contagious. I became more and more depressed, and I couldn't think of any way out other than killing myself. It was only when I woke up at hospital, I made the choice to leave the church. It meant leaving everything I knew but it was the only way I was able to survive. Leaving was hard, it's taken me years to learn to love myself. I don't think people outside of abusive faith settings know the power of spiritual abuse."*

- Survivors of forced/closed adoption lost connection with their whakapapa and whānau/fono (families), as well as a sense of knowing who they are and who they belong to. This caused a raft of psychological and emotional effects, and a particular form of intergenerational trauma through the loss of ancestry for children and grandchildren. The ramifications of closed adoption continue for many, including for many Māori survivors of closed adoption:

*"Today, finding Māori whakapapa (genealogy) can still be problematic for Māori adoptees, as the connection to hapū (sub-tribal) and Iwi (tribal) affiliations of often birth fathers, were not necessarily recorded in the adoption file or in the original birth certificates ... In such cases, adoptees are and were reliant on what their birth mother choose to share or not to share ... Even when names were known, and not redacted from adoption files, finding whakapapa can be and still is very intense, emotional and a time-consuming process with little or no support or resources for adoptees. For many Māori adoptees, closed adoption led to the outcome or consequences that saw the severing of whakapapa connections to whānau (families), hapū, and Iwi. This has had lifelong and intergenerational impacts on Māori adoptees."*

- Rangatahi (youth) survivors, whose experience of abuse in care is more recent, are particularly concerned about whether changes to the current care and protection system for children and rangatahi are delivering what they needed but did not receive. Their voices reinforce that the tūkino is not historical; it is ongoing. Often tamariki (children) and mokopuna (grandchildren) of survivors, rangatahi voices emphasised the importance of intergenerational healing:

*"When you feel like you don't belong and when you're constantly shunted from pillar to post, you just, you feel, less than a human being ... children in care, we've been through a whole lot of battles that people could hardly imagine, so we're stronger than we think. You've just got to realise you've overcome so many challenges. This is just another one. It's hard, but you've got to be strong for yourself."*

*This is a once in a lifetime opportunity for us to recognise the failures of the State and to acknowledge the lifelong and intergenerational effect this has had on our survivors of abuse. The State has harmed generations of my whānau (family), this is a chance to bring some form of justice and recognition ... I entered the care of the State at the age of 5 and left at 17. I began my advocacy career the moment I left the system."*

*"The ability to positively impact and change lives is important to me. This is an opportunity to heal generations. Break generational trauma and harm. To be circuit-breakers and agents of change. We can allow people to heal so they can live their best lives."*

*I am a strong advocate for survivors because I am one. When I was young, I remember my dad looking at me with tears in his eyes saying, 'I can't get out of this gang life Bubby, but you can and when you do, come back and get your siblings.' I believe in a world where we can all be free from suffering and healing is the answer. This work is important because I don't want anyone to suffer like how I suffered. For my children, my grandchildren, the grandchildren of my people and the grandchildren of Aotearoa (New Zealand). This is my why."*

These selected reflections convey the depth of feeling and need that survivors have for redress.

This report outlines our high-level design proposals for the Survivor-Led Redress System, for survivors of abuse – tūkino – in State and faith-based settings. Our proposals are provided in response to the task set in the Terms of Reference. These were developed following the recommendations set out in the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions' (Royal Commission's) 2021 report *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui*.<sup>1</sup>

## Terms of Reference

Our Terms of Reference for high-level design asked us, the Design Group, to produce independent, high-level design proposals for the new redress system, which cover:

- a. feedback on the system's intended principles, purpose, functions, and scope, drawing on the recommendations of the Royal Commission and agreed in principle by Cabinet;
- b. how the system should safely connect with and support survivors and whānau to navigate their redress journey – how redress needs to "look and feel" to give survivors confidence in the redress system and to provide them with a safe, accessible, trauma-informed, and culturally responsive redress experience;
- c. the types and mix of services and supports that should ideally be provided as part of each of the redress system's functions;
- d. feedback on apology and payment frameworks, and any draft redress models and example proposals provided by the Crown Response Unit, with a focus on what is needed to support meaningful recognition of the harms people have experienced; and
- e. an outline of the critical issues that will need to be considered as part of the detailed design and implementation planning in order to give effect to the overall design.

### How we have responded to the Terms of Reference

We have responded in two complementary ways to the Terms of Reference. Following the linear format of the Terms of Reference, we have responded specifically, and in some detail, to each component in Part 2 of this report, in order to provide the detailed design phase as much guidance as possible in working towards implementation by 2025. We provide deliberations, insights, and recommendations to minimise relitigation of the various complexities navigated in high-level design. We intend Part 2 to be used repeatedly

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<sup>1</sup> Royal Commission of Inquiry into Abuse in Care, 2021.

throughout the next two to five years as detailed design transitions into implementation and the *Survivor-Led Redress System* is in its first years of operation.

We have also felt it necessary to communicate the collective sum of our proposals. We do this in this part so that the deliverables are understood as more than their component parts. The individual responses to the Terms of Reference must be understood as a whole so that both survivors and the nation get the returns that are desperately needed from effective redress.

## The high-level design proposal

Our overarching vision for the *Survivor-Led Redress System* is healing, justice, and the reclamation of mana (dignity) for survivors through survivor autonomy and control over their redress and healing journeys. Survivors will have access to seamless support that recognises the harm done to them, as well as resources to address the long-term consequences.

We believe this vision captures the overall look and feel needed from the Survivor-Led Redress System. This is in order to have a safe, accessible, trauma-informed, and culturally responsive redress experience in place, as well as the apology and payment frameworks we believe are needed to support meaningful recognition of tūkino (abuse, harm, neglect and trauma).

To realise this vision, the Design Group deliberated on the overarching framing of the Survivor-Led Redress System. We considered a variety of frameworks and models that might do justice to the experiences and voices of all survivors. To adequately reflect these experiences and voices, we have drawn together several concepts, grounded in te ao Māori (Māori worldview), that underpin the System.

### Underpinning Māori concepts

#### **Wai ora and mauri ora**

**Wai ora** and **mauri ora** are the interrelated states of wellbeing derived from **wairua** (spirit) and **mauri** (life force/essence). Through the experience of tūkino at the hands of the State and faith-based settings, survivors' wairua and mauri have been significantly impacted, resulting in various states of languishing. Addressing these states of languishing and the associated outcomes is the focus of the Survivor-Led Redress System, so that survivors can heal and realise wai ora and mauri ora.

#### **Pātūwatawata**

The **pātūwatawata** (the fortified village) is a redress 'space' – virtual and physical as needed – that will be created within the Survivor-Led Redress System. This will constitute a protected space or sanctuary for survivors while they plan, navigate, and work through their own redress pathway.

#### **Take-Utu-Ea**

The restorative process of **Take-Utu-Ea**<sup>2</sup> underpins redress itself, most notably personal apologies and acknowledgements, and monetary payments.

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<sup>2</sup> Mead, 2003. (p. 27).

- Take refers to the issue or harm that brings survivors to redress, namely the tūkino they have experienced. In a process of determination, it is expected that the survivor and State or faith-based perpetrators agree to the nature of the take.
- Utu means to make a response, to balance or provide reciprocity in some form, and is agreed on the basis of what is deemed appropriate recompense or restoration.<sup>3</sup> This involves some recognition of differences of magnitude of a breach or harm, and the general principle of “obtaining an equivalent”.<sup>3</sup>
- Ea is the outcome of restoring harmony in the relationship between survivor and State or faith-based perpetrator or reaching “a resolution satisfying all parties so that the matter is resolved.”<sup>2,4</sup>

### A survivor-centred view of the design proposal

When using the Survivor-Led Redress System, survivors expect it to be visible, accessible, and usable. Where survivors interact with the System, we expect it to be welcoming, reflective of the survivor, efficient, and non-invasive. Of particular relevance to the centrality of survivors within the System are two key considerations: system responsiveness and survivor confidence.

#### System responsiveness

While much redress activity may be able to be built from or connect to existing services, whether virtually or in person, there will be gaps that the Survivor-Led Redress System itself will need to address. To this end, innovation and commissioning of new approaches will be required. The System will therefore need to be built to evolve over time, so that it remains fit for purpose for the survivors it serves.

At all stages of its development and implementation, the Survivor-Led Redress System must be easy to find, highly visible, and accessible. All who are eligible for redress must be able to know that they are eligible and how to find that redress. The System will welcome a survivor and their whānau (family) in, provide them with care for their individual needs, let them know they are believed, supported, and valued, and help them feel at home.

#### Survivor confidence

The Survivor-Led Redress System must be founded on solid principles, with clear purpose, and its functions and scope clearly understood. It must be fit-for-purpose to support past, current, and future survivors of abuse in achieving redress. The System will be forward looking as well as concerned with addressing past and current abuses.

The Survivor-Led Redress System will be founded on core principles that reflect and build on the principles identified by the Royal Commission. We believe they are all necessary to guide the System so survivors are delivered, and receive, what they need.

Our principles are set alongside our outline of the purpose of the system, its scope, and its functions as requested in our Terms of Reference. To these, we have added a proposal for a

<sup>3</sup> Turei, 2021.

<sup>4</sup> See also utua kia ea, a principle developed by the Royal Commission that formed part of the redress system foundations that the Design Group was asked to provide feedback on.

lead role in monitoring the system. This is in response to the concern expressed universally by survivors that systems of care must not continue to perpetuate abuse and produce further/future survivors.

We envision that the monitoring aspect of the Survivor-Led Redress System will have an inward focus on monitoring the performance of the System, as well as the outward focus on monitoring the provision of support. We propose that new legislation will be created that gives the System the ability to monitor, investigate, and advocate for system-level improvements in the provision of care, including the eradication of abuse. This would include powers such as the ability to request information from any State or faith-based setting, and the ability to monitor the progress and action on any recommendations made by the System to other entities responsible for people in care.

An independent Survivor-Led Redress System is required, with survivor-facing and system-facing functions to deliver monetary payments and personal apologies and acknowledgements, coordinate access to survivor-elected services and supports, and monitor and report on the System's performance and progress towards the eradication of abuse in care.

#### *A Survivor-Led Redress System design*

In this section, we outline the key components of the Survivor-Led Redress System that are required to respond effectively to both the context and take (issue) of tūkino, and that reflect a survivor-led ethos – these are matters of definition, structure, and process.

#### **Tūkino (abuse, harm, neglect and trauma)**

Foundational to our high-level design have been the varied manifestations of tūkino. The Royal Commission's hearings provide overwhelming evidence of the acts of commission by the State, faith-based settings and others, as well as of the State's acts of omission in failing in its duty of care. In short, the State created the conditions that enabled abuse to flourish and then, faced with mounting evidence, it failed to act to stop the abuse and to address the harm caused. Because this evidence has been clearly established, we do not need to prove this harm occurred and are mindful that the Royal Commission's final report is expected to set out the history and context in full.

It is essential that the Survivor-Led Redress System recognises the tūkino of the various survivor groups. This is especially significant given that *He Purapura Ora, he Māra Tipu* has provided clear definitions of only some forms of abuse, namely abuse in State care, which was later ratified to include pastoral care and cultural abuse. Definitions surrounding tūkino related to adoption, and spiritual abuse remain unclear.

**The Design Group recommends incorporating the following definitions of adoption-specific and spiritual abuse in the detailed design.**

1. **Spiritual abuse** is a form of coercive control enacted by those in a position of power within, and associated with, a faith-based setting, whether formal or informal. Mechanics of spiritual abuse include the use of faith-based teachings, threats, and demonisation to coerce and cause harm to the individual. Significantly, coercive

control can include the use of emotional, financial, physical, psychological, medical, and sexual abuse.<sup>5</sup> To avoid doubt, spiritual abuse includes conversion practices.

2. **Adoption-specific abuse:** Closed adoption in and of itself constitutes a form of tūkino. Through the Adoption Act 1955, the State severed legally and permanently the relationship between birth parent and child, erased the child's birth identity, and prohibited contact between child and birth parent and any knowledge of each other. These actions generated lifelong impacts for the adopted child and, in instances of coercion, the birth mother. The relinquishment and associated losses generated emotional and psychological harms and, for the child growing up without knowledge of biological kin, whakapapa disconnection and cultural alienation. Further, reckless and unsuitable adoptive placements led to some adoptees being subjected to further emotional/ psychological, physical, and sexual abuse.

Note: Adoption was practised more openly post-1985, enabling contact between birth parent and child, although the legal effects of the 1955 Act remained. This distinction between fully closed and more open adoption practice in terms of tūkino and consequential harms might form part of redress considerations.

### Proposed structure and function

Our vision for redress reflects the urgent need, through the confluence of services and supports, personal apologies, and monetary payments to:

- move people from disempowerment and dependency to mana Motuhake (self-determination);
- establish a plan and practical actions that can improve poor health, crime, and other negative statistics that reflect disproportional impacts of tūkino;
- build an agile way of delivering services and supports unencumbered by overly bureaucratic systems; and
- reduce appropriations and long-term costs to the State and public.

We strongly recommend a flexible structure to resource survivors to design and lead their individual redress journeys to their desired outcomes. For survivors, the Survivor-Led Redress System comprises various resources (personal apologies and acknowledgements, financial redress payments) as well as access to people and organisations who will provide other services and resources to support their redress journey.

Survivors will be enabled to stay within and/or move through services and supports when and as they need them. This includes creating spaces for survivors to determine what they want from redress, to get support, and to decide when they are ready to move through a personalised redress pathway. We acknowledge that such support may occur through local community hubs or through national peer-led support structures.

Critically, there must be no 'wrong door' into the Survivor-Led Redress System and no pre-determined pathway through. While some survivors may need to sit and reflect, others

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<sup>5</sup> See Roguski, (in press).

already know what their path is and wish to access specific redress steps – for example, monetary payments, and personal apologies or acknowledgements.

Whatever their needs and preferences, support will be available to survivors through the provision of navigators to help them design and activate their personally, culturally, and spiritually fit-for-purpose pathway through redress. Navigators will help survivors connect with existing services and supports (see ToR 3 for examples) while also identifying gaps that should be made available by the Survivor-Led Redress System, through a ‘leading innovation’ function. We believe that there is the potential, with the right training in place, for many survivors and whānau (families) to work as navigators and peer supporters themselves, bringing their experiences to bear to support other survivors through redress.

To support decision-making, we present here a high-level description of the structures, activities, and behaviours that underpin the proposal to deliver the Survivor-Led Redress System to survivors. Effectively, we recommend a hub and spoke model. The hub will be responsible for the governance and management of the System whereas the various spokes will be primarily responsible for service and support coordination and delivery.

### **The central entity**

We recommend the establishment of a central entity for governance and management.

A central entity, the hub, will need to be set up as one of the first steps in building the new Survivor-Led Redress System. This is needed to manage the System’s independence, and to navigate and negotiate with the State and faith-based settings.

Strong governance will be needed to keep the central entity on track to deliver for survivors. This will require a robust strategy to capture what the Survivor-Led Redress System needs to be building towards. The strategy should be underpinned by a clear performance framework to set out points to measure progress of delivery against.

The entity must be survivor-led, both for management and governance. It must be independent of the State and faith-based settings, so that it is not subject to political pressures and to changes in governments, ministerial portfolios, or organisational priorities. Above all, it must be independent because it is vital that survivors can trust the Survivor-Led Redress System as representing and responding to survivor needs, rather than prioritising the demands of the government of the day.

Accordingly, we recommend that the central entity:

- reflects a governance structure and executive management that contains a majority of survivors;
- is independent of the Crown and faith-based settings;
- must adopt an operating model that focuses on agile service provision and is survivor-centred; and
- is based in a location that supports ease of networking with key agencies, organisations, and stakeholders.

### *Key principles of the central entity*

We recommend the Survivor-Led Redress System is underpinned by key principles that should guide the central entity (see our response to ToR 1 in Part 2). These principles reflect that the System must be Māori-centric and Te Tiriti o Waitangi-informed and led, considering the significant disparity particularly in the targeting of State abuse of and tūkino to Māori over many decades.

The first principle is mā tātou, mō tātou, and mana motuhake, by survivors and for survivors. It is critical that the process is survivor-led, both through supporting each survivor to develop and achieve their individual, self-determined path forward and through providing the management and governance needed to oversee the Survivor-Led Redress System.

The next principle is utua kia ea (accounting for harm), which encapsulates a process that must be undertaken to account for tūkino and to support survivors and their whānau (families) to reclaim their mana (dignity) so that they can achieve a state of restoration and balance. Pathways of utua kia ea should include scope for survivors, both as individuals and collectively, to negotiate their own unique course based on their experience of tūkino, the take (issue), and what is appropriate and acceptable to them in terms of what is needed (utu) to achieve resolution (ea).

We have also prioritised a principle of manaakitia kia tipu (nurture to prosper). This encapsulates the priority given to nurturing the wellbeing of survivors and their whānau so that they can prosper and grow. This includes treating survivors and their whānau with care, humanity, compassion, fairness, respect, and generosity in a manner that upholds their mana and is culturally and spiritually safe (this includes being survivor-focused and trauma-informed), and that nurtures all dimensions of wellbeing).

Āhurutanga (protection) is also important to the central entity to ensure that processes are established to protect and safeguard people. These processes include actively seeking out, empowering, and protecting those who have been, or are being, abused in care as well as implementing systemic changes to stop and safeguard against abuse in care (e.g., strengthening monitoring functions). Survivor insights and knowledge will also be used to ensure the Survivor-Led Redress System improves and adapts over time, and to direct systemic changes.

Finally, mahia kia tika (transparency) is to be fair, equitable, honest, and transparent. In this context, it includes a Survivor-Led Redress System that has clear, publicly available criteria and other information about how it works; regular reviews of its performance; and accountability back to survivors. In culmination, the System must be easy to use, understand, and access.

We recommend the central entity and the Survivor-Led Redress System are independent of the State, including of ministerial oversight. This is explained in detail in our section below, *Financial management for a complex system supporting a diverse survivor group*.

### *The responsibilities of the central entity*

The primary responsibility of the central entity is to systematise the various resources, services, and suppliers so that survivors will have access to a multi-faceted and holistic Survivor-Led Redress System.

Fulfilling this responsibility will include:

- maintaining a survivor-led focus;
- holding and managing funds for operating the redress;
- maintaining the long-term financial viability of the Survivor-Led Redress System;
- establishing, managing, and monitoring the supports that help survivors access the resources and services for their redress (referred to as “navigation” in this document);
- managing the commissioning and contracting of services and providers to deliver survivor redress resources and services;
- directly providing survivor redress resources and services where none exist to meet demand;
- piloting new resources and services where none exist to meet demand;
- managing eligibility, access, and delivery of the following primary functions:
  - facilitating a whakatau (welcome) payment that acknowledges the survivor’s efforts in engaging with the System at the outset of their journey;
  - providing access to multiple services or supports that facilitate the survivor’s mental, physical, and social healing;
  - providing access to multiple services or supports that help the survivor overcome the consequential damage of the tūkino experienced in State care or faith-based settings;
  - providing access to personal apologies and acknowledgements as requested by the survivor;
  - providing access to monetary payments (assessment-based) to recognise the damage of the tūkino; and
- ensuring data required for survivor redress processes are collected and managed safely and securely.

These systematic responsibilities and functions are what create a Survivor-Led Redress System. They bring together a large set of disparate components.

### **Key processes of the *Survivor-Led Redress System***

Registering with the Survivor-Led Redress System will activate a series of processes to ensure survivors’ experiences of and through their redress pathway are positive and smooth. We stress that the mechanics underpinning the System remove any administrative burden or engagement-related duress for survivors. In order to achieve this, we recommend designing the System to ensure:

- engagement with and navigation through the System is seamless and survivors are provided the supports and services they require in a timely manner;
- survivors can readily access personal information and receive immediate updates on application progress through a single interoperable information platform;

- a common workflow where possible – the flow of data inputs, application of tools, and production of outputs are portable and scalable across a variety of software and hardware environments; and
- all kaimahi (personnel) are trauma-trained in their behaviours and care towards survivors.

Details of these components of the overall design are provided in our responses to individual Terms of Reference, 2 and 5 in particular.

### Financial management for a complex system supporting a diverse survivor group

Section A of the *Draft Redress System Payment Framework*<sup>6</sup> notes that its objectives include a programme that:

- a. is efficient to administer;
- b. is equitable and financially viable over the long term.

The Design Group considered these purposes in the context of the principles of independence from the Crown and other abusing organisations, the position of payments alongside other supports, the diversity of survivors, and the volume of transactions that would take place within the redress system.

### Separation from the Crown and other abusing organisations

If we accept the Royal Commission's recommendation that the Crown is the sole funder of the redress system, achieving independence from the Crown is difficult. The Public Finance Act 1989 exists to ensure that government investments are managed transparently. Typically, this is done through a published appropriation that is the responsibility of a Minister, negotiated at Cabinet, and subject to the parliamentary law-making process. Further, the Act enables responsible Ministers to seek evidence of transparent spending of appropriations by questioning responsible executives in periodic Cabinet Committee meetings.

In the instance of Independent Crown Entities, the Public Service Act 2020 allows for the expectation by Ministers that their agencies maintain a monitoring relationship with an independent entity. This relationship is an additional mechanism to further ensure transparency in spending of government funds.

Making funding redress dependent on government would limit the Survivor-Led Redress System's independence. Survivor evidence tells us that if the System was subject to the annual budget process, that would erode survivor confidence in its long-term sustainability.

Moreover, the Survivor-Led Redress System cannot be underfunded. There are concerns that if the monetary redress programme is a line item in an annual budget, it will not get the resources it needs to provide the necessary services, support, and monetary payments. Therefore, we recommend funding for the System, including survivor payments, is accompanied by legislative design and an investment plan.

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<sup>6</sup> Crown Response Unit, 2023.

It is essential that the Survivor-Led Redress System has operational control over its own financial management. It will not be appropriate for it to be managed by a government department (such as the Department of Internal Affairs). That would contradict the principle of independence.

The survivor evidence points to a vast range of supports that, firstly, ensure that all survivors are able to participate in redress on their own terms. For some survivors, that will require high-intensity augmented communication, decision-making support, and bespoke facilities. For other survivors, initial engagement will be a matter of meeting and building confidence in a navigator (see our response to ToR 2). Once survivors have begun their redress journey, the Survivor-Led Redress System may need to contract services from a range of providers so that support goes where it is needed.

The proposal to rapidly release whakatau payments to survivors as soon as possible after they enter the redress pathway presents the challenge of timely and accurate payments. At the same time, the projected number of people eligible for whakatau payments presents a challenge to ensure payments are both timely and accurate at a scale to rival large government departments (such as the Ministry of Social Development or Inland Revenue). These challenges increase exponentially when whakatau payments are deployed alongside other redress payments and payments to service providers.

With exponential increase in the volume of payments comes a substantial projected operating budget. In short, we need a structure that is financially independent and capable of managing a very large number of transactions.

### Funding model

Enabling the establishment of a Survivor-Led Redress System that is both capable of fulfilling the complex range of activities for a large number of people and sufficiently independent of the State requires significant activity to establish the financial and fiscal bases using government investment processes. The Cabinet-mandated Better Business Case process will provide wider high-level design activity with ongoing operating assumptions, including estimates of the number of participants and cost of services, as well as having whole-of-life investment implications. In articulating the activities and their sequence in Table 1.1, the high-level design process acknowledges that the long-term investment proposal requires legislative investigation, appropriations processes, and interim non-departmental expenditure (NDE) funding to be addressed.

**Table 1.1: Structure, investment planning and legislative impact**

Overarching structure	Investment planning	Legislative impact
<ul style="list-style-type: none"> <li>▪ Crown appropriates NDE in tranches based on an investment plan produced by the Survivor-Led Redress System</li> </ul>	<p>The following financial considerations are considered during detailed design:</p> <ul style="list-style-type: none"> <li>▪ multi-year capital allocations;</li> </ul>	<p>Detailed design will be required to consider the following impacts:</p> <ul style="list-style-type: none"> <li>▪ appropriations rules;</li> <li>▪ ministerial accountability</li> </ul>

Overarching structure	Investment planning	Legislative impact
<ul style="list-style-type: none"> <li>▪ Recommendation: The Survivor-Led Redress System interim governance and high-level design works with Treasury and appropriate portfolio Minister to develop the business case to ensure subsequent investment and financial planning is carried over to implementation.</li> <li>▪ The investment plan outlines appropriations to realise long-term and short-term benefits.</li> <li>▪ Short-term appropriations are a mix of capital and operational expenditure to purchase: <ul style="list-style-type: none"> <li>- the establishment of a Survivor-Led Redress System;</li> <li>- immediate financial payments to priority survivors;</li> <li>- immediate services and supports to priority survivors;</li> <li>- immediate resources for priority survivors (e.g., housing developments);</li> <li>- establishment of critically required service providers where need is urgent and unable to be fulfilled from existing suppliers (i.e., supported decision-</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Crown capital allocations for various functions;</li> <li>▪ other investment models nationally and internationally (such as the Accident Compensation Corporation in New Zealand, Provident Funds in Singapore, and the Canada Pension Plan);</li> <li>▪ “social” enterprise profit models;</li> <li>▪ multi-category investment risk;</li> <li>▪ investment ethics and returns risk;</li> <li>▪ organisational financial planning;</li> <li>▪ asset planning; and</li> <li>▪ asset ownership models.</li> </ul>	<p>requirements under the Public Finance Act 1989;</p> <ul style="list-style-type: none"> <li>▪ agency accountability with independent entities under the Public Finance Act 1989;</li> <li>▪ agency accountability with independent entities under the Crown Entities Act 2004;</li> <li>▪ Schedule categories of the Public Finance Act and Crown Entities Act 2004; and</li> <li>▪ Cabinet Fees Framework for the central entity providing survivor governance.</li> </ul>

Overarching structure	Investment planning	Legislative impact
<p>making services for people with disabilities)</p> <ul style="list-style-type: none"> <li>▪ Long-term appropriations are Capital Expenditure.</li> <li>▪ Long-term appropriations are then invested in multiple income-generating asset classes.</li> <li>▪ Income generated is distributed according to the Survivor-Led Redress System financial management plan.</li> </ul>		

### Summary of proposed funding solution

To ensure long-term sustainability, we recommend that the Crown appropriates a significant capital amount, to be managed by the Survivor-Led Redress System, which uses investment earnings to fund the operating budget (see our response to ToR 5). The initial endowment would need to comprise capital sufficient to enable the programme to become self-funding. This would, probably, need to be accompanied by significant funds to meet startup costs and the first few years of monetary claims. Relevant models include the Super Fund and Accident Compensation Corporation (ACC).

Detailed design is responsible for seeking advice on optimal investment structures, and legislative changes to reduce Crown engagement with the fund, or earnings. We recommend that the external interface function in the system design (ToR 2) is the interface where Ministers or Cabinet execute their legislative obligations (as noted above).

The capital fund should be survivor-governed, and having the monetary redress programme become self-funding out of investment earnings would eventually provide significant and real independence from government.

To ensure that the Survivor-Led Redress System, which involves a considerable volume of transactions, is administered efficiently, we recommend that Core Banking platforms are investigated as a payments mechanism. We note that this advice is dependent on the successful conclusion of the Reserve Bank of New Zealand's Open Banking Platform project. To complement the payments platform, a comprehensive data management, scheduling, and team management system would need to be implemented to ensure that the data generated by calendar appointments for services, notes, and actions from interactions, and administration processes are integrated and can form automated workflows, to increase efficiency.

## How we reached our high-level design proposals

This section outlines the structures, contexts, processes, and methods of the high-level design phase, centred around the establishment and working of the Design Group and Advisory Group. Following Cabinet acceptance of the Royal Commission's recommendation to commence development of a new redress system, the Design Group and the Advisory Group were established through a process undertaken through the CRU. This involved the CRU leading a call for nominations for the groups, from which over 120 nominations were received.

An Independent Review Panel comprising panel members Tū Chapman (Chair), Gary Williams, Rāhui Papa, and Amanda Hill was established in early 2023 to review the nominations and put forward their views on the proposed membership of the Design and Advisory Groups. The panel conducted interviews and submitted its recommendations to the Minister for the Public Service. As a result, in May 2023, the Minister announced the appointment of 12 members to the Design Group and 16 members to the Advisory Group.<sup>7</sup>

The Design Group members are:

- Ruth Jones QSM (co-chair)
- Dr Annabel Ahuriri-Driscoll (co-chair)
- Dr Filipo Katavake-McGrath
- Māhera Maihi
- Tyrone Marks
- Te Pare Meihana
- Paora Moyle [Resigned August 2023]
- Bernie O'Donnell
- Dr Michael Roguski
- Tupua Ulrich
- Keith Wiffin
- Dr Stephen Winter.

The Advisory Group members are:

- Kararaina Beckett
- David Crichton
- Dr Alison Green
- Joanna Ilolahia
- Toni Jarvis
- Bianca Johanson
- Denise Messiter

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<sup>7</sup> Beehive.govt.nz, 2023.

- Heidi Nayak
- Sevia Nua
- Fleur Ramsay
- Paora Sweeney
- Frances Tagaloa
- Jacinda Thompson
- Jenni Tupu
- Emma West
- Matthew Whiting.

As a Design Group, we have met very regularly through a series of wānanga (deliberations). Through our wānanga (deliberation) process, we have worked at staging points of contact/consultation with the Advisory Group to ensure that a diverse range of survivor voices, and their specific redress needs, were amplified. Inevitably there was not sufficient time for the depth of discussion and consideration needed, and we know the Advisory Group would have appreciated more opportunities to meet together, but time and budget were often against this.

We thank the Advisory Group for their commitment to ensuring the voices of State and faith-based survivors, whether tangata whenua (indigenous people), tangata Tiriti (Tiriti people), adopted, disabled people, Pacific peoples, Lake Alice, takatāpui, MVPFAFF, and LGBTIQ+, or rangatahi (youth), and the many who are all or many of these identities, were strongly heard. We have sought to reflect and incorporate their views and feedback in our evolving proposals as much as possible, while acknowledging that it was ultimately our job as the Design Group to determine the final form and detail of our high-level design proposals. That has meant we have had to make ultimate calls on and take responsibility for these proposals.

In the Design Group, we organised ourselves into subgroups charged with focusing on specific aspects of the Terms of Reference, so that we could maximise consideration within the limited time we were given. We were supported in this work by a small secretariat drawn from the Crown Response Unit. Each subgroup developed specific packages within each deliverable and, as we drafted, we shared these with the Advisory Group to seek their feedback and input to test our thinking and to ensure coverage of the diversity of survivor views was as comprehensive as possible. Advisory Group feedback was incorporated in successive iterations of each deliverable.

We have endeavoured to reflect the urgency of this work through survivor voices within our proposals because we know it is critically important that the Ministers who will make decisions on these proposals see and hear the survivors this is needed for. We implore Ministers to keep survivors in their minds above the costs, logistical challenges, competing demands, and inevitable barriers to progress that they will confront.

There are very real people waiting in need, and it is them, our fellow survivors, who must be centred as the process transitions into detailed design and through to implementation.

**Poem – Ko te aroha (love)**

*Life has been hard, but it has been purposeful,  
full of strength and determination,  
to do better,  
to be better,  
for you, for us, for all those who have suffered at the hands of others.*

*Love is what binds us all together the search for it,  
the touch of it,  
the feel of it,  
as it takes you forward,  
hold on to it and never let it go,*

*Love and nourish all that is on your pathway,  
Ahakoa he iti, he pounamu.  
Believe in it, for love can melt the hardest of hearts,  
the lost of souls ... desperately searching for that next breath.*

*Do not lose sight of who you are,  
of what you have become and from where you have begun,  
for in your story is the healing that many are still searching for,  
be strong, be courageous and with love surrounding you,  
let your voice be heard*

## **Why the Survivor-Led Redress System is needed: the duty to care**

*Hāhā-uri, hāhā-tea* Māori Involvement in State Care 1950–1999 lays out the reality of the conditions that allowed a system of abuse. These were set by the unilateral imposition of British colonial values in the nineteenth century. While this unilateral imposition most profoundly breached the rights of Māori under Te Tiriti o Waitangi, the Royal Commission's interim report demonstrates how the presumptive imposition of colonial ideas in fact breached the rights of many other New Zealanders as well.

We understand that the Royal Commission's forthcoming final report will set out the relevant context fully, so we confine ourselves here to commenting that for many the 'care' system that resulted from this climate failed to meet even basic definitions of what care should entail. Many were failed in an absence of an overarching duty of, and to, care.

While this is the sad reality that came to pass for many, there is a valuable opportunity now to build a new redress system to restate and reset the values of a modern Aotearoa New Zealand. We believe that the vision of Te Tiriti o Waitangi was for a new nation with shared

benefits, founded on partnership, shared decision-making and values, and the knowledge and strengths of both signatories.

Fundamental to taking this opportunity now is reframing the duty of care that the State holds on behalf of our broader society. Many survivors struggle with the word “care”, as what they received and experienced was the absolute antithesis of that. While the Crown has accepted that there were significant failures in its legal duties of care, we see the need and the opportunity to reframe care – and redress for the absence of that care – as a duty *to* care relevant to the Aotearoa New Zealand of today and tomorrow. This should not be confined to narrow legal obligations and must be liberated from the negative associations of abuse in care.

A holistic redress system can help create a care culture and climate relevant to Aotearoa New Zealand that reflects the strengths and beliefs of te ao Māori (the Māori world). As described by the Family Violence Death Review Committee, a duty *to* care is broader than a legal duty *of* care, reflecting relational obligations, values and practices instead of legal definitions focused on liability.<sup>8</sup> The Committee states, and we agree, that “Manaakitanga (ethos of care) embodies a type of caring that is reciprocal and unqualified, based on respect and kindness. It is holistically embedded in the values of whānau, emphasising obligations and reciprocal relationships within the whānau (family) and wider groupings.”<sup>9</sup>

We believe there is real value to this understanding and that it is directly relevant to the modern language of care that Aotearoa New Zealand needs. Moreover, we believe this understanding resonates with the original vision of Te Tiriti o Waitangi to create shared benefits on the basis of relationship.

Manaaki (ethos of care) can frame the mindset shift that is needed across social, cultural, and economic systems and, moreover, that we believe would benefit Aotearoa New Zealand society more broadly. As a nation, we share collective obligations to and responsibilities for each other. We need a more thoughtful approach to understanding the roles of the State and faith-based settings, including all the relevant agencies within the government system, and of Iwi (tribes), hapū (sub-tribes), community groups, trusts, families and whānau, and the general public. Safe and nurturing care of Tamariki (children), rangatahi (youth), and vulnerable adults is everyone’s responsibility. With strong inbuilt accountability and monitoring functions from its inception, we believe that the *Survivor-Led Redress System* we propose can hold us all to higher account, oriented as it is around the needs and self-determination of survivors and their dedication to preventing further intergenerational harm. In this way, the new System we propose in Part 2 will support an ecosystem characterised by ethics of relationality and mutuality and that subsequently delivers much better returns to survivors, and to all of Aotearoa New Zealand.

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<sup>8</sup> Family Violence Death Review Committee, 2022.

<sup>9</sup> Ibid.

## Part 2 – Responding to the Terms of Reference

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# Term of Reference 1: Foundations of the *Survivor-Led Redress System*

## 1 Introduction

In this section, we respond to the Terms of Reference item that asked us to provide “feedback on the system’s intended principles, purpose, functions, and scope – with the option to outline a strong case for alteration to any of the specific aspects, particularly when considering the principles from a Treaty perspective”.

The Royal Commission’s work encompassed purpose, functions, scope, principles, concepts, values, and Te Tiriti o Waitangi. Each of these aspects is critical for designing the Survivor-Led Redress System, setting the parameters in terms of the primary beneficiaries, the System’s areas of focus and activities, and the way it works.

## 2 *Survivor-Led Redress System* purposes

The Royal Commission proposed the following purposes for the redress system.

“The Crown should establish a puretumu torowhānui (holistic and wide-ranging) system to respond to abuse in State care, indirect State care and faith-based care that:

- acknowledges and apologises for tūkino, or abuse, harm and trauma, done to, and experienced by, survivors, their whānau (families), hapū (sub-tribe), iwi (tribes), and hapori or communities
- aims to heal and restore individuals’ mana (dignity), tapu (sacredness) and mauri (life essence)
- takes decisive and effective steps to prevent further abuse.”

The Design Group has retained the purposes proposed by the Royal Commission but has strengthened them and elaborated on them as needed. In relation to the first purpose, we acknowledge the Survivor-Led Redress System’s substantive role in responding to tūkino. However, rather than the System acknowledging and apologising for tūkino, we recommend that, as an independent and survivor-led system, it has a facilitative function. We have also extended this purpose to include the intergenerational and community-wide impacts in addition to those directly experienced by survivors.

In the second purpose, we have made an important shift in emphasis away from the system playing a restorative role for survivors, to that of survivors taking ownership of redress themselves – aligned with a principle of being survivor-led. We have added a reference to aspects beyond the mana, tapu, and mauri that were specified, which makes space for diverse survivor aspirations.

In the final purpose, we have amplified the role of the Survivor-Led Redress System in preventing further abuse, moving it from “taking steps” to leading.

The Design Group recommends that:

1. An independent redress system is to be established, focused on redress to achieve healing and justice. Survivor-led, the System will respond to people who have suffered abuse in the context of their care being entrusted to the State, faith-based settings, or any other organisation responsible for providing care (including pastoral) and support services in Aotearoa New Zealand.
2. The way in which the Survivor-Led Redress System responds to survivors will be determined by survivors, but will include:
  - facilitating the acknowledgement and address of the tūkino (abuse, neglect, harm, and trauma) experienced by survivors, their whānau (families), hapū (sub-tribes), iwi (tribes), and hapori (communities), including intergenerational impacts;<sup>10</sup>
  - enabling survivors to lead their restoration and healing of mana (dignity), tapu (sacredness), mauri (life essence), and other aspects important to them; and
  - leading present and future governments in preventing further abuse.

### 3 *Survivor-led Redress System functions*

The functions developed by the Royal Commission speak to the core business of the Survivor-Led Redress System. The Royal Commission proposed that the system:

- “provide a safe, supportive environment for survivors to share their care experiences;
- facilitate acknowledgements and apologies by the relevant institutions;
- facilitate access to support services, financial payments and other measures that enable te mana tāngata (personal dignity); and
- make recommendations on identified issues, to help prevent further abuse in care.”

As with the System purposes, we have amended the wording of the functions in terms of specificity and reach. We added a survivor-led emphasis in the first function, thereby shifting the focus to the environment that survivors need to experience as supportive, and lessening the requirement that survivors must share their experiences; and again in the third function, articulating that survivors will restore their own mana. We specified relevant institutions in the second function and, in the third, we moved from the notion of the System “facilitating” to providing. The fourth function was fortified and expanded considerably.

The Design Group recommends that:

3. The Survivor-Led Redress System has the functions of:
  - providing a safe and survivor-led, responsive environment where survivors can share and access support for their experiences of tūkino (abuse, harm, neglect and trauma) in care settings and services within the specified scope;

<sup>10</sup> This statement acknowledges the impact of tūkino beyond the survivor but does not extend redress to all of those parties.

- facilitating personal apologies and acknowledgements by the State, faith-based settings, and/or appropriate or agreed representatives of the settings and services listed in the scope;
- providing access to monetary payments, and to targeted services and supports for survivors to restore their own mana (dignity); and
- monitoring, investigating, and advocating for system-level changes to State and faith-based settings in which care and support are provided, including the eradication of abuse.

### **The monitoring, investigation, and advocacy function**

We added a monitoring function based on the concern expressed universally by survivors that systems of care must not perpetuate abuse and produce further/future survivors. It is also the focus of several recommendations of the Royal Commission's report *He Purapura Ora, he Māra Tipu: From Redress to Pūretumu Torowhānui (He Purapura Ora)*.<sup>11</sup> We envision that the monitoring aspect of the Survivor-Led Redress System will have an inward focus on monitoring the System itself and its delivery of redress, as well as an outward focus on monitoring the provision of care and support in State and faith-based settings.

We acknowledge that multiple entities and pieces of legislation provide various oversight and monitoring responsibilities and protections for people in care. We recommend that new legislation is created to empower the Survivor-Led Redress System with the ability to monitor, investigate, and advocate for system-level improvements in the provision of care, including the eradication of abuse. Necessary legislation would include powers to request information from any State or faith-based setting, and the ability to monitor action on any recommendations made by the System to other entities responsible for people in care. While existing entities exercise monitoring functions, we feel that they would not effectively provide the type of monitoring that will be delivered by the System, because:

- when viewed as a whole, existing entities provide monitoring over a number of organisations where there are people in care (with noted gaps), but no single entity is responsible for oversight across all these, which means they are unable to provide a systemic view;
- none of the existing entities explicitly covers faith-based settings;
- existing entities do not provide monitoring in a way that meets the Design Group's principles of survivor leadership, mana Motuhake (self-determination), and independence; and
- existing entities do not provide monitoring of current State and non-State care redress processes (this may become less important over time as these processes wind down).

<sup>11</sup> Royal Commission of Inquiry into Abuse in Care, 2021.

The Design Group recommends that:

4. An assessment is undertaken to identify suitable agencies or mechanisms to support the Survivor-Led Redress System's monitoring function, adhering to a principle of survivor-led, as part of detailed design.
5. In the event that no agency or existing mechanism is identified, monitoring functions must be developed within the Survivor-Led Redress System.

#### 4 *Survivor-Led Redress System scope*

The Royal Commission set the scope, in terms of who it included in its inquiry and is therefore eligible for redress, as a combination of the following components:

- i) the abuse and neglect suffered;
- ii) who has experienced harm;
- iii) where the harm occurred; and
- iv) the perpetrator (State or faith-based setting or other person in care).

Although the broader scope was not included in the Design Group Terms of Reference (we were asked only to consider the scope with respect to non-State care and future survivors), based on strong feedback from other survivor communities, and our own deliberations, we considered it necessary to offer our thoughts on ways in which the existing scope might need to expand to be more inclusive and reflective of survivors' experiences of abuse. We suggest changes to i), ii) and iii). The Design Group's expectation is that our recommended changes will be taken into consideration in detailed design.

#### **Abuse and neglect suffered**

The Design Group has expanded the Royal Commission's definition of tūkino to specify additional forms of abuse and neglect.

The Design Group recommends that:

6. The Survivor-Led Redress System uses the following definition of tūkino:

**Tūkino** refers to abuse, neglect, harm, and trauma. In this context, it includes past, present, or future abuse, whether physical, sexual, emotional, psychological, cultural, spiritual, and/or racial abuse; and/or neglect, which may also include medical, spiritual, and/or educational neglect, experienced by individuals and their whānau (families), hapū (sub-tribes), Iwi (tribes), and hāpori (communities) in the context of their care being entrusted to the State, faith-based settings, or other organisations responsible for providing care (including pastoral) and support services in Aotearoa New Zealand.

## Who has experienced harm

The Design Group has expanded on the Royal Commission's eligibility recommendation, with the additions of pastoral care and, in specific instances, whānau of survivors.

### **The Design Group recommends that:**

#### **7. The Survivor-Led Redress System uses the following definition of eligibility:**

Eligible individuals includes children or young people below the age of 18 years, or a vulnerable adult. "Vulnerable adult" means an adult who needs additional care and support, by virtue of being in State care or in the care of a faith-based setting, or the pastoral care of a person conferred with authority or power by State or faith-based settings. This may involve deprivation of liberty and may or may not be exacerbated by collusion. In addition to vulnerability that may arise generally from being deprived of liberty or in care, a person may be vulnerable for other reasons (for example, due to their physical, learning disability, or mental health status, or due to other factors listed in clauses 8 and 13).<sup>12</sup>

Our use of the term "vulnerable" is in accordance with existing legislation and the work of the Royal Commission. However, we acknowledge that vulnerability arises because of the environment and context, rather than an attribute of the survivor.

### *Inclusion of whānau*

The inclusion of whānau in the Survivor-Led Redress System arose from additional work undertaken by the Crown Response Unit, which the Design Group was asked to deliberate on. It is our view that dependants and whānau of survivors who are deceased may also apply for redress, on three bases:

- recognition of the need for whānau to participate in the redress of tūkino suffered by direct survivors;
- recognition of intergenerational harm; and
- in some circumstances, they may apply for redress payments due to now deceased survivors.

The third provision will be framed by the wishes of the survivor, where those wishes are known.

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<sup>12</sup> Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order, 2018.

## Where the harm occurred

The Design Group considers that the context of care may be residential or non-residential and may be, or may have been, provided on a voluntary or non-voluntary basis.

The Design Group recommends that:

8. The Survivor-Led Redress System uses the following examples of care settings to determine redress eligibility. The Design Group acknowledges that this list is not exhaustive:

- care and protection residences;
- youth justice residences (and young people aged under 18 years in adult prisons);
- foster care;
- adoption placements (inclusive of children, and mothers who were coerced into relinquishing their children);
- children's homes, family homes, and borstals;
- general medical, psychiatric, and psychopaedic hospitals or facilities, disability facilities, Deaf and hearing-impaired facilities, and also non-residential psychiatric, medical, disability, and Deaf and hearing-impaired care;
- health camps;
- programmes provided by third parties contracted to the State;
- schools and education facilities (boarding schools and special residential schools);
- transitional settings and services including police cells, custody, and transport between State care facilities;
- faith-based settings such as children's homes and orphanages, homes for unmarried mothers, religious schools, youth groups and camps operated through a faith-based organisation, and formal and informal church structures; and
- a care relationship that arises in the provision of pastoral care in the faith-based setting.
- Domestic abuse in fully private, domestic settings is not included as a care setting.

We have added pastoral care, informal church structures, and some more specific facilities to this list of settings derived from the Royal Commission. There was considerable deliberation on whether to include prisons, based on feedback from consultation with wider survivor communities. We recognise that abuse in prisons is a critical issue in need of attention and action. After weighing up this issue, however, we decided against inclusion on the basis that prisoners and prisons are outside of the care system. Prisoners who have a prior history of abuse in care settings will remain eligible for redress within the system, and we would like to see young people aged under 18 years who are in adult prisons to be considered within scope on the basis that they are young and vulnerable.

The Design Group recommends that:

9. The Survivor-Led Redress System is for past, current, and future survivors, non-State survivors and their whānau (families), to prevent the need to establish parallel systems or processes in the future.

## 5 Survivor-Led Redress System principles, values, and concepts

We cannot overstate the importance of the underpinning principles, values, and concepts in terms of specifying how the Survivor-Led Redress System must work to ensure optimal redress outcomes for survivors. The Design Group principles expand on the Royal Commission's principles. Additions (in the first four and the last principles/concepts) and amendments have been made to strengthen the work presented in *He Purapura Ora*.<sup>13</sup>

Some changes have been made to the language of the principles to better reflect the centrality of survivors and their autonomy, the inherent mana (dignity) of all people, and the role of whānau and collectives in healing, as well as some important process considerations.

We see the following principles, values, and concepts as foundational, and critical in guiding the Survivor-Led Redress System in its operations.

The Design Group recommends that:

10. The following principles, values, and concepts underpin the purposes, functions, and scope of the Survivor-Led Redress System:

- **Mā tātou, mō tātou:** This refers to redress for survivors, with survivors, as part of the survivor-led and survivor-driven, independent redress system.
- **Mana motuhake:** This refers to: a) the independence and autonomy of the survivor-led and survivor-driven redress system; and b) the ultimate goal for survivor mana and healing through autonomy and control over one's redress pathway/healing journey.
- **Māori-centric:** Given the disproportionate representation of Māori among survivors and the status of Māori as tangata whenua (indigenous peoples), it is imperative that Māori ways of knowing, being, and doing – mātauranga, te reo, me ōna tikanga – are a) structured into or embedded in the Survivor-Led Redress System and central entity; and b) upheld through Māori leadership in governance, operations, decision-making, and implementation.
- **Foundational frameworks:** The Survivor-Led Redress System must give effect to Te Tiriti o Waitangi in its operation (as per our position statement), as well as the

<sup>13</sup> Two acknowledgement statements were also included in the material provided to the Design Group. Feedback was not requested on these; however, we have made some suggested changes that we felt were important and necessary. First, the tūkino statement provided under scope reflects our changes. Second, we have amended a statement about purapura ora, which we provide here: "*Purapura ora, in this context, refers to survivors and whānau and their potential to heal and regenerate in spite of the tūkino they experienced. This may be individual and/or collectively focused healing.*"

following rights frameworks: the Human Rights Act 1993, New Zealand Bill of Rights Act 1990, United Nations (UN) Convention on the Rights of Persons with Disabilities, UN Convention Against Torture, UN Declaration on the Rights of Indigenous Peoples, UN Convention on the Rights of the Child, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and International Convention on the Elimination of All Forms of Racial Discrimination.

- **Te mana tāngata:** In this context, te mana tāngata is respect for the inherent mana (power, dignity, and standing) of people affected by tūkino (abuse, harm, neglect and trauma).
- **He mana tō tēnā, tō tēnā – ahakoa ko wai:** This refers to each and every person having their own mana and associated rights, no matter who they are. In this context, it means that a new Survivor-Led Redress System and central entity, and the underlying processes must value disabled people and diversity, accept difference, and strive for equality and equity. This includes challenging ableism – the assumptions and omissions that can make invisible disabled people, the tūkino and neglect they experience, and their needs.
- **Utua kia ea:** This is a process that must be undertaken to account for tūkino and support survivors and their whānau to reclaim their mana and so achieve a state of restoration and balance. In this context, pathways of utua kia ea should include scope for survivors, both as individuals and collectively, to chart their own unique course.
- **Manaakitia kia tipu:** In this context, this is the nurturing of the wellbeing of survivors and their whānau so that they can prosper and grow. This nurturing includes treating survivors and their whānau receiving care with humanity, compassion, fairness, respect, and generosity. It should be done in a manner that upholds their mana (this includes being survivor-focused and trauma-informed) and nurtures all dimensions of wellbeing including physical, spiritual, mental, cultural, social, economic, and whānau, in ways that are tailored to, culturally and spiritually safe for, and attuned to survivors.
- **Whanaungatanga:** This refers to the whakapapa and kinship connections that exist between people. In this context, it reflects that the impact of tūkino can be intergenerational and can also go beyond the individual and affect whānau, hapū, iwi, and hapori or communities. Therefore, the Survivor-Led Redress System should facilitate individual, whānau, and/or collective wellbeing and mana, connection or reconnection to whakapapa, and cultural and/or spiritual restoration.
- **Teu le vā / tauhi vā:** This is the tending to and nurturing of vā, or interconnected relationships between people and places, to maintain individual, whānau, and societal wellbeing. Where there has been abuse, harm, or trauma, steps must be taken to heal or rebuild the vā and re-establish connection and reciprocity.
- **Āhurutanga:** In this context, āhurutanga refers to processes to protect and safeguard people, including by actively seeking out, empowering, and protecting those who have been, or are being, abused in care as well as by implementing

systemic changes to stop and safeguard against abuse in care (e.g., strengthening monitoring functions). Survivor insights and knowledge will be used to ensure the Survivor-Led Redress System improves and adapts over time, and to direct systemic changes.

- **Mahia kia tika:** This is to be fair, equitable, honest, and transparent. In this context, it includes a Survivor-Led Redress System that has clear, publicly available criteria and other information about how it works, regular reviews of its performance, and accountability back to survivors. In culmination, the System must be easy to use, understand, and access.
- **Kia mau, kia pono:** This involves fidelity to the foundational principles, concepts, and values consistently throughout the implementation and operation of the Survivor-Led Redress System and the central entity.

## 6 Te Tiriti o Waitangi position statement

Te Tiriti o Waitangi position statement and the accompanying background paper respond to Recommendations 2, 13, and 14 of *He Purapura Ora*:

2. The puretumu (holistic) system – and its design and operation – will give effect to Te Tiriti o Waitangi through legislation, policy and practice.

13. Principles, te Tiriti obligations and international commitments will inform the implementation of the puretumu system.

14. The governing body for the system will give effect to te Tiriti and reflect a diversity of survivors and expertise.

The Design Group engaged in extensive discussion of the positioning of survivors, the redress system, and the central entity in relation to Te Tiriti o Waitangi (Te Tiriti). We were cognisant of the importance of following established Te Tiriti thinking, but also of the unique experiences and positioning of survivors. For example, Māori survivors may occupy a tenuous position with respect to their hapū and Iwi due to their disconnection and dislocation as a result of abuse in care, and survivors have not necessarily been recognised as part of, or reintegrated within, Iwi collectives and structures. This means that achieving Te Tiriti-related redress for survivors may be distinctive in some respects and entail different considerations.

While the Design Group is comfortable with our decisions taken with respect to Te Tiriti, these decisions may be contentious in some respects (for example, our position, following external advice, that hapū and Iwi are not eligible for redress through the Survivor-Led Redress System). These matters, and the question of where Te Tiriti partnership sits with respect to the System and the central entity, will need to be addressed in more depth in the detailed design phase.

The Design Group has drafted a background paper (see Appendix 2) to accompany the following position statement. The background paper provides the context and justification for

a survivor-centred consideration of Te Tiriti o Waitangi, as part of achieving justice and redress for all survivors who have experienced and continue to experience harm.

### Position statement

Our aspirations are for:

1. the breaches of Te Tiriti o Waitangi relating to Māori survivors of abuse to be recognised; and
2. the guarantees made in Te Tiriti to inform remedies for the harms and losses experienced by all survivors, through the foundations and operation of the Survivor-Led Redress System.

Te Tiriti o Waitangi guaranteed protection, self-determination, and equity for Māori.

In acknowledging the importance of Te Tiriti as a founding document of Aotearoa New Zealand, we affirm these rights were denied to Māori survivors of abuse in State and faith-based settings. For Māori survivors, the promises of Te Tiriti are yet to be realised.

In State and faith-based settings, survivors were, and often continue to be, disconnected and isolated from the enveloping korowai (cloak) of whānau love and care. We belonged nowhere and were subjected to abuse, neglect, and for some of us, atrocities such as torture. Our rights and expectations to be nurtured and safe were, and continue to be, denied us. The long-term nature of these failures, abuses, and losses transcends generations. The losses and harms are intertwined with those experienced by whānau, hapū, and Iwi, but are also distinct.

Tauīwi (non-Māori) survivors share many of these experiences and effects of State and faith-based abuse. The Survivor-Led Redress System exists for the restoration, reconciliation, and recompense of survivors first and foremost. It is our commitment that as a system that is Te Tiriti o Waitangi-led, in its foundations and operation the Survivor-Led Redress System will ensure that Te Tiriti o Waitangi will be aspirational and beneficial for all survivors.

## 7 Recommendations for the *Survivor-Led Redress System* foundations

The Design Group notes that we have amended and expanded the Royal Commission-recommended purposes, functions, scope, principles, concepts, and values.

The Design Group recommends that:

11. The purposes, functions, principles, values, and concepts developed by the Design Group will be used in the establishment of a Survivor-Led Redress System.
12. An independent, survivor-led central entity with survivor-facing and system-facing functions is established, to deliver monetary payments and personal apologies and acknowledgements, coordinate access to survivor-elected services and supports, and monitor and report on the Survivor-Led Redress System's performance as well as progress towards the eradication of abuse in care.
13. Aligned with a slightly expanded scope, the Survivor-Led Redress System supports past, current, and future survivors of abuse, non-State survivors, and their whānau (families) who have also been harmed, in achieving redress.

14. The Survivor-Led Redress System is both Te Tiriti o Waitangi-led and Māori-centric. The system will give effect to the provisions of Te Tiriti o Waitangi through ensuring honourable kāwanatanga (government), rangatiratanga (self-determination), and equity, underpinned by Māori ways of knowing, being, and doing (mātauranga, te reo, me ōna tikanga).

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## Term of Reference 2: The look and feel of redress

### *Poem – Eyes wide open*

*So many eyes looking in  
like stars in the night skies sparkling bright for the hope that they see  
others dull and haunted,  
caught in the rage that lies within,*

*so many eyes with so many expectations...  
... to lie with eyes wide open,*

*dreaming those dreams that once we never dared to dream,  
eyes wide open, looking in.*

*The ghosts that remain, the pain that seeks to subside,  
the love that hopes for the sun ray that seeps into the opening,*

*eyes wide open looking in and what of me who see the eyes  
full of hope and expectation of love and of rage  
what of me?*

*Are my eyes open,  
is my heart open...  
to one another,  
to each other...*

*eyes wide open  
looking in.*

### 1 Introduction

Our Terms of Reference ask us to make recommendations on “how the system should safely connect with and support survivors and whānau (families) to navigate their redress journey – how redress needs to ‘look and feel’ to give survivors confidence in the redress system and to provide them with a safe, accessible, trauma-informed, and culturally responsive experience”.

As is appropriate in high-level design, this section addresses how the *Survivor-Led Redress System* will appear in broad terms, incorporating the experiences, needs, and suggested solutions of diverse survivor perspectives and the various combinations of their possible redress journeys. These perspectives include but are not limited to:

- survivor experiences of both State and faith-based settings;
- te ao Māori (Māori worldview);

- Pacific peoples;
- tangata takatāpui, MVPFAFF and LGBTIQ+; and
- disabled people.

## 2 Vision and principles underpinning the look and feel of the *Survivor-Led Redress System*

The ultimate goal is to reclaim and realise survivor mana, healing, and justice through processes that enable survivor autonomy and control over their redress and healing journey. Survivors will have access to core functions of redress that recognise the harm done to them and will receive seamless support and resources to heal from the long-term consequences of the harm.

Foundational to the proposed look and feel of the Survivor-Led Redress System are the twin principles of:

- mana motuhake (independence, self-determination, autonomy and survivor-led)
- mā tātou, mō tātou (by survivors, for survivors).

Survivors' experiences of seeking redress and engaging support to heal from the impacts of tūkino (abuse, harm, neglect and trauma) have been dehumanising. We have not been believed, our attempts to seek redress have been met with administrative barriers and inordinate delays, and many of us have been retraumatised. The two principles above represent a shift from the deficit view of survivors that has underpinned past responses, to one of survivor empowerment and agency. The principles also underpin the shifts required to ensure the Survivor-Led Redress System is a safe environment in which survivors can select, engage with, and access the support and services that they choose (see Table 2.1).

**Table 2.1: Shifts required under the Survivor-Led Redress System to move from current state to future state**

Current state	Future state	Shift required
Retraumatization	Sensitivity	From processes that may trigger trauma towards sensitive approaches. Implement trauma-informed practices, prioritising survivors' emotional wellbeing throughout the processes.
Complexity	Accessibility	Transition from complex and bureaucratic to straightforward and accessible processes. Simplify criteria and documents, provide clear guidance, and offer assistance throughout.
Silence	Empowerment	Evolve from silencing to empowering survivors to have a voice and lead. Create an environment where survivors are encouraged to share their experiences openly and without fear.

Current state	Future state	Shift required
Delay	Timeliness	Move away from long delays to timely processes. Establish clear timelines for resolutions and provide regular updates to survivors to reduce anxiety and increase accountability
Scepticism	Belief	Transition from doubting to believing survivors and validating their experiences. Create a culture of trust and empathy.
Isolation	Support	Evolve from isolating survivors to offering support including counselling, advocacy services, and community support. Survivors can see themselves and people like themselves in the System.
Legal battles	Collaboration	Move away from adversarial to collaborative approaches. Engage survivors as partners in processes, so they contribute to their own redress journey.
Minimal compensation	Fair restitution	Transition from inadequate payments to providing survivors with fair and equitable redress. Recognise the impact of the abuse on survivors' lives and provide meaningful monetary payments.
Ambiguity	Transparency	Evolve from a lack of transparency to processes that are explicit and unambiguous. Communicate openly about redress progress, criteria for monetary payments, and access to appropriate supports and personal apologies.
Token apologies	Meaningful apologies and accountability	Move from evading responsibility to accepting it. Hold institutions to account for past tūkino and make changes to prevent future abuse and harm. Provide opportunities for meaningful dialogue, restoration, and healing.
Reliving trauma	Closure to move on	Transition from survivors constantly reliving their trauma to achieving closure. Offer a clear resolution pathway that helps survivors find closure and/or move forward in their healing journey.
Stigma	Dignity	Evolve from processes that stigmatise survivors to dignifying and respectful ones. Ensure survivors are not revictimised through seeking redress.

Current state	Future state	Shift required
Exclusion	Inclusion	Move from exclusive to inclusive processes and approaches that consider all survivor experiences, regardless of when the abuse occurred or the type of care involved. True inclusion necessitates accessibility at every level.
Business risk	Survivors' wellbeing and dignity	Evolve from prioritising the perpetrator's interest to providing robust and supportive experiences that acknowledge survivors' suffering, healing, and restoration. This shift requires a fundamental change in mindset, practices, and policies to ensure survivors' rights and needs are at the forefront of redress.

### 3 What a survivor-led system requires

A Survivor-Led Redress System requires two forms of survivor leadership. The System must be led by survivors, and it must enable survivors to lead their own redress. Both systemic and personal survivorship are critical to realising the transformative shifts identified in Table 2.1. It is only when survivors are central to the delivery of redress that they can be assured that it will be welcoming, enabling, and safe. Equally, it is only when survivors can control their redress journeys that they will be able to pursue ea (healing) that they identify as meaningful.

To realise systemic and personal survivor agency, we identified the following recommendations. These recommendations are central to the look and feel of the Survivor-Led Redress System and critical to a system that provides meaningful redress, healing, and justice for survivors.

#### 4 Survivors leading the *Survivor-Led Redress System*

A clear survivor identity should be omnipresent throughout the Survivor-Led Redress System. Survivors must be central to its governance and management structure. Ideally, the senior leadership of the central entity will include survivor executives. That leadership should also reflect survivor diversity, including strong Māori leadership.

Wherever commissioned organisations are not staffed by survivors, they should explore how they might implement professional development programmes for survivors. They should work with survivor reference groups and pursue innovative means to involve survivors in delivering redress.

At a minimum, managers and staff involved with the initial development and subsequent service delivery of the Survivor-Led Redress System must demonstrate understanding and competence regarding survivors. That means governance, managers, and kaimahi (personnel) are trauma-trained and trauma-informed. Those commissioned to deliver the various functions of the System must continually evidence how they ensure survivor-centred practice

in their governance, management, and operations. As the survivor population is diverse, that diversity needs to be represented in the staff and organisations involved, including Māori, Deaf and hearing-impaired people, and disabled people.

The central entity and any commissioned delivery partnership must put the interests and agency of survivors at the centre of their organisation structure, workflows, and outputs. Being survivor-centric ensures survivors are involved and the possible impact of decisions on survivors continually informs strategic, policy, and operational decisions. Similarly, it is essential that actions, decisions, and partnerships made by the Survivor-Led Redress System are undertaken with survivors' views and experiences at the centre. Success and failure are measured in terms of how the System works for and with survivors.

The Survivor-Led Redress System needs to ensure that survivors can determine which redress options they will pursue in ways that are mana-enhancing (dignity-enhancing). That will require agile workflow structures with multiple pathways. The system needs to be innovative and flexible, and to adapt to the diverse and changing needs of survivors. It will need mechanisms to enable survivors to provide input into their redress options and feedback on their experience.

Delivery needs to be quick and transparent. Timeliness and regular communication are especially important in relation to any decisions surrounding monetary payments, and personal apologies and acknowledgments.

**The Design Group recommends that:**

15. The Survivor-Led Redress System puts survivors at the centre of its governance and executive. This means that clear survivor and Māori identity and leadership must be omnipresent and sustained.
16. Managers and staff both within the central entity and in commissioned supports and services must demonstrate the understanding and competence necessary to work with survivors.
17. The organisations and staff of the Survivor-Led Redress System must reflect the diversity of the survivor population.
18. Key performance indicators are survivor-centric and co-designed with survivors. Systemic success and failure are measured in relationship to how operations and delivery work for survivors.
19. The Survivor-Led Redress System must be constituted by a flexible range of survivor-focused redress pathways.

## 5 Survivors leading their own redress

Survivors are an extremely diverse population with different redress capacities and needs. It is essential that the Survivor-Led Redress System provides multiple and varied ways for survivors to engage, and a sufficiently varied set of options for every survivor to pursue redress in a manner appropriate for them.

That there is “no wrong door” means that the Survivor-Led Redress System has multiple points of entry that are accessible wherever the survivor is on their redress journey. Further, ease of access will require a targeted approach that invites survivors to access redress, rather than relying on survivors to ‘find’ the entry. For many survivors, including some disabled survivors, this is likely to require proactive engagement. This may include advertising across platforms and community groups, and having people available to answer questions in various community or other settings (including online, phone, or via the Internet). Information about the system needs to be easy to understand and access.

The Survivor-Led Redress System must be committed to diversity and inclusivity. Some survivors will want to work through community agencies to get the information and support they need. Others will be served better by Iwi and/or urban Māori authorities. Some will engage through existing survivor groups, and some may wish to engage online or via the web portal.

Having survivors lead their own redress will require access points that meet the survivor where they are. It is essential that access to, connection with, and information about the Survivor-Led Redress System is safe and culturally responsive, reflects manaaki (caring for others), and provides survivors with confidence. The System must assess the services provided and who they are provided by, according to a variety of perspectives, testing them to mitigate inadvertent barriers.

Survivors must determine their own redress, including deciding if and when they access apologies, monetary compensation, and/or supports and services. In the past, survivors have had negative experiences of having to fit within agency requirements that have minimised and nullified survivor their needs. The new Survivor-Led Redress System must enable their authority in decision making at all phases of their redress journey.

Agency may require supported decision making for some survivors. Moreover, survivors need effective options from which to choose. Where existing options are not appropriate, the Survivor-Led Redress System may need to develop novel and personalised redress opportunities, delivered in a way that is mana-enhancing. The System must work with survivors to determine how to meet their needs if appropriate options are not yet available. This includes prototyping new approaches in relevant locations or building new partnerships.

To enable survivors to lead their own redress, effective options need to be visible and available for them to access. Achieving that, in turn, requires clear and transparent information to make informed choices. Survivors need redress options that are easy to understand and procedures that are easy to use. Further, they need to be able to prioritise redress options that are important to them. They need to have time to think and pause where needed, and opportunities to hear about and learn from other survivors’ redress experiences. They need to be able to call on trusted kaimahi (personnel) who work in redress and who work with values that align to the kaupapa (programme). In short, we recommend flexible and adaptive options and responses, particularly for survivors that may have new ideas about what redress might mean for them.

The Survivor-Led Redress System needs to have timelines that work for survivors. That means ending the inordinate delays that are all too common for survivors in Aotearoa New Zealand. The System must provide clear survivor communication and timeframe policy guides, and associated monitoring of these guidelines to ensure that operational timeframes complement the principles of the System. There must be clarity around response timeframes, and the mitigation strategies that will follow if timeframes are not met, including informing survivors of support options (to avoid possible retraumatisation and realise accountability).

The Survivor-Led Redress System must be responsive and listen to its users. The System will need to continually review, and remedy, the emergence of barriers to survivors'. Survivors must be able to exercise agency in the operation of the System both for themselves and for their peers. With survivors in informing and advising roles to influence what works best, the System should evolve as industry and clinical best practice responds to the preferences and needs of survivors.

That flexibility entails multiple lines of feedback, including formal procedures for lodging complaints and requests. Survivors should be able to provide feedback on their redress experience knowing where their feedback goes, when they will receive a response, and who from, and with a clear understanding of any actions they may need to take.

**The Design Group recommends that:**

20. The survivor is the authority in deciding whether and how they pursue redress.
21. The Survivor-Led Redress System is highly accessible, with targeted engagement activities central to the initial development and implementation phase.
22. The Survivor-Led Redress System reflects the diversity of the survivor population and enables survivors to pursue redress in modes, through agencies, and at times appropriate to them.
23. Redress options are easy to use, and survivors can access support that works for them.
24. The Survivor-Led Redress System is highly agile and responsive, enabling redress to innovate.
25. The Survivor-Led Redress System clearly communicates with survivors according to specified and appropriate timeframes.
26. The Survivor-Led Redress System has appropriate procedures for feedback and complaints.

## 6 Functions of the central entity

In our recommended hub and spoke model, the survivor's experience of redress will be largely determined by how they choose to engage with the Survivor-Led Redress System. We envision a highly decentralised system that enables survivors to work with those organisations and services that are most suited to them.

However, to enable survivors to lead redress, the central entity should perform key functions in the redress ecosystem. Having the central entity either perform or monitor these key

functions ensures their independence from the State and other perpetrator organisations and helps realise survivor control over critical aspects of the Survivor-Led Redress System.

The central entity should:

- have a governance body with a charter (or similar) setting out key principles;
- have strong survivor and Māori leadership;
- manage and control the core funding for the System, which entails having a financial control function and investment strategy;
- promote redress and manage communication;
- manage system-level reporting;
- oversee the training and employment of redress navigators;
- oversee the training and employment of redress assessors;
- make redress payments to survivors and manage the payment procedures and policies;
- manage the central information systems;
- procure and commission redress supports and services;
- undertake and manage memoranda of understanding (MOUs) with government and other organisations;
- prototype and develop new forms of redress; and
- monitor the operational performance of system components.

Detailed design and further programme evolution may need to add to or remove some of the functions on that list.

Figure 2.1 illustrates the proposed core facilitation and coordination roles of the Survivor-Led Redress System and how the steps or spaces identified in Figure 2.2 fit within the approach. The enabling functions to support the operations of the System are proposed in the grey shaded box at the bottom, which are discussed further under our response to ToR 5.

**Figure 2.1: Proposed core roles for the Survivor-led Redress System**

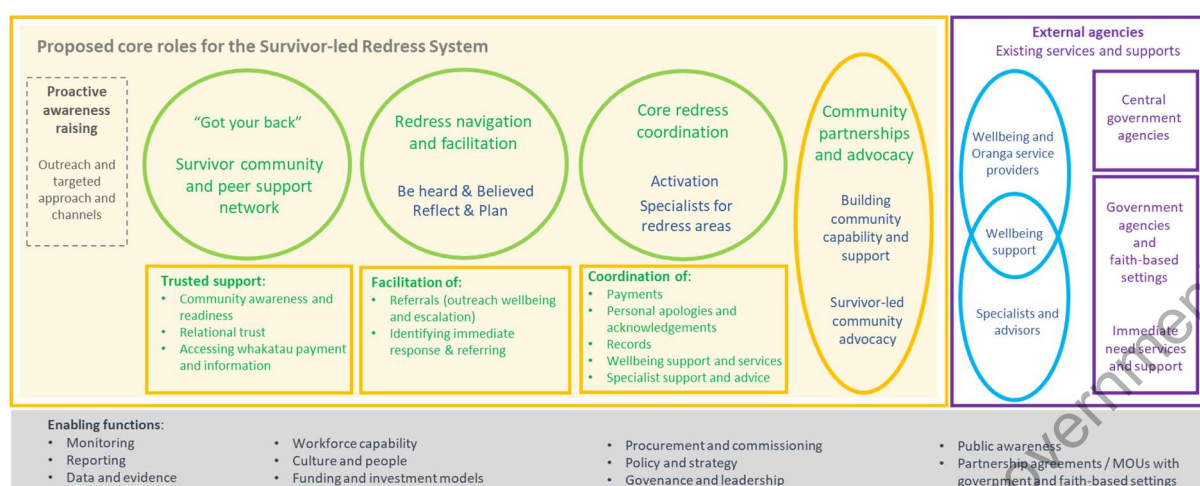


Table 2.2 describes the steps and spaces outlined in Figure 2.1.

**Table 2.2: Steps and spaces in relation to the core roles for the Survivor-led Redress System**

Core role	What this means	What this might look like
Proactive awareness raising	Publicly and widely promote redress availability and expectations to ensure all survivors are aware of where and how to access redress.	Targeting spaces that survivors are likely to be in, including community spaces like libraries, shelters, marae and rural spaces, specific survivor cohorts, prisons, and gang communities.
Community and peer support network	Recognise the capability and capacity of survivor communities and peer support networks; and the value of online and virtual information.  This is a space to build trust and confidence with key supporters to guide and advocate for survivors.  This could also be a space to access a recognition or whakatau (welcome) payment before progressing with next redress steps.	Survivors are supported by their peers, whānau, and community.  Survivors may nominate a key supporter from their whānau (families) or network who they trust to be with them along their journey – someone or some people who ‘have their back’. This could also be the survivor themselves.
Redress navigation and facilitation	Facilitate immediate response to needs; and support survivors to understand what options are available to them and how to access the right supports for their redress journey. There may be some	Survivors who use the Survivor-Led Redress System have information available that they might consume directly, or that

Core role	What this means	What this might look like
	form of assessment and supported decision-making to support survivors with decisions about what might meet their needs and aspirations for their future.	might be presented by a navigator – working either directly for the System, or for a third-party supplier (e.g., a community group, a social sector provider, a non-government organisation, or a workplace) that has been contracted to the System to provide this service.
Core redress coordination	<p>Coordinate core redress functions, including monetary payments, personal apologies and acknowledgements, records, and specialist supports.</p> <p>This role is required to ensure effective coordination of core redress functions happens swiftly and seamlessly. While being transparent, ensuring survivors' expectations are met, some processes and facilitation with external agencies may not require survivors to participate.</p>	<p>Effective facilitation of an apology by the central entity with external agency will ensure it has the capability and understanding to deliver a meaningful apology.</p> <p>Effective coordination will ensure records are collated on behalf of survivors, so they receive their records as expected and/or supportively.</p>
Community partnerships and advocacy	Provide survivor advocate groups with the opportunity to lead research and evidence-gathering, awareness campaigns, and prevention approaches.	<p>Research and evidence inform the Survivor-Led Research System for continuous improvement, and hold State and faith-based settings to account.</p> <p>Survivors may access their language, whakapapa, or identity through avenues made available through community partnerships.</p>

**The Design Group recommends that:**

27. The central entity performs and retains the functions necessary to ensure that redress is and remains survivor led.
28. The central entity sits within, monitors, and facilitates a comprehensive and responsive range of redress experiences.

## 7 How the *Survivor-Led Redress System* might safely connect with survivors and whānau, and support them to navigate their redress journey

Figure 2.2 provides a high-level illustration of the steps or spaces that survivors may move through on their redress journey, and described in Table 2.3. This is not a linear process. Rather, the Survivor-Led Redress System provides points for survivors to enter and revisit as it best meets their needs, throughout. Figure 2.2 should be read alongside Figure 2.3, which provides a wider view of the roles across the System and the ecosystem in which it sits.

Each of the points along the survivor's redress journey is encompassed within a virtual – and perhaps in some cases, physical – safe and protected space, akin to a pātūwatawata. A pātūwatawata can be described as a fortified place of sanctuary, where survivors can experience nurture and care without having to negotiate the complexity of the system themselves. We believe this metaphor can also represent the function and role of the central entity to protect the space that survivors need to undertake their personal redress journeys, and to be responsible for engaging with the Crown and managing transactions and compliance so that survivors don't have to. We have illustrated potential survivor-led redress journey and pathways in Appendix 3.

Figure 2.2: High-level steps or spaces that survivors may move through on their redress journey

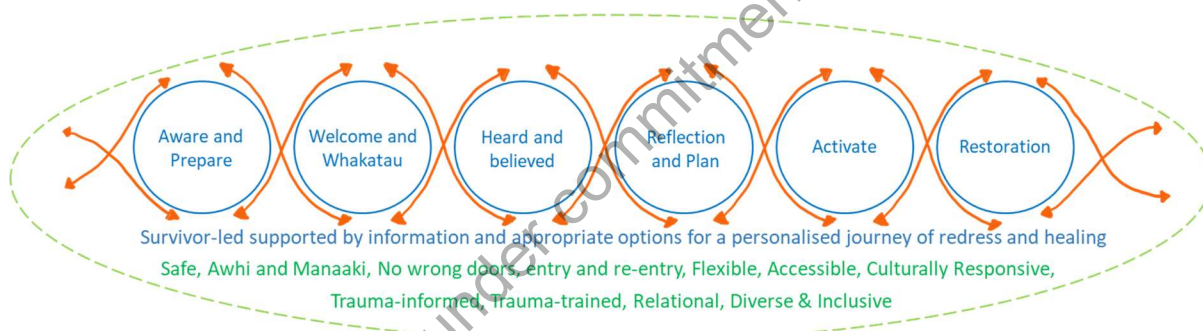


Table 2.3: What each high-level step or space means and looks like

Step or space	What this means	What might this look like?
Aware and prepare	There are diverse channels and methods to ensure survivors are aware of what the Survivor-Led Redress System may offer them. Survivors can easily recognise if they are eligible. They can take the time to get ready and prepare to explore what redress might look like for them.	Newspaper, TV, radio, and Internet banner ads; interviews; news stories; presentations in community groups; hui for specific survivor cohorts; testimonial videos; community visitors with key messages about the System (who, what, when, where, why, how); accessible information; and people who can help survivor groups to understand the information

Step or space	What this means	What might this look like?
Welcome and whakatau	<p>The whakatau (welcome) is an opportunity for the System to introduce itself to the survivor, and for survivors to receive a formal recognition, from other survivors, of their experience and resilience.</p> <p>Along with supports, a \$10,000 payment to the survivor is a part of this process to give tangible recognition as well as provide immediate resources to help them get started.</p> <p>The whakatau is where the survivor outlines their initial thoughts, wants, and needs, and where the System recognises their rights to redress and introduces some of the available offerings. This is also allowing survivors to decide if they are ready to seek and explore other redress options.</p>	<p>In-person meeting/s and conversations; paper or online resources to learn about what the System is; opportunities, examples, and reassurances, navigator or supporter engagement; necessary preparatory activities (e.g., getting an independent bank account; and getting the required legal work done – e.g., people with delegated decision-making or power of attorney)</p>
Heard and believed	<p>Survivors have a space to be heard, believed, and trusted. Providing a space for survivors to tell their story from their perspective is important to demonstrate manaaki (caring for others), support, and value.</p>	<p>One-to-one conversation (i.e., ethnographical); alone story-telling (to recording device); feedback conversation; written or one-to-one personal attestations of being trusted</p>
Reflection and plan	<p>Survivors have a space to decide what they need from their redress and healing journey. They should have all the information about the choices and options available for them to inform their planning.</p>	<p>At home at a retreat; with family; alone; with supporter/s and/or navigator/s; away from institutional pressures; online or hard copy catalogues; definitions of processes; standby technical advice (about processes); no deadlines; funded time (including covering cost of not working or not being in current home or living environment)</p>

Step or space	What this means	What might this look like?
Activate	This space supports survivors and connects them with their selected redress options.	Booking system; user appointment diaries (paper, digital); user resource base (paper, digital); at home; on provider premises; provider codes of conduct; complaints and resolution spaces; complaints and resolution support; access support; cultural support; language (including jargon) support; easy read; identity-based support
Restoration	Survivors receive redress. This does not mean that redress is final: survivors can revisit any point across the System, as redress is also about their healing journey.	Survivors may have received a meaningful personal apology, monetary payment/s, and/or healing services and supports.

## 8 Navigating the *Survivor-Led Redress System*

While the Survivor-Led Redress System is intended to be intuitive for survivors to interact with, we recognise that survivors come from a diverse set of experiences and backgrounds. Therefore, we are proposing a platform that enables survivors to self-direct and lead their redress while also ensuring survivors can access the support they need to assist them with their redress journey.

The navigator role is central to making the Survivor-Led Redress System accessible, safe, and efficient.

The Design Group has discussed the core skills or attributes of navigation, facilitation, and coordination roles delivered by the Survivor-Led Redress System as including:

- advocacy and guidance;
- holistic or redress journey support similar to whānau ora navigators;
- connecting with, and referring to, the right supports and specialists;
- strong understanding and knowledge of the redress options;
- providing information about the System and options of how to access redress and support;
- facilitating access to information/evidence needed for redress, and facilitating apologies; and

- providing support that is under the guise of awhi (embrace), creating and holding space for survivors so that they have time to be, think, and understand, and not be overwhelmed.

Detailed design will explore how these roles will be available and accessible to the diverse survivor communities, including the cultural and specific needs of survivors. For instance, it will be critical to have navigators who have relevant and shared lived experience – as disabled people, Pacific peoples and/or Māori. Survivors should also have a choice of navigators of different genders, in locations near them, and who speak different languages.

A survivor can nominate a trusted support person from their network or whānau to (family) be resourced by the Survivor-Led Redress System so that they can seek redress surrounded by their whānau, extended family, aiga, community of supporters, support workers, and others. We also considered those survivors whose engagement with redress may involve an institution (such as supported living facilities, prisons, or other spaces where an individual's ability to freely make decisions is mediated) as well as personal, familial, and community relationships.

It is possible that a survivor may work with more than one navigator, if there are areas in which specialisation is necessary.

To achieve the welcoming and easy look, we propose that the Survivor-Led Redress System uses a relational approach to its interactions with survivors and those they connect to. This may look like taking time, building trust, going over information and checking back as needed, linking survivors with other survivors, and pausing the process.

While we considered social workers for these types of roles, we did not see this qualification as necessary. Some survivors have not had good experiences with social workers, and we want to be explicit in noting this.

We propose that informal supports often overlooked in communities are prioritised and resourced. We know that people are more likely to seek help from people they trust – their peers, friends, and whānau – before reaching out to formal services and supports. Investing in these trusted relationships and building capability in flexible and mobile approaches can ensure support reaches survivors across a myriad of communities. Supports and services don't need to be location-based, but do need to be able to go to survivors through roadshows or facilitation partners with lived experience.

It may not necessarily be people that facilitate and coordinate some of the core redress functions. We envisage that there will be a role for information technology, where that is beneficial and appropriate. The detailed design phase should explore how some navigation might be automated.

We propose that navigation or advocate supports funded by the Survivor-Led Redress System be endorsed in a way that keeps survivors safe.

**The Design Group recommends that:**

29. The Survivor-Led Redress System supports the recruitment and training of navigators.
30. Survivors can choose navigators appropriate to their needs.
31. Navigator recruitment looks to build on existing relationships and expertise.

## 9 Accessing supports and services outside of the core redress functions

The Survivor-Led Redress System needs to be intuitive to support survivors to access valuable supports and services that it does not deliver directly.

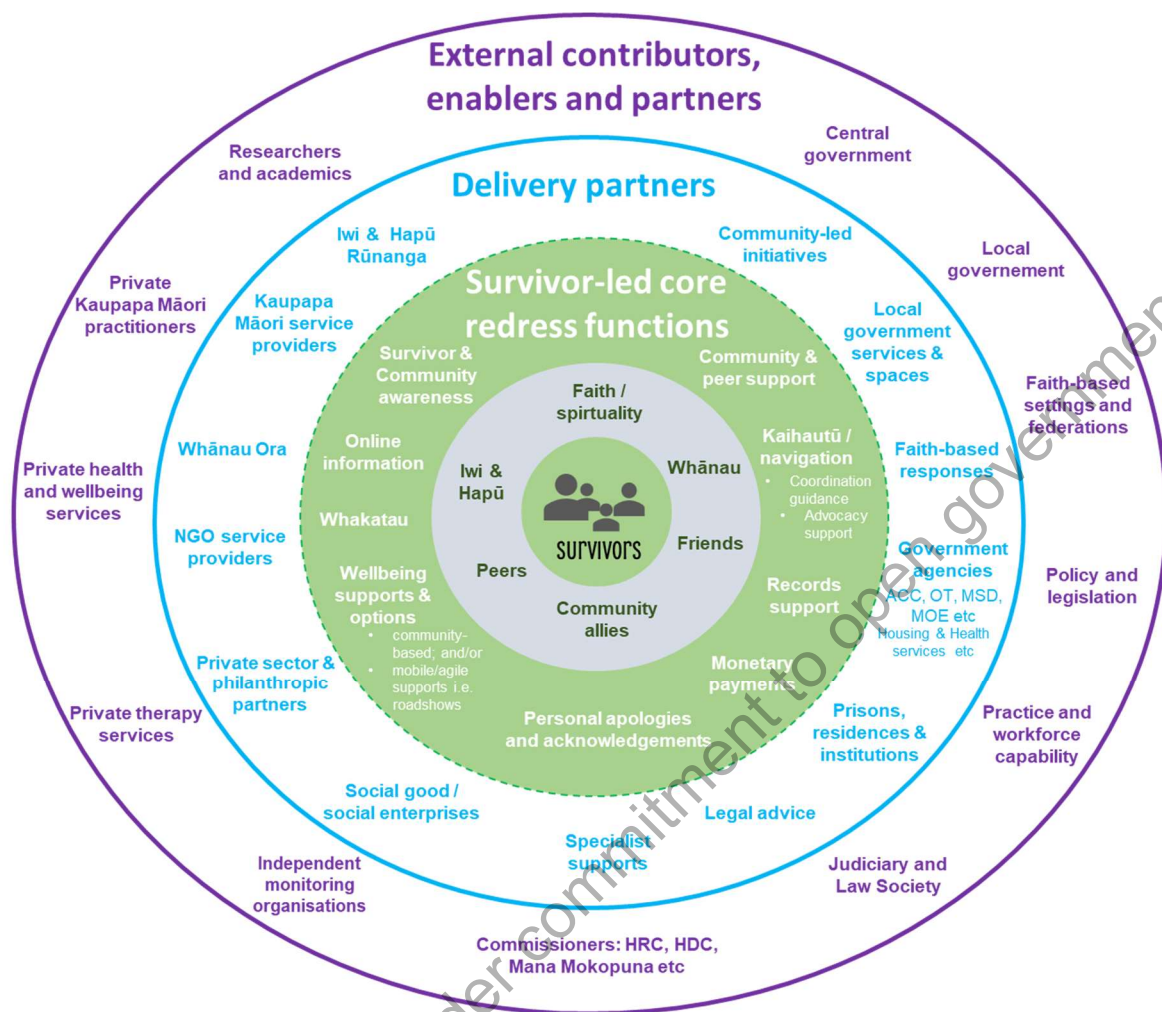
We propose that the central entity partners with a range of delivery and external partners, identified as part of the ecosystem in Figure 2.3, to provide a myriad of redress options for survivors, as survivors determine what redress looks like for them. Each survivor will have different needs, and a flexible delivery model will enable them to select the services and supports that work for them.

Eventually, it is possible that a survivor might be issued with a 'silver' card loaded with credit and/or that provides access to partnering/survivor accredited services, or an allocated amount of money.

Additionally, where demand exists for services or supports that are yet to be established in existing sectors, the Survivor-Led Redress System could underwrite and lead the piloting, testing, and commissioning of such novel services or supports.

Figure 2.3 illustrates an ecosystem that revolves around the survivor and their redress journey and provides Survivor-Led Redress System options, resources, supports, and services. The central green sphere is that of the survivor, while the light-green layer represents the purview of the System, and the core redress functions supported by the central entity in the redress ecosystem. The blue ring illustrates the delivery partners likely to be directly engaged by the System to offer some parts of the system to survivors, while the purple outer layer consists of enablers who may not have direct interaction with survivors.

Figure 2.3: Redress ecosystem



Note: ACC = Accident Compensation Corporation; HDC = Health and Disability Commissioner; HRC = Human Rights Commissioner; MOE = Ministry of Education; MSD = Ministry of Social Development; OT = Oranga Tamariki. Mana Mokopuna, Chief Children's Commissioner.

## Term of Reference 3: *Survivor-led Redress System* mix of services and supports

### 1 Introduction

Our Terms of Reference ask us to identify “the types and mix of services and supports that should ideally be provided as part of each of the redress system’s functions”. In this section, we explore the types and combinations of services that survivors may wish to access from the *Survivor-Led Redress System*. As Figure 2.4 shows, services and supports are one of three key core functions designed to assist survivors to advance towards their redress goals.

Figure 2.4: Redress intervention logic



### 2 Situating services and supports in the context of a survivor

Drawing on our guiding concept of *Pūtahi te mauri, he wai ora e* – *Connected we find vitality*, we understand survivors’ journeys to and through the Survivor-Led Redress System in terms of wairua (spirit) and mauri (life essence). Survivors’ experiences of tūkino (abuse, harm, neglect and trauma) have profoundly affected their wairua, their mauri, and subsequently their wellbeing. We propose that understanding each survivor’s movement through redress as one from languishing wairua and mauri noho (deep wounding of spirit) towards the optimal states of wai ora (well-being) and mauri ora (state of flourishing) provides a useful basis for mapping the various services and supports that best meet survivor needs.

#### **Mauri and wairua – indications of deprivation or thriving**

Mauri is the life force or essence, and is a property of all things. Therefore, mauri reflects not only “the vitality, integrity, and energy within a person” but also “the nature of relationships in the wider environment”.<sup>14</sup> There are various states of mauri, ranging from mauri noho

<sup>14</sup> Durie, 2001.

through to mauri ora. Mauri noho might be characterised as a deep wounding of the spirit,<sup>15</sup> reflected in indicators such as trauma, deprivation, disconnection, powerlessness, insecurity, whakamā (shame), and hopelessness<sup>1</sup> (see Table 2.4). Conversely, mauri ora might be characterised as a state of flourishing, reflected in indicators such as thriving and living well, rangatiratanga (self-determination), connectedness, fulfilment, purpose, hope, and valued roles in the collective.<sup>16,17</sup>

Wairua is the spirit and, together with mauri, constitutes all living beings.<sup>18</sup> It is also a foundation or source of wellbeing.<sup>6</sup> Similar to mauri ora, wai ora as experienced by people is dependent on relationships with the physical environment, and may be seen in a number of interrelated indicators ranging from micro/intra-personal to meso/social determinants. In He Ara Waiora, the mātauranga-informed (knowledge-informed) wellbeing framework adopted by Treasury, these indicators or ‘ends’ are identified as identity and belonging, interdependent rights and responsibilities, aspirations and capability, and sustainable prosperity.<sup>19</sup>

**Table 2.4: Mauri noho domains and indicators**

<b>Mauri noho (deep wounding of spirit) domains and indicators</b>	
<b>Durie, 2015<sup>4</sup></b>	<b>Love et al., 2017<sup>5</sup></b>
Trauma	Intergenerational experience of colonisation, loss of cultural cohesion and identity, marginalisation
Deprivation	Socio-economic disadvantage, low levels of educational achievement, not in education, employment, or training (NEET), health issues, early parenthood with limited whānau support
Disconnection	Disconnection from cultural identity, social systems and institutions (related to, e.g., employment, training sports, or culture), poverty restricting ability to fully participate in society
Powerlessness Insecurity	Powerlessness Insecure or negative cultural identity Colonised thinking
Whakamā Hopelessness	Whakamā, feelings of worthlessness, uselessness, self-condemnation, lack of pride in whānau Hopelessness

Many survivors, through their experiences of abuse and trauma and the associated harms and losses of opportunity, are highly likely to be in positions of disadvantage and deprivation, disconnected from those things that might provide important support (land, language,

<sup>15</sup> Love, Lawson-Te Aho, Shariff, & McPherson, 2017. (pp116–28).

<sup>16</sup> Durie, 2015.

<sup>17</sup> Pohatu, 2011.(p. 3, 1–12).

<sup>18</sup> Henare, 2001) (pp 197–221.).

<sup>19</sup> McMeeking, Kururangi, & Kahi, 2019.

whānau, culture), with subsequent effects on identity, security, and future prospects. The concepts of mauri ora and wai ora provide a clear vision, or horizon, towards which survivors might map out their redress pathways. While survivors will exercise choice about what services and supports they would like to engage with as part of redress, it is possible to link specific domains of mauri noho (languishing) with specific services/supports – for example, investment in education and training as a means of improving employment prospects and, thereby, economic security. Survivors may also have more immediate needs that could be supported; for example, they might attain a driver licence and thereby gain a sense of agency, self-efficacy, and therefore hope. Such short-term goals may be important precursors to medium-term and longer-term goals, as decided by the survivor. Survivors may be situated at any point between the states of mauri noho and mauri ora, and they will therefore be accessing services and supports that relate to their specific circumstances and current position on their own redress pathway.

To inform the types and mix of services and supports for survivors choosing from the Survivor-Led Redress System, mauri ora and wai ora together are the focal point for survivors' planning. They are also the prime source of monitoring the efficacy and the look and feel of services and supports (Table 2.5).

**Table 2.5: Indicators of wellbeing – mauri ora and wai ora**

<b>Mauri ora (a state of flourishing) domains</b>	<b>Wai ora domains (from He Ara Waiora)</b>	<b>Services and supports for survivors and whānau may include (but are not limited to)</b>
<b>Identity and belonging</b>		
<ul style="list-style-type: none"> <li>▪ Strong, positive cultural identity</li> <li>▪ Connectedness</li> <li>▪ Ability to navigate and participate in socio-cultural milieu (e.g., sports clubs, social and cultural activities such as attending tangihanga (funerals) and hui (meetings))</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cultural identity, social connections, social capital</li> <li>▪ Confidence in language and culture</li> <li>▪ Cohesion, resilience, nurture</li> </ul>	<ul style="list-style-type: none"> <li>▪ Connecting with whakapapa (genealogy), whānau (family), and Iwi (tribes)</li> <li>▪ Building cultural knowledge</li> <li>▪ Establishing and maintaining whānau and other relationships</li> <li>▪ Connecting with faith-based communities</li> <li>▪ Connecting with other survivors (peer-to-peer support)</li> <li>▪ Pastoral support</li> </ul>
<b>Interdependent rights and responsibilities</b>		
<ul style="list-style-type: none"> <li>▪ Role in collective – mana (dignity), self, and</li> </ul>	<ul style="list-style-type: none"> <li>▪ Confidence in participating in society</li> </ul>	<ul style="list-style-type: none"> <li>▪ Disability support services and navigation</li> </ul>

whānau-acceptance, sense of usefulness, having a role to play or contribution to make, participation in reciprocity	<ul style="list-style-type: none"> <li>▪ Civic engagement and governance</li> <li>▪ Safety and security</li> </ul>	<ul style="list-style-type: none"> <li>▪ Supported decision-making</li> <li>▪ Legal services (provided through the independent body)</li> <li>▪ Support through the criminal justice process</li> <li>▪ Restorative justice processes</li> <li>▪ Standardised financial advice and mentoring</li> <li>▪ Support to leave abusive religious or other communities</li> </ul>
<b>Aspirations and capability</b>		
<ul style="list-style-type: none"> <li>▪ Fulfilment</li> <li>▪ Hope</li> <li>▪ Sense of agency, self-efficacy, confidence</li> <li>▪ Purpose</li> </ul>	<ul style="list-style-type: none"> <li>▪ Knowledge and skills</li> <li>▪ Housing</li> <li>▪ Time use</li> <li>▪ Human capital</li> <li>▪ Self-managing</li> <li>▪ Healthy lifestyles</li> </ul>	<ul style="list-style-type: none"> <li>▪ All types of psychosocial supports (e.g., counselling, art therapy, music therapy, and other psychological care)</li> <li>▪ Health (physical, medical, and dental) and social services</li> <li>▪ Help to obtain and understand personal records</li> <li>▪ Housing services</li> <li>▪ Access to interpreters and translators to engage with supports and services</li> </ul>
<b>Sustainable prosperity</b>		
<ul style="list-style-type: none"> <li>▪ Engaged in career development, further education, training, employment, and business to improve economic outcomes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Jobs and earnings, income</li> <li>▪ Economic security and wealth creation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Access to, and support with, education</li> <li>▪ Access to, and support for, gaining or maintaining employment, or changing careers</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Support for immediate needs such as kai (food), transport, heating, and keeping safe</li> </ul>
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### 3 Types and mix of services and supports

Services and supports should be free and aimed at facilitating redress with survivors, their whānau, and communities, supporting their physical, mental, emotional, social, economic, faith, spiritual, and cultural wellbeing. This is an essential component of a survivor's pathway to mauri ora and wai ora, and more generally of restoring the mana of survivors and achieving utua kia ea (restoration and balance).

The Design Group acknowledges that many survivors' experiences of existing services have not always upheld their mana (dignity). We want to reiterate the independent nature of the *Survivor-Led Redress System* in designing services and supports that work for survivors.

There will be some existing services and supports that the *Survivor-Led Redress System* can build and learn from but that can be delivered through the System to safeguard and maintain the integrity in delivering meaningful redress, justice, and restorative healing for survivors. For instance, the System could engage survivor counsellors/practitioners to support survivors in their redress journey. The System will also have a role in navigating and supporting survivors to access other existing services and supports, for example, complex and administratively burdensome systems such as ACC-funded counselling. A second commonly cited example is the need for health advocacy to access primary, secondary, and tertiary health care.

Within this context, the Survivor-Led Redress System will be designed with a dual focus: supporting survivors to access existing services and simultaneously developing and providing survivor-specific services and supports directly through the System. This means all mainstream and specialist services would be accessible to all survivors and that the System offers services and supports that are specifically designed for and by survivors. This approach is not about having to choose between specific or mainstream services; rather, it is about ensuring survivors have the right access to the high-quality support service they need in the right time and place.

#### **The Design Group recommends that:**

32. A twin-track<sup>20</sup> service and support approach is taken to service delivery: supporting survivors to access existing services and simultaneously developing and providing survivor-specific services and supports directly through the Survivor-Led Redress System.

<sup>20</sup> Office for Disability Issues, 2016.

#### 4 Resource management for supports and services

As outlined in Part 1, we propose that the Survivor-Led Redress System is responsible for, and has full control of, the resourcing of the System. The System is responsible for managing survivors' access to services and supports in a way that is fair and transparent, and meets the needs of all survivors.

Initial work on how access to services and support is managed can be completed as part of the detailed design and implementation phase. Part of the implementation of the Survivor-Led Redress System will be about phasing for priority survivors and will also focus on prototyping to learn and improve.

This approach will provide the Survivor-Led Redress System with the flexibility and agility to respond and grow based on the number of survivors who access the System and the services and supports they need and want. Because redress is unique to each survivor, the System needs to be flexible and responsive to each survivor's individual needs. Through this process we expect to learn about what types of services and supports are most important and how to scale and manage the provision of these to survivors and their whānau.

#### 5 Barriers to accessing supports and services

We know that a number of barriers may limit survivors' ability to access existing services and supports. The Survivor-Led Redress System recommends the following to help overcome those barriers and deliver meaningful redress, healing, and justice for survivors.

**To increase awareness of existing services, the Design Group recommends that:**

33. Navigator, support and advocacy roles within the Survivor-Led Redress System will ensure that survivors can access to services and receive their full entitlements.
34. The Survivor-Led Redress System will enable easy and free access to critical services and supports for survivors – for example, primary health care services and dentistry. However, the specific services they can access will be determined in collaboration with survivors and their support people during the detailed design phase.
35. The detailed design phase explores a user-centred budget as a potential option to manage the delivery of existing services and supports, and to enable self-navigation.

**Where required services and supports do not exist, the Design Group recommends that:**

36. The Survivor-Led Redress System can commission and/or invest in, pilot, prototype, design, and/or deliver new services and supports. Opportunities for innovation and new services will be identified in the detailed design phase and on an ongoing basis as the System is delivered. The System may also choose to commission and/or invest in, design, and deliver services that do exist but due to barriers are not currently accessible to survivors – for example, social housing for kaumātua (elderly).
37. We propose the Survivor-Led Redress System invests in and partners with initiatives, organisations, and/or providers to deliver workforce training and capability building.

**In the event that required services and supports exist but there are long wait times or capacity issues with delivery, the Design Group recommends that:**

38. The Survivor-Led Redress System is empowered to create memoranda of understanding (MoUs) and other arrangements with government agencies, Iwi, and providers to prioritise survivors. For example, it could set up systems to prioritise delivery to a certain number of survivors with the highest needs.
39. The Survivor-Led Redress System can invest in and/or recommend further government investment in existing services that survivors wish to access. For example, such investment might be directed at Whānau Ora to ensure it has the capacity and capability to deliver to survivors.

## 6 Supports and services to raise awareness for prevention

The Design Group recognises the opportunity for the Survivor-Led Redress System to facilitate change and prevention through awareness and public education campaigns. We also acknowledge that survivors' courage in speaking out has come with their intent to make Aotearoa New Zealand a safer place for future generations and for children, young people, and vulnerable adults currently in State and faith-based settings. The existence of the System would enable and promote awareness and knowledge. This would continue and build on the work and outcomes of the Royal Commission.

The Design Group has identified the importance of intergenerational and whānau redress in recognising the impact of intergenerational trauma for whānau and children of survivors. The Survivor-Led Redress System therefore needs to support affected whānau to design their own redress plan and access to supports and services, including educational opportunities such as scholarships, that recognise the impact of the structural disadvantage and trauma they have experienced. While the need of whānau is significant, the Design Group has identified that survivors are the priority of the System and whānau should receive services and support after the needs of survivors are redressed directly.

**The Design Group recommends that:**

40. Whānau (families) are eligible for Survivor-Led Redress System services and supports.

**The Design Group notes that:**

Whānau should receive services and support after the needs of survivors are redressed directly.

# Term of Reference 4A: Personal apologies and acknowledgements

## 1 Introduction

In this section, we respond to the Personal Apology Framework that the Minister for the Public Service, the Minister of Finance, and the Attorney-General approved, derived from the work of the Royal Commission and augmented with content provided by the Crown Response Unit. The Personal Apology Framework consists of five elements: purposes, features, principles, guidance and expertise, and limitations.

Facilitating meaningful personal apologies is a key purpose of the *Survivor-Led Redress System*. Personal apologies are separate from the public (national) apology to be made after the Royal Commission's final report is received.

**While the Design Group recognises that the national apology is a separate stream of work, we recommend that:**

41. The national apology workstream aligns with the principles of the Survivor-Led Redress System, inclusive of those additional principles generated in the high-level design.
42. No public apology should be actioned without survivor endorsement of the specifics outlined in the apology.

Two issues are outside the scope of this proposal.

- The liability of specific agencies and perpetrators that would inform personal apologies and acknowledgements work will be addressed in the detail of the Royal Commission's final report.
- Seeking apologies from individual offenders and perpetrators is outside the scope of the Survivor-Led Redress System. Navigators will, however, be available to support survivors who wish to pursue apologies through other means (i.e., through legal avenues, employment proceedings, or complaints. See Section 6: *Naming specific people and events*.)

## 2 Our recommended approach to apologies

As outlined in our response to ToR 2, the Survivor-Led Redress System will include a personal apologies function that entails system-facing and survivor-facing components.

### System-facing functions

Personnel within the central entity will work at the institutional interface to:

- secure agreement from agencies to accept responsibility for abuse;
- provide personal apology and acknowledgement training to State and faith-based settings to assist them with issuing apologies; and

- monitor the quality of apologies in terms of how well organisations are honouring their commitments and whether or not promised restorative actions have been enacted.

### Survivor-facing functions

Navigators are the primary survivor-facing component of the Survivor-Led Redress System. In relation to apologies, navigators will:

- work directly with survivors, in accordance with the survivor's needs and wishes for personal apologies and acknowledgements (including locating records of placement) and provide support throughout the process; and
- ensure that conditions for successful engagement around personal apologies and acknowledgements are established by:
  - ensuring survivors are supported and feel safe throughout the process; and
  - acting as an interface between institutional perpetrators or representatives to ensure the apology adequately addresses aspects of tūkino (abuse, harm neglect and trauma) and prevention of future harm as directed by the survivor.

#### The Design Group recommends that:

43. The Survivor-Led Redress System comprises a personal apologies and acknowledgements function that includes system-facing and survivor-facing components.

## 3 Contextualising personal apologies for survivors

Two key components underpin the context and framing of personal apologies for survivors: the mana motuhake of the survivor and Take-Utu-Ea as a framework.

### Survivor mana motuhake

In keeping with the overarching principle of survivor leadership identified in the responses to the other Terms of Reference, the survivor will determine what they need for healing, resolution, or restoration, and **whether** this includes a personal apology.

We have heard from some survivor cohorts that a personal apology is not meaningful to them, and from others that they would like to accept some elements but not others (i.e., receiving acknowledgement but not apology).

Note: Survivors determine what they need for healing, resolution, or restoration, and **whether** this includes a personal apology.

## Take-Utu-Ea

Take-Utu-Ea (issue-response-healing) provides a restorative framework for personal apologies, alongside other mechanisms for redress (see Part 1).

The three components of Take-Utu-Ea are as follows.

- Take is the abuse and harms that the survivor has experienced, which constitute the perpetrator's transgressions that must be apologised for and are a significant part of the apology.
- Utu is the form and delivery of the apology/apologies or acknowledgement that the survivor deems is appropriate and meaningful. It is also the genuine commitment of the perpetrator to: acknowledge, accept responsibility for, and express genuine apology for the abuse and harms; commit no further transgressions; and attempt to redress injustices. The utu should be in the spirit of generosity rather than looking to limit liability.
- Ea is the resolution, healing, or restoration that the survivor considers will be supported through a personal apology/apologies or acknowledgement.

## 4 Key features of an apology

The Personal Apology Framework outlines specific features of personal apologies and acknowledgements. These are presented below, with some rewording and specific stipulations. The Design Group has added the seventh feature, as described at the end of this section.

### Personal Apology Framework

1. Each survivor's experiences of abuse and its impacts are deeply personal and therefore the apology or acknowledgement they receive should seek to reflect that personal nature.

The Design Group asserts that it is critical to the genuineness, authenticity, and meaningfulness of a personal apology or acknowledgement that a letter or response is not generic but personalised and specific, according to the needs of the survivor.

### Personal Apology Framework

2. To deliver such an apology/apologies or acknowledgement, the Survivor-Led Redress System could use a guided process to work with a survivor to develop the appropriate wording and delivery approach.
3. The approach can include the organisation/s and people to make each apology, the format it needs to be delivered in, who is supporting the survivor in receiving the apology, the location and timing of the apology's delivery, accessibility requirements, and accompanying culturally and/or spiritually sensitive actions or rituals.

The Design Group asserts that:

- the navigation mechanism offered through the Survivor-led Redress System will be critical to the success and safety of personal apologies;
- the guided process will need to be couched in restorative justice processes and principles (Take-Utu-Ea);
- it is imperative that the content and delivery is negotiated and co-designed with the survivor;
- the survivor need only tell their navigator broadly what they would expect to see in their apology and have the right to ask for changes and to accept or reject it after it is first written by the individual or institution responsible; and
- for apologies to be restorative, face-to-face dialogue may occur between perpetrator/representative and survivor, in the presence of a trained facilitator and supporters.

#### **Personal Apology Framework**

4. Apologies may be made to survivors as part of a process to receive a payment or support services or may be made in isolation.
5. Any apology or acknowledgement of this nature does not have to come first in the redress process. A survivor may wish to access support services first, to enable them to be in a suitable space to consider an apology or acknowledgement.
6. Some survivors may never wish to receive an apology or acknowledgement. It is important that those accessing the Survivor-Led Redress System have options in which redress functions they access and when.

The Design Group asserts that:

- consistent with the survivor-led principle, survivors have the choice of whether to receive personal apologies and acknowledgements and when this would best occur;
- individual survivors may want apologies at different times in the redress process, depending on their preparedness. There needs to be some agility within redress spaces and processes, to make sure that the apology comes when the survivor is prepared and ready; and
- the survivor may need cultural and psychological support and services in the process of the apology design and delivery. It is important that this be provided in the process of the apology design as well as in the delivery process and afterwards.

#### **Personal Apology Framework**

7. Apologies should not be 'full and final' or conditional. An apology or acknowledgement is not an endpoint; it is a starting point to help survivors and their whānau move towards ea. There has to be the possibility for further dialogue with

the Crown or faith-based settings during and following any apology or acknowledgement.

The Design Group asserts that:

- more than one apology or acknowledgement may be needed, and from different representatives and organisations;
- in the context of a restorative apology or acknowledgement process, a survivor has the right to read an impact statement or the like (either reading it in person or submitting it in writing or via video) to the apologising individual or institution. A survivor also has the right to respond to the apologising individual or institution.

## 5 Apology principles

On the whole, we endorse the Royal Commission principles for apology, subject to the overarching principle of **survivor leadership**. A survivor-led apology and acknowledgement process means that the final principle – that apologies and acknowledgments “come directly from the institution concerned” – for instance, may need to extend beyond an institutional focus depending on the care setting within which the survivor experienced abuse, and on their wishes. As such, the principle required some rewording. This principle also provoked discussion about how Survivor-Led Redress System would need to work at the institutional interface.

Principles for apology are presented below; eight are based on the Royal Commission principles, with added detail and some rewording, and six are additional principles (principles 4, 6, 7, 10, 11, 14). Specific stipulations from deliberation and consultation are provided.

### Apology principles

1. Acknowledge the tūkino (abuse, harm, neglect, and trauma) caused to the survivor and to others the survivor identifies and wishes to have acknowledged, such as whānau (families), hāpori (communities), and future generations.
2. Accept full responsibility, without minimisation or defence, for the tūkino. This must include both the actions of the abuser and institutional responses that have facilitated abuse.

The Design Group asserts that:

- the long-term and ongoing impact that the survivor has had to endure as a result of the State or faith-based setting's actions should be acknowledged;
- in addition to tūkino while in care, for some survivors institutions' neglect to intervene must also be acknowledged – for example, through not believing or silencing survivors, covering up abuse, obstructing justice, and subjecting survivors to cruel and retraumatising complaints processes;
- survivors can choose to have an apology or acknowledgement extended to whānau and others if they would like it – for example, whānau and parents who were forced or persuaded to enter their disabled children or young people into care or relinquish

their child for adoption with the promise that their children would be safe and protected when they were not;

- some survivors may opt against inclusion of whānau in apologies and acknowledgements, if they have suffered abuse at the hands of whānau members; and
- for deceased survivors, apologies and acknowledgements may entail acknowledging the trauma passed on to surviving whānau.

#### **Apology principles**

3. Express genuine regret and remorse for the tūkino (abuse, harm, neglect and trauma). Phrases like “I’m sorry” or “We apologise” should be central to the statement if this is desired by the survivor.
4. Show genuine empathy for the survivor’s emotions and experiences. Acknowledge the survivor’s feelings and validate their pain and suffering.

The Design Group asserts that:

- expression of regret and remorse needs to be done in culturally and spiritually meaningful ways, and may employ specific rituals deemed appropriate by individual survivors;
- while genuine regret, remorse, and empathy are important, how this is expressed should be tailored to the needs of the survivor. For instance, the specific phrase “We apologise” will be less relevant if the survivor desires an acknowledgement instead. Acknowledging feelings and validating pain and suffering may be perceived as patronising by some.

#### **Apology principles**

5. Ensure that an institutional apology or acknowledgement is made by a person at an appropriate level of authority, so the apology or acknowledgement is meaningful, and is delivered in a respectful and dignified manner.

The Design Group asserts that:

- the survivor determines what is meaningful. For some, this may be related to an individual’s proximity to the offence or offending, while others may wish to hear from people in positions of influence in the Survivor-Led Redress System;
- the process should be bi-directional: Ideally the apologise will develop their insight and commitment to making changes in systems and behaviours through the process of building a relationship with the survivor; and
- more than one institution may need to apologise.

#### **Apology principles**

6. Address the survivor by name and be specific about the survivor’s experiences.
7. Use clear and unambiguous language to apologise.

The Design Group asserts that:

- survivors need to hear apologies and acknowledgements in language that makes sense to them; and
- translation will be an essential service in the apologies and acknowledgements process for some survivors.

#### **Apology principles**

8. Commit to taking all reasonably practicable steps to prevent any recurrence of the tūkino (abuse, harm, neglect and trauma).

The Design Group asserts that:

- being aligned with actions ultimately makes apologies and acknowledgements meaningful and genuine. It is important that apologies and acknowledgements are backed with organisational commitment to no longer causing harm and to making required changes; and
- survivors need to be able to ask for specific details in terms of what changes are being made.

#### **Apology principles**

9. Be flexible and respond appropriately to the needs and wishes of the individual survivor, taking care to uphold their mana (dignity).
10. Respect the survivor's wishes regarding privacy, further actions, and how they want to move forward. Some survivors may prefer confidentiality, while others may seek justice, accountability, or vindication.
11. Be transparent about investigation and any findings related to the events in question. Provide the survivor with access to relevant information.

The Design Group asserts that:

- consistent with the survivor-led principle, meaningful apologies should be founded on survivor determination about central elements of the apology or acknowledgement;
- apologies and acknowledgements should be personalised and specific to events, survivor experiences, and hara (transgression);
- some survivors may want their personal apology to be public and to be witnessed by others, and this option should be available. This may include publication or the reading of a written apology or findings of facts in public;
- vindication is an essential desired outcome for some survivors. In this regard, an apology or acknowledgement presents the opportunity to clear survivors' reputations and restore their standing in their communities; and

- it is essential to consider the safety of survivors who remain in the care of a service they have made a claim about and want to receive an apology or acknowledgement from.

#### **Apology principles**

12. Be consistent, where appropriate, with tikanga Māori (Māori customs), Pacific, and other spiritual, religious and/or cultural practices meaningful to the survivor.

The Design Group asserts that:

- apologies and acknowledgements are considered broadly within the framework of Take-Utu-Ea (issue, response, healing);
- as determined by the survivor, apologies and acknowledgements should respect and be consistent with the survivor's beliefs, which may be cultural, spiritual, and/or religious. This may entail use of specific language to reflect these beliefs; and
- Ifoga and other cultural practices will need a cultural advisor or broker to navigate this process safely and give input alongside the wider family input. Cultural advisors or brokers will need to be provided to help disconnected family members find unity/fakalataha within aiga, fanau or magafaoa. A balance is needed for such processes of apology and acknowledgement that are relevant to Pacific survivors' culture. The survivor and wider family should have a right to respond.

#### **Apology principles**

13. Come directly from the institution(s), care setting(s) and/or individual(s) deemed appropriate by the survivor.

The Design Group asserts that:

- it is important to appreciate that apologies and acknowledgements are not only institution-oriented and they need to reflect the broad range of care settings and circumstances in which survivors have been abused; and
- the importance of apologies coming from Iwi (tribes) was raised by disabled survivors who desire recognition and acknowledgement by their Iwi of their failure to reach out to or claim them. Where apology might take place on home marae (courtyard in front of meeting house), this needed to be inclusive and easily accessible – for example, with a ramp for wheelchair access, a New Zealand Sign Language interpreter, and the ability to take a guide dog.

#### **Apology principles**

14. Offer apologies and acknowledgements in a timely manner to prevent further distress to the survivor and to demonstrate commitment to addressing the issue promptly.

In addition to the Royal Commission apology principles, the Personal Apology Framework stressed the need for apology-related processes to be easy to navigate, be inclusive, and be trauma-informed. The Design Group supports this guidance.

**Based on the Personal Apology Framework, the Design Group recommends:**

44. Apology-related processes should not be overly complex, and should be trauma-informed, accessible, age appropriate, and culturally sensitive to avoid retraumatising survivors and undermining the intent of the apology or acknowledgement.
45. All survivors, including disabled survivors, need to understand and be able to fully participate in the process. Comprehensive guidance and/or capability building will be needed.
46. Apology-related processes should draw on and be informed by:
  - meaningful apology and acknowledgement principles;
  - trauma-informed guidance and expertise;
  - tikanga and cultural guidance and expertise;
  - faith and spiritual guidance and expertise;
  - accessibility guidance and expertise;
  - an overview of the natural justice considerations involved in making an apology or acknowledgement; and
  - information on care settings' history and context, abuse prevention initiatives, and other care-related change programmes underway.

## 6 Naming specific people and events

The following considerations related to limitations were presented in the Personal Apology Framework, centred around the need for evidence to justify the naming of specific people and events.

- Reasons for any limitations to apologies and acknowledgements should be clear to survivors.
- The principles of natural justice place some limitations on what can be acknowledged in an apology or acknowledgement. For example, alleged offenders cannot be named in an apology or acknowledgement without an appropriate investigation or unless they volunteer to be named.
- In some cases, there may have already been an investigation that resulted in findings that the apology or acknowledgement can include.
- Some survivors may also be prepared for their experiences to be part of an investigation before an apology or acknowledgement is made, which would increase the details that could be recognised in the apology or acknowledgement.

After deliberation, the Design Group has taken the position that a personal apologies and acknowledgements function **would not** include negotiating apologies from individual offenders or perpetrators given the natural justice implications and the complexity of the

investigations that would be required. Where survivors wish to pursue criminal or other investigations, navigators within the Survivor-Led Redress System will be available to provide psycho-social and other support through that process.

**The Design Group recommends that:**

47. Negotiating or facilitating apologies from individual offenders or perpetrators is not a function of the Survivor-Led Redress System.

**Potential impacts of lack of specificity in personal apologies**

Where an apology or acknowledgement is not specific enough, there is a significant risk that it will lack meaning or may feel tokenistic to the survivor, with the result that it is inadequate in supporting ea (healing) or other desired outcomes. This was a strong theme in survivor feedback.

Working through the level of specificity survivors need for an apology or acknowledgement to be meaningful and restorative, and the associated investigative requirements, will be a critical part of the navigation role within the Survivor-Led Redress System.

Navigators will need to develop relationships with survivors **and** institutions/organisations that allow them to maximise detail and manage expectations. Any limitations need to be clearly stated from the outset. The decision to undertake further investigation (i.e., locating records of placement/care) lies ultimately with the survivor, and whether they determine that the benefits of specificity and accountability are outweighed by the costs of scrutiny and retraumatisation. However, investigation is also potentially limited by the absence of records, and the death or infirmity of alleged perpetrators as well as those who might provide witness testimony. Where survivors are aware of these constraints, they advised us that “having independent support at every step and being kept well-informed is very helpful. Survivors know that they are believed even if there isn’t enough evidence to prosecute.”

Mechanisms are available to enable or encourage accountability for apologies and acknowledgements without libel or liability. A ministerial order could be passed to the effect that admitting to and apologising for abuse or harm does not open institutions/organisations up to financial liability. An amnesty can ensure that information used in one way (i.e., for apologies and acknowledgements) cannot be used for another (i.e., in legal proceedings). However, these mechanisms are not ideal from the perspective that a survivor may desire more fulsome accountability.

**How the *Survivor-Led Redress System* might facilitate meaningful apologies that do not include details about specific people and events**

We note that a meaningful apology or acknowledgement is not necessarily without hurt. A meaningful apology or acknowledgement may still entail the survivor revisiting their experiences of abuse to some extent.

Individual survivors will have different perceptions of what constitutes a meaningful apology or acknowledgement. As noted above, the role of the navigator or navigation service will be

critical in supporting survivors to work through what is important to them in an apology or acknowledgement, providing clear information about what is possible, and managing expectations where necessary. A number of other elements of apologies, as set out above under [4 Key features of an apology](#) and [5 Apologies principles](#), may strengthen their meaningfulness. For example, an apology or acknowledgement may be made public and the survivor may receive an apology or acknowledgement in a place of their choosing with whānau (family) and support people to bear witness to it; an apology or acknowledgement may focus on hearing the survivor's account, their victim impact statement, or the like; and the subsequent response may reinforce that what happened was not acceptable and that there is a commitment to following through and redressing the wrongs.

**How the *Survivor-Led Redress System* can support survivors while an appropriate investigation or process is worked through, and minimise the need for survivors to have to retell their experiences**

The relationship between the survivor and the navigation service or navigator will be critical in supporting a survivor through the apologies and acknowledgements process. Counselling and other wellbeing services will also be available and accessible to survivors (if they choose).

The Survivor Led Redress System ensures that survivors tell their story only once, if at all. (Some survivor cohorts, e.g., from Lake Alice, have already been subject to detailed investigation, with the result that there is considerable prior evidence of abuse or harm.)

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## Term of Reference 4B: Payments

### *Poem – Money*

*Money came and went in our lives  
It didn't help or make life any better  
– it was, what it was  
– no connection, no meaning – money lost, money gone.*

*Pain then, pain now – nothing has come, and nothing has left.*

*Money will give me redress for the pain that I was caused,  
still the pain remains.*

*Money, money – whose money it is?  
Blood money – your money, my money ... money.*

### 1 Introduction

Our Terms of Reference ask us to:

feedback on ... payment frameworks, and any draft redress models and example proposals, provided by the CRU... with a focus on what is needed to support meaningful recognition of the harms people have experienced ...

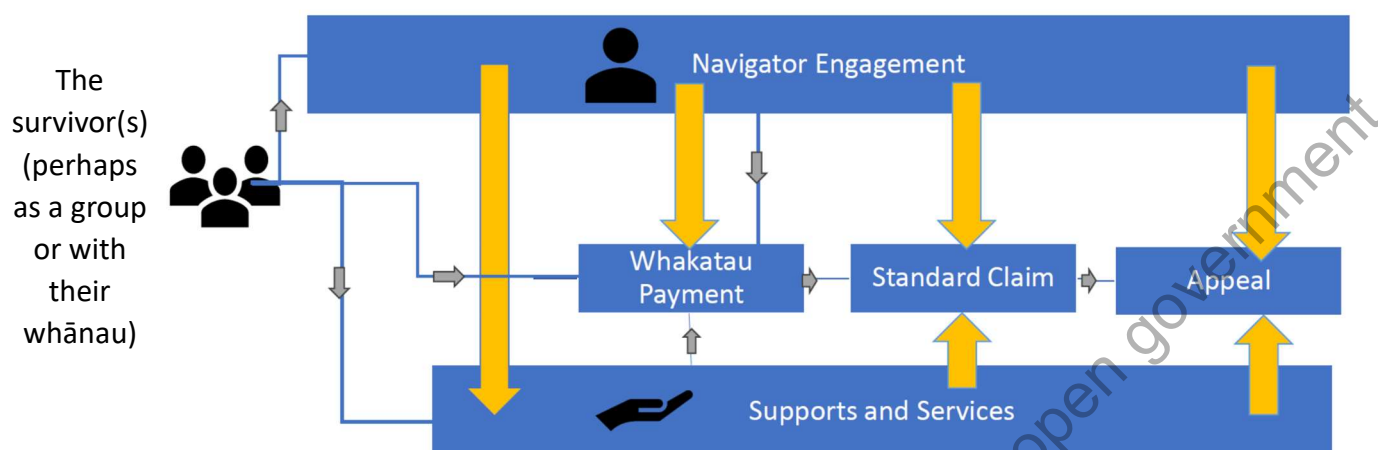
Our recommendations regarding monetary payment flow from two documents. The first, *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui (He Purapura Ora)* is an interim report published by the Royal Commission into Abuse in Care in December 2021. The second is the *Draft Redress System Payment Framework (the Proposed Framework)*, a document provided to us by the Crown Response Unit in late September 2023. The *Proposed Framework* poses a series of questions concerning the purposes, structure, values, and process relevant to making monetary redress payments. In this section, we reflect on the recommendations of *He Purapura Ora* and the questions posed by the *Proposed Framework* in relation to our development of high-level design recommendations for monetary redress payments.

Our discussion proposes three payment types:

- \$10,000 whakatau (welcome) payments, made in welcome and recognition;
- \$30,000–\$400,000 standard claim payments, responding to tūkino (abuse, harm, neglect and trauma) experienced in care and consequential harms and \$5,000–\$10,000 for especially vulnerable survivors;
- \$10,000 harmed whānau (families) payments for those who were in the care of suffering survivors.

In what follows, we explain the purposes, grounds, structure, values, and processes associated with each of these four redress claims. Figure 2.5 provides an initial overview of the proposed payments process to introduce this discussion.

Figure 2.5: Overview of the proposed payments process for direct survivors



## 2 Purposes of a monetary payments programme

We agree with the *Proposed Framework* that a system of monetary redress payment must balance the objectives that it:

- provides fair and meaningful payments;
- provides transparent, simple, and timely access to payments;
- minimises the risk of retraumatising survivors;
- is efficient to administer;
- is equitable and financially viable over the long term; and
- has integrity to maintain survivor and public confidence.

Drawing on *He Purapura Ora*, we add to that list the five further objectives that the system of monetary redress payment:

- recognises the survivors' distinctive tūkino (abuse, harm, neglect and trauma) and vulnerability;
- recognises the effects of the survivors' tūkino on their whānau;
- alleviates needs caused by, or related to, their tūkino;
- encourages survivors to engage with other services and supports provided by the *Survivor-Led Redress System*; and
- respects and realises survivors' human rights.

Inevitably, some of these purposes will come into conflict. Formulating rigid procedures to resolve such tensions is likely to be misguided because it is impossible to anticipate all circumstances in which tensions will arise. However, in many cases, the principles for the

Survivor-Led Redress System provide guidance on how to balance tensions between these objectives. We provide four illustrations.

First, the principle of mana motuhake (self-determination) suggests that how the objectives are balanced will depend on the survivor's choice. Wherever possible, the survivor chooses what objective(s) they may want to pursue and how to balance competing objectives.

Second, the principle of mana motuhake also means that minimising the risk of retraumatising survivors is subordinate to the survivor's right to pursue forms of redress that may cause them difficulties. The Survivor-Led Redress System should not use paternalistic reasons to prevent survivors from pursuing redress to which they are entitled.

Third, the principle of manaakitia kia tipu (nurture to prosper) suggests that efficiency may need to be subordinated to alleviating needs.

Fourth, responding appropriately to the complex requirements that tūkino creates for survivors may not be simple. The demands of utua kia ea (restoration and balance) will likely require a complex set of monetary redress options for survivors to pursue.

### 3 Principles

The principles we set out in our response to ToR 1 inform and apply to our recommendations concerning monetary payments. For further clarity, we stipulate the following.

- The principle of mana motuhake means that because the process of obtaining monetary redress is survivor-led, the survivor decides what they will do and when they will do it. The survivor is the decision-maker.
- The principle of mana motuhake means that monetary redress will be provided by a body that is independent of the State and is survivor-led and survivor-centric.
- Monetary redress is only part of a holistic Survivor-Led Redress System that is nationally coordinated.
- Monetary redress does not displace or replace survivors' needs for ongoing support provided by the System.
- Monetary redress will be an optional part of a wider range of redress provisions that functions independently. Mana motuhake requires choice. If survivors do not want to make a monetary claim, they can still access other needs-oriented services and supports. Or they can choose to defer their monetary claim until they feel ready.
- Survivors will receive support before, through, and after receiving monetary redress.
- Access to the Survivor-Led Redress System is not means-tested. Redress responds to and recognises the survivors' tūkino.
- Monetary redress should be flexible, respectful, and transparent and the associated processes should be disabilities-informed and trauma-informed.

#### 4 Monetary redress and Take-Utu-Ea (Issue-Response-Healing)

The framework of Take-Utu-Ea grounds our monetary redress proposals. The take is the survivor's unique experience of tūkino encompassing the experience of abuse and the experience of consequential harm and trauma. Take provides the justification for redress. Take appears, therefore, in the descriptions of tūkino in, for example, the matrices used to assess monetary claims. Utu is the remedy. In this context, utu takes the form of monetary payments, located within a larger and holistic redress system. We leave the definition of ea open-ended. Monetary payments are unlikely to realise ea for many survivors, and each survivor will have their own understanding of ea.

##### **Redress is not compensation**

In *He Purapura Ora*, the Royal Commission argues that redress should “acknowledge in a meaningful way – not compensate for – abuse and harm”.<sup>21</sup> We agree with the Royal Commission that a compensatory approach to redress is not appropriate in this setting and that the courts provide a superior avenue for compensation. Section G.28 of our Terms of Reference states that the government is undertaking steps to improve survivors' access to justice through the courts. However, where the Royal Commission describes compensation as strictly equivalent payments, this move away from compensation means that redress would not, therefore, be strictly 'equivalent' utu for the tūkino experience.

Several things follow from the stipulation that monetary redress is not compensatory. Because monetary redress will not provide full compensation, the receipt of monetary redress does not affect a survivor's eligibility for the supports and services provided by and through the holistic Survivor-Led Redress System. The reason is that, because the survivor will not be compensated for the full tūkino, they may have needs that are not fully addressed by the payments. It follows, further, that survivors should not be expected to use those monies to pay for supports and services related to needs caused by abuse in care (such as dental health). Lastly, because they are not compensation, redress payments are not full and final. After receiving one payment, the survivor may also return to the monetary redress programme with new information or claims. Prior payments may be deducted from any further claim.

The Design Group recommends that:

48. Monetary redress is not compensatory, meaning that:

- monetary redress payments do not affect a survivor's eligibility for other supports and services in the Survivor-Led Redress System;
- survivors are not expected to use redress to pay for needs caused by tūkino (abuse, harm, neglect and trauma);
- redress payments are not full and final, but prior payments may be deducted from any further claim; and
- survivors should have the option of receiving authentic acknowledgements of responsibility and apologies alongside monetary redress.

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<sup>21</sup> *He Purapura Ora* p. 304.

## **An outline of our proposal**

*He Purapura Ora* recommends three forms of monetary redress: common experience payments, brief claims, and standard claims. To expand, the Royal Commission recommends that survivors be eligible for uniform payments available through the common experience pathway and stepped payments available via brief and standard claims. Reflecting on the Royal Commission's proposals, we developed a fourfold typology of claims, each with different grounds:

- whakatau (welcome) claims, developing the Royal Commission's common experience proposal;
- standard claims, a combination of the Royal Commission's proposed brief and standard claims;
- whānau harm claims, responding to the Royal Commission's concerns with intergenerational tūkino; and
- payments for especially vulnerable survivors, responding to the Royal Commission's proposal that payments should reflect the vulnerability of survivors at the time of their abuse.

## **Common experience and whakatau payments**

*He Purapura Ora* states that a common experience payment would be payable to survivors who were "at an institution or other care setting where systemic abuse" occurred.<sup>22</sup> The survivor would not need evidence of either abuse or harm to receive a common experience payment. They need only have been "at" a scheduled care setting at the relevant time.

However, deciding what counts as a systemically abusive care setting would be difficult, costly, and time-consuming. The diversity and number of care settings potentially in scope mean that the monetary redress programme might only learn of certain care settings when a survivor seeks entry to the Survivor-Led Redress System. That means it would be impossible to create a complete list of eligible institutions in advance; therefore, potentially eligible survivors would not know whether they were eligible. Moreover, the experience of international programmes suggests that the programme would be subject to legal challenges by excluded survivors seeking to demonstrate their experience of systemically abusive care settings.

More importantly, the Royal Commission's common experience payments would immediately exclude all those survivors who were not in a care setting judged to be systemically abusive. It is inappropriate to begin with a redress process that excludes many survivors. The principles of manaakitia kia tipu (nurture to prosper) and he mana tō tēnā, tō tēnā – ahakoa ko wai (all people have dignity) entail that all survivors and their whānau are supported to prosper and grow, with their own mana and associated rights, no matter who they are. Therefore, we have developed the Royal Commission's collective payment as whakatau (welcome) payments.

The whakatau payment builds on the Royal Commission's recommended common experience payments to provide a more inclusive and fair approach that corresponds to our principle of

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<sup>22</sup> *He Purapura Ora* p. 309.

manaakitanga (ethos of care). The whakatau payment would be given to all survivors who seek it. Similar to the Royal Commission's recommended common experience payment, the whakatau payment is a fixed sum— we recommend a uniform payment of \$10,000.

The whakatau payment has several purposes.

- It recognises and immediately acknowledges the survivor as a survivor.
- It provides an immediate tangible benefit to survivors that will encourage participation in the broader Survivor-Led Redress System.
- By alleviating some immediate needs, the payment enables survivors to engage further with the System. In this sense, the whakatau payment adheres to a principle of manaakitanga.
- It provides minimal satisfaction towards the remedy of injury.

The whakatau payment is made when the survivor engages with the Survivor-Led Redress System. Because the survivor may not have accessed the various supports and services related to the System until after they engage, it is important that the whakatau payments are as accessible as possible. The availability of the whakatau payment needs to be widely advertised so that all eligible survivors know of their eligibility. These payments will be a centrepiece for the general outreach of the System. To be eligible for a whakatau payment, a survivor need only indicate that: they want it; they were in care; and they were subject to abuse.

The Royal Commission envisions deducting prior compensation or redress payments from redress monies that survivors would otherwise receive.<sup>23</sup> That suggestion only concerns payments that redress specific abuses. As the whakatau payment does not redress specific tūkino, but instead serves as a welcoming recognition payment, prior payments should not be deducted from it. Equally, a whakatau payment should not be deducted from any other redress payment.

**The Design Group recommends that:**

49. A whakatau (welcome) payment is easily accessible and available to all survivors, meaning:

- all survivors are eligible for whakatau payments;
- the availability of whakatau payments is widely and accessibly advertised;
- whakatau payments are not to be deducted from other compensation or redress payments; and
- whakatau payment is \$10,000.

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<sup>23</sup> *He Purapura Ora*, p. 307.

## Differentiated (stepped) payments

*He Purapura Ora* suggests two forms of differentiated payments: brief and standard claims.<sup>24</sup> These are “differentiated payments” because survivors would get different (stepped) amounts of money depending on their different experiences of tūkino (abuse and neglect in care, and consequential harm). While we do not recommend that the Survivor-Led Redress System includes both a brief and standard claim (see “[Whānau protection payments](#)” in Section 6 below), here we discuss the approach set out in *He Purapura Ora*.

### *Brief and standard claims*

*He Purapura Ora*’s proposed brief claims would enable survivors to obtain redress for experiencing abuse. They would not redress the harmful impact of that abuse. Payments would differ between survivors depending on the nature, severity, duration, and frequency of the tūkino they experience(d). Other factors might be relevant, such as the survivor’s vulnerability at the time of the offence.

Turning to standard claims, *He Purapura Ora* envisions these as the main mechanism for monetary redress. Standard claims would redress both abusive experiences and consequential harms. Like brief claims, standard claim payments would vary according to the nature, severity, duration, and frequency of abuse survivors experience(d).

Both the brief and standard claims are remedial in their purpose. They respond to the survivors’ entitlement to a remedy for the abuse and harms they experience(d). Both the claims vary payments according to the nature, severity, duration, and frequency of the abuse and harm specific survivors experience(d). In that respect, the grounds for both the brief and standard claims would be more aligned with the rebalancing purpose of utu (restoration): they aim to provide money ‘equivalent’ to the degree of injury. Since people’s injuries vary, these differentiated payments recognise differences in the magnitude of the breach, harm, or hara (transgression).

However, because *He Purapura Ora* states that the value of payment would not match the severity of the harm, the brief and standard claims produce only a rough equivalence between the tūkino and the monetary payment in the sense that variations in payment values accord with the character, severity, frequency, and/or duration of the tūkino.

We largely agree with the Royal Commission’s approach. However, we recognise significant problems with it.

### *Problems with the Royal Commission’s approach*

There are good reasons to worry about differentiating payments according to the nature, severity, duration, and frequency of the abuse and harm.

First, to get redress, survivors would need to tell the programme about their tūkino. In short, some form of testimony would be necessary. That process would encourage survivors to excavate and evidence their worse experiences, which would likely be retraumatising for many. We can build trauma-informed processes to mitigate that risk, but it is a serious

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<sup>24</sup> *He Purapura Ora* pp. 296–297.

concern, and would potentially increase the need for counselling and other support during the claims process.

Second, the programme would need to measure the experience of abuse and attempt to measure severity. This is hard to do and, moreover, the idea of grading abuse is objectionable. A common and consistent framework for assessing abuse and harm will abstract from the survivors' lived experience. Getting a framework that is fair and consistent to all survivors is likely to require the use of assessment matrices, which compartmentalise the survivors' tūkino in a manner divorced from their lived experience.

Third, it can be difficult and costly to amass evidence of consequential harms, and to assess the degree to which injuries experienced in care contribute to various harms.

### *Alternatives*

We considered alternative differential payment approaches, including making payments respond to the survivor's present needs. Such a needs-based equitable process asks us to think about utu as a restorative process that focuses on what the survivor's present situation is. At other times, we canvassed the idea of simply paying all survivors a single uniform payment. Both alternatives have the advantage of not requiring retraumatising testimony. The programme would not need to grade people's experience of abuse or harm. Instead, survivors would work with their navigator (see ToR 3) to identify needs and receive money to help them address those needs.

We identified eight problems with the alternatives.

- Neither the needs-based nor the uniform model remedies or acknowledges the specific tūkino survivors experience(d).
- Redress providing rough equivalence is common overseas and matches the expectations of many survivors in Aotearoa New Zealand.
- Failing to recommend differentiated payments as an option would go against the Royal Commission's recommendations that redress include options for pursuing claims that respond to and acknowledge the distinctive character of each survivor's tūkino.
- The needs-based approach still risks centring redress on a deficit model. Because the needs-based model centres on the survivor's needs, the survivor is the one being judged. Alternatively, focusing on tūkino centres redress on the wrongdoing of others – offenders are the ones who are being judged.
- The entitlement to remedy model works better with demands for accountability. We expect offending organisations and people to be accountable for what they did, and the survivor may wish to tell organisations about their injuries to receive an appropriate response, including personal apologies and acknowledgements.
- The holistic range of supports and services that constitute Survivor-Led Redress System addresses many of the survivors' needs.

- The uniform whakatau payment provides a modest uniform sum. Survivors who do not wish to pursue the more difficult entitlement-based payments have a robust alternative.

Having considered the benefits and drawbacks of the entitlement, uniform, and needs-based approaches and reflecting on the principle of mana Motuhake (self-determination), we are agreed that survivors should be able to choose their path to redress. We, therefore, endorse the Royal Commission's overall approach. Survivors should have the option of pursuing 'stepped' entitlement-based claims.

**The Design Group recommends that:**

50. The *Survivor-Led Redress System* makes payments with values that are differentiated according to nature, severity, duration, and frequency of the tūkino (abuse, harm, neglect and trauma) survivors experience(d).

**Combining the brief and standard claims**

*He Purapura Ora* indicates that the standard claims process would include the brief claims process. In essence, the standard claims process would be a brief claim plus a response to the consequential damage a survivor experienced after their original injury. After consideration, we do not recommend having two redress systems, one containing the other. It is unnecessarily confusing. Therefore, we recommend that there is only a single process, that of the standard claim.

However, survivors should be encouraged by their navigator and by other means to consider what aspects of their tūkino they wish to be redressed. Some may choose a path similar to that of the Royal Commission's brief claims recommendation. Others will combine some aspects of their in-care tūkino and some post-care tūkino.

**The Design Group recommends that:**

51. The *Survivor-Led Redress System* delivers a single claims process, the standard claim, which does not include a distinct brief claims pathway, and where:

- all survivors are eligible to make standard redress claims; and
- standard claim payments recognise and acknowledge the distinctive character of each survivor's tūkino (abuse, harm, neglect and trauma), including both abuse in care and consequential damage.

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**Monetary redress values**

The Royal Commission and the *Proposed Framework* argue that payments should be set at a "meaningful" level, and the Royal Commission criticises the values offered by current State redress systems as too insufficient to be meaningful.<sup>25</sup>

It is difficult to establish values associated with tūkino. People experience tūkino differently and there is an ineradicable uniqueness to suffering. *He Purapura Ora* suggests a public

<sup>25</sup> *He Purapura Ora*, p. 305.

consultation process for determining the value of any monetary payments.<sup>26</sup> However, as it is critical to survivors that we produce values, and our ToR ask us to comment on what “meaningful recognition” payments would require, we set out recommended payment values and specify, in general, what will make a survivor eligible for different payments and values.

Our review of *He Purapura Ora* found eight relevant factors that concern how to set payment values.

**Factors to consider in setting monetary values are:**

- a) the need for consistency and fairness between survivors;
- b) the comparative value involved – how the payment sits relative to other payments made by other systems or reparations (for example, settlements made as part of civil litigation), while acknowledging the different focuses or contexts those systems or reparations might have;
- c) payments should be set high enough to make redress a better option than civil litigation; and
- d) payments should be able to make a tangible difference to a survivor’s life—giving the survivor some control over their life, with the ability to use the payment as they see fit.

**Concerning what to pay survivors with respect to their individual claims, factors to consider are:**

- e) the nature and seriousness of the abuse;
- f) the impact on the oranga (livelihood) of the survivor, potentially including lost opportunities;
- g) the intergenerational impact;
- h) the vulnerability of survivors at the time of their abuse – for example, young age, disability, pre-existing physical or mental condition, or previous abuse at home all represent circumstances where there was a greater need for care, which made the abuse suffered a greater betrayal of the duty of care.

Source: All factors are from *He Purapura Ora* <sup>27</sup>with the exception of factor (d), which comes from the *Proposed Framework*, and may derive from material from the Australia’s Royal Commission into Institutional Responses to Child Sexual Abuse.

This section uses these factors to develop monetary redress types and values. However, this approach is also in keeping with our recommendation that the responsibility for assessing and making monetary redress payments is that of the central entity, which must be empowered to set and amend monetary payment types, values, and associated processes. Our recommendations should inform advance and priority payments but, once the Survivor-Led Redress System exists, the central entity will have the liberty to enact its own decisions.

<sup>26</sup> *He Purapura Ora*, p. 304.

<sup>27</sup> *He Purapura Ora*, p. 304-308.

The Design Group recommends that:

52. The independent survivor-led entity, the central entity, will be responsible for setting and amending monetary payment types, values, and associated processes.

### **Whakatau (welcome) payments**

We now explain how those considerations relate to our whakatau payment recommendation.

Because the whakatau payment is identical for all survivors, it will be consistent and fair. Comparing with overseas payments, base/fixed rate payments in comparative programmes range from AUD\$7,000 in Queensland to £10,000 in Scotland. These payments tend to be ‘flat’ – that is, they pay the same value to all survivors. Canada has paid a range of uniform values, which tend to average around CAD\$20,000. When we considered how to attract survivors by making redress a better option than litigation, we canvassed whakatau payment values ranging from \$1,000 to \$20,000.

Because the whakatau payments are uniform, they are only loosely related to the survivor’s individual tūkino. Moreover, they do not acknowledge intergenerational impact and do not recognise vulnerability. Further, the low standards of evidence for the whakatau payments might encourage fraudulent claims. Also, many survivors potentially eligible for a whakatau payment will have experienced less serious tūkino. To ensure that money remains available for survivors who experience(d) more severe tūkino, it might be prudent to keep the value of the payment relatively modest.

However, the value cannot be so low as to minimise survivors’ experiences. The value should be high enough to make redress a good alternative to litigation. It should also be sufficient to make a tangible difference to the survivor’s life. We propose \$10,000 as a sum that would meet each of these criteria. Although that figure is only half that provided by the Canadian and Scottish redress programmes, we are proposing a lower standard of evidence in the context of a broader scope of survivors.

### **Differentiated payments**

We agree with *He Purapura Ora* that the monetary redress programme should use matrices to enable consistency and fairness between survivors. Such payment schedules will enable transparency by providing public criteria that help survivors to understand how their claims are valued.

Applying *He Purapura Ora*’s distinction between tūkino experienced in care and consequential harms, we propose two matrices (see Appendices 5 and 6) that address each aspect of tūkino respectively. Such a distinction will enable survivors to choose to apply for tūkino experienced in care only, or to apply for both tūkino in care and consequential damage.

These matrices specify differentiated payments. By enabling survivors who experience(d) more severe tūkino to receive more money, these differentiations enable redress to be sensitive to the nature and seriousness of the abuse. Tables 2.6 and 2.7 provide a summary of the monetary values.

**Table 2.6: Summary of monetary values for tūkino experienced in care**

Level	Monetary value	General characterisation
1	\$30,000	One or more types of abuse/neglect of lesser severity, or was infrequent, or of shorter duration
2	\$60,000	One or more types of severe abuse/neglect, or abuse/neglect that is less severe but more frequent or of longer duration
3	\$90,000	One or more types of abuse/neglect of greater severity that was frequent, and/or lasted for several years
4	\$120,000	One or more types of abuse/neglect of grave severity that was frequent, and/or lasted for several years
5	\$150,000	One or more types of abuse/neglect of extreme severity that was frequent, and/or lasted for a significant portion of the person's life to date
6	\$200,000	Cases of such extraordinary severity that they cannot be recognised by a lower award. Should be less than 2% of the total awards.

Note: See Appendix 4 for the full matrix.

**Table 2.7: Summary of monetary values for tūkino experienced as consequential harm**

Level	Monetary value	General characterisation
1	\$30,000	One or more types of consequential harm of lesser severity, or was infrequent, or of shorter duration
2	\$60,000	One or more types of severe consequential harm, or consequential harm that is less severe but more frequent or of longer duration
3	\$90,000	One or more types of consequential harm of greater severity that was frequent, and/or lasted for several years
4	\$120,000	One or more types of consequential harm of grave severity that was frequent, and/or lasted for several years
5	\$150,000	One or more types of consequential harm of extreme severity that was frequent and/or lasted or will last for a significant portion of the person's life
6	\$200,000	Consequential harm in the form of behaviour that holds serious and grave imminent threat to self and others. Person is unable to function independently or take care of themselves – level of disability resulting from tūkino is extreme. Person has multiple distinct and significant problems. Problems are pervasive, impacting functioning in every domain of their life (social, physical, psychological, financial, spiritual, family, legal contexts). Extent of person's subjective experience of physical and emotional misery/distress is extreme and relentless.

Note: See Appendix 5 for the full matrix.

We recommend that the monetary redress respond to specific factors and how those factors relate to one another. In setting monetary payment values, we took the following into account:

- the Royal Commission’s judgement that redress payments should be “substantially higher” than they are at present;
- that the values must be high enough to make redress a good alternative to litigation;
- the compensation values paid for [unlawful detention/wrongful imprisonment](#).<sup>28</sup> Aotearoa New Zealand’s “base annual rate is \$150,000, in cases of [wrongful] imprisonment, or \$75,000, in cases of [wrongful] detention”; and
- the experience of and precedent set by comparative redress programmes in overseas jurisdictions.
- Our Level 1 (see below) value of NZD\$30,000 is very similar to the amount paid in Canada’s ‘sixties scoop’ settlement agreement (CAD\$25,000). That payment was made to any Indigenous Canadian removed from their homes between 1951 and 1991 “[and placed in the care of non-Indigenous foster or adoptive parents](#)”.<sup>29</sup> Receiving that money did not require any evidence of tūkino in care;
- Our Level 5 value of \$150,000 is similar to the maximum available in the Australian Redress Scheme, which primarily focuses on sexual abuse. Although the Australian scheme includes some consideration of consequential damage, the New Zealand dollar is lower, and the abuse encompassed by our proposal is much broader.
- Under the Canadian Independent Assessment Process (IAP), the maximum score for abuse in care points was set at around CAD\$105,000. But the Canadian dollar is worth more and that value was set in 2006. An inflation-adjusted value (146%) brings it quite close to our abuse in care maximum of \$150,000.
- Values provided by the Scottish Redress Scheme and Northern Irish Historical Institutional Abuse (HIA) programme were developed more recently and are more similar to what we have proposed to redress abuse in care. Their values are approximately 150% of those we propose, which suggests the possible need to increase our proposed payment levels.

Considering consequential harm, *He Purapura Ora* suggests that we provide differentiated monetary acknowledgements of consequential harm. But few overseas redress programmes include consequential harm. The following are the approaches of those that do include it.

- The Canadian IAP separated out several distinct consequential harm procedures. For psycho-socio-physical harms, the programme had a five-level matrix, which had a maximum value of around CAD\$35,000. For consequential damage to one’s experience of or capacity for employment, there was a four-level matrix with a maximum value of around CAD\$35,000. The Canadian programme scored each application using points, and the more points an application obtained, the greater

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<sup>28</sup> Ministry of Justice, 2023.

<sup>29</sup> Sixties Scoop Settlement Agreement, 2017.

value each successive point was worth. Put differently, not all points paid the same amount because the value of successive points scaled up. Therefore, once ‘aggravating factors’ had been applied, the maximum value of redress could total as much as CAD\$275,000, of which around half was consequential harm. Again, that figure should be adjusted for the stronger Canadian dollar and for 146% inflation.

- The Australian Redress Scheme pays up to AUD\$35,000 for the impacts of sexual abuse.
- The Northern Irish HIA programme considers consequential harm, but does not distinguish monetary values between abuse in care and consequential impact.

We note the contemporary Dilworth Redress programme has a maximum of NZD\$300,000, which will address both abuse in care and consequential harm.

How is this overseas comparative data relevant? *He Purapura Ora* recommends “meaningful” redress payments. “Meaningful” might be understood in different ways. One way in which the payments have meaning is that the different values acknowledge that survivors differ in their tūkino. The payments gain their meaning by reference to their justification as acknowledging each survivor’s tūkino. In that respect, overseas precedent-setting programmes provide some useful data for specifying what is meaningful. The Canadian, Scottish and Northern Irish exemplars provide the most help on this matter. It is notable that the design of the Northern Irish and Scottish programmes reflects significant survivor participation in policy development.

However, *He Purapura Ora* also quotes survivors who suggest what the *Payments Framework* document states: that payments should make a tangible difference to a survivor’s life. This offer is another way of understanding “meaningful” – that is, we could connect monetary redress values to costs relevant to living in Aotearoa New Zealand. We then considered some monetary values meaningful to life in this country in 2023. In particular:

1. the mean average downpayment on a home is \$175,000 (20% of the \$870,550 average home price);
2. in the lowest quartile of house prices, the average price is \$591,000, which would require an average downpayment of \$118,200. Some buyers can obtain a home loan with a 10% downpayment, or \$59,000;
3. the median average after-tax income is \$79,597; and
4. Aotearoa New Zealand’s living wage (pre-tax) is \$26 per hour (amounting to \$44,085 a year after tax).

Our proposed consequential harm matrix (see below) includes six levels.

Adding the Level 1 payments for both tūkino in care and consequential damage would equate to \$60,000. That is enough for a 10% downpayment on an average house in the lowest quintile in Aotearoa New Zealand. In addition, \$60,000 is the equivalent of 75% of the nation’s annual median post-tax household income and 136% of the post-tax annual living wage.

Adding the Level 2 payment for both tūkino in care and consequential damage would equate to \$120,000, enough for a 20% downpayment on an average house in the lowest quintile.

Survivors at this level would receive the equivalent of 151% of the nation's annual post-tax household income and 272% of the post-tax annual living wage.

Adding the Level 3 payment for both tūkino in care and consequential damage would equate to \$180,000, enough for a 20% downpayment on an average house. Survivors at this level would receive the equivalent of 226% of the nation's annual post-tax household income and 400% of the post-tax annual living wage.

Adding the Level 4 payment for both tūkino in care and consequential damage would equate to \$240,000, enough for a 28% downpayment on an average house. Survivors at this level would receive the equivalent of 302% of the nation's annual post-tax household income and 544% of the post-tax annual living wage.

Adding the Level 5 payment for both tūkino in care and consequential damage would equate to \$300,000, enough for a 34% downpayment on an average house. Survivors at this level would receive the equivalent of 377% of the nation's annual post-tax household income and 681% of the post-tax annual living wage.

The number of Level 6 payments is likely to be so small and the tūkino so extremely severe that comparison seems inappropriate.

#### *The structure of the direct survivor matrices*

All survivors assessed as within each level on a matrix will receive the same amount of money. The five-level framework is common to the Northern Irish HIA and Scottish Redress. Canada's IAP abuse in care framework may appear to have six levels, but because that system scores points, and the point values of the first two levels overlap, there are really five. Canada's consequential harm matrices have five and four levels respectively.

Having six broad levels (or bands) permits significant differentiation, capturing the different severities of survivors' tūkino. The matrices use fairly broad payment bands of \$30,000. Having more fine-grained assessment might enable greater accuracy; however, because this is not compensation, having broad categories can increase everyone's confidence that the claim has been correctly valued – it may be clearer how a claim fits within a broader, rather than narrower range.

The Survivor-led Redress System might develop a policy of levelling up marginal claims. Payment values should be periodically adjusted for inflation over time.

#### *The contents of the matrices*

The full recommended matrices (see Appendices 4 and 5) combine specific descriptions of different forms, durations, and severity levels using material from the above-mentioned overseas programmes and *He Purapura Ora*. We received expert assistance from a clinical psychologist for appropriate terminology and severity judgements related to consequential harm.

It is possible the descriptions could be updated and expanded by reference to the Royal Commission's final report.

In structuring the abuse in care matrix, we took the following factors into account.

- Severity: how significant is the abuse or neglect?
- Frequency: how often did the abuse or neglect occur?
- Duration: for how long did it occur?
- Complexity: were different forms of abuse or neglect combined?

In structuring the consequential harm matrix, we took the following factors into account.

- Severity: What is the intensity of subjective distress and pain?
- Imminent threat: What are the current threats to life (e.g., suicide ideation/attempts)?
- Functional impairment/disability: What is the extent of impairment or how disabling are the difficulties?
- Complexity: How many discrete problems does the person have?
- Pervasiveness: In how many contexts do the problems show up?

The deficit-focused character of the matrices is confronting. As noted previously, any attempt to grade tūkino is inherently objectionable. That is one reason we recommend the whakatau payment as an option for survivors who do not wish to have their life assessed according to the abuse, neglect, and harm they experience(d). However, if the Survivor-Led Redress System is to provide differentiated monetary recognition of survivors' tūkino, then the matrices help ensure the process is transparent and equitable.

### **Vulnerability<sup>30</sup>**

*He Purapura Ora* suggests that payments should reflect the vulnerability of survivors at the time of their abuse. Greater vulnerability represents circumstances in which there was a greater need for care and/or that could make the abuse suffered a greater betrayal.<sup>31</sup>

We agree with *He Purapura Ora*. Our more developed recommendations combine international approaches with that of *He Purapura Ora* and our survivor experiences.

We understand the survivor's vulnerability to abuse or neglect in care varies according to the survivor's age and/or the degree to which they experience:

- social entrapment
- disability or disabilities
- physical ailment or impairment
- psycho-social disorders
- impaired communication

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<sup>30</sup> Some people prefer the term "at risk" to the more common term "vulnerability" to reflect the fact that the higher risk of abuse in care does not stem from the survivor's personal characteristics, but from the survivor's relationships with other agents and institutional structures. However, "vulnerability" is the term used by the Royal Commission and in relevant legislation in Aotearoa New Zealand and for that reason we use it here.

<sup>31</sup> *He Purapura Ora* p. 305.

- debilitating environmental factors or processes
- a history of abuse in care or prior to care
- medical control.

Those factors contribute to vulnerability when they increase the susceptibility of an individual to abuse and/or neglect, or increased severity of abuse and/or neglect. Multiple forms of vulnerability can compound.

Some overseas programmes, including the Australian National Redress Scheme, Redress WA, and the Canadian IAP, use risk factors inherent to the survivor's circumstances in care when assessing claims. To illustrate, in terms of environmental factors, the Australian National Redress Scheme helpfully defines someone as "institutionally vulnerable" if it would be reasonable to conclude that the person's living arrangements increased their risk of experiencing sexual abuse.

The Australian National Redress Scheme assesses vulnerability according to whether:

- the person lived in accommodation provided by the institution;
- the institution was responsible for the day-to-day care or custody of the person;
- the person had access to relatives or friends who were not in the day-to-day care or custody of the institution;
- the person was reasonably able to leave the day-to-day care or custody of the institution;
- the person was reasonably able to leave the place where the activities of the institution took place.

In terms of values, those overseas programmes use multipliers to recognise degrees of vulnerability.

- In the Australian National Redress Scheme, recognition of special vulnerability can constitute between 3% and 20% of the claim.
- In Redress WA (also in Australia), it was between 4 and 7%
- In Canada, it was less than 15%.

After consideration, we decided that multipliers create unnecessary complications. It was simpler to add values that would roughly approximate those available internationally.

In considering how to acknowledge vulnerability, we recognised that all people who are in scope for the Survivor-Led Redress System had some degree of vulnerability by virtue of being in care. However, some survivors are/were substantially more vulnerable than others. Therefore, we propose to add monetary values for those who are/were seriously and/or extremely vulnerable.

**The Design Group recommends that:<sup>32</sup>**

53. Survivors who were seriously or extremely vulnerable at the time of abuse receive additional payments:
- \$5,000 for seriously vulnerable survivors; and
  - \$10,000 for extremely vulnerable survivors.

Those who assess tūkino must balance the need for consistency between survivors and the need to respond holistically to the survivor's individual and unique experience. As redress payments are not compensation, strict equivalence between the tūkino and the monetary payment is not expected.

Assessors will need to make a holistic assessment of the survivor's tūkino. In some cases, individual events and/or harms will be such as to specify the right level for the survivor. In others, the assessor will need to consider combinations of different events and/or harms.

The representative specific characterisations are illustrative only. Survivors will present claims for tūkino that are not specified in the matrices. That should not serve as a reason to exclude or minimise the survivors' claims.

**Outlining the process for direct survivors.**

Assess tūkino experienced in care -> Apply vulnerability weighting -> Assess tūkino as consequential damage.

$(\text{Table 1 Level}) + (\text{Table 2 Level}) + (\text{Vulnerability Level}) = \text{Payment value}$

For example, consider a survivor who is assessed at Level 3 for tūkino in care, at Level 2 for consequential tūkino, and Level 1 for vulnerability. Their payment would be:

$\$90,000 + \$60,000 + \$5,000 = \$155,000$

**Whānau (intergenerational) harm payments**

Evidence from Aotearoa New Zealand and other jurisdictions on the intergenerational effects of tūkino in care is robust. While the Royal Commission's *He Purapura Ora* suggests that it will make recommendations for whānau redress in its final report, our high-level policy recommendations are due prior to that. However, our whānau harm payment recommendation may need to be reconsidered in light of the Royal Commission's final recommendations.

Recognising the intergenerational damage caused by abuse in care, we recommend that direct dependent and impacted whānau members should be eligible for a whānau harm payment of \$10,000.

<sup>32</sup> See Appendices 4 and 5 for the full matrix.

To be clear, the whānau harm payment:

- is different from the entitlements that affected whānau would have to counselling, records access, and other non-monetary services and support; and
- does not depend on the agreement of the 'direct survivor', and is independent of the direct survivor's degree of harm.

The whānau harm entitlement arises from the fact that impacted whānau members are harmed by care-based exposure to survivors. In short, we recommend redressing effects of living with a survivor who is suffering the consequences of tūkino in care.

In recommending which whānau members should be eligible, we acknowledged that whānau are large and comprised of diverse kinship affiliations.

We examined overseas precedents. There are comparable programmes overseas for which whānau members had an independent claim. One example is from Tasmania, where, starting in 2006 a small 'Stolen Generations' programme paid biological children of survivors a flat rate of AUD\$5,000 up to a maximum of AUD\$20,000 per family group.

In other cases, whānau inclusion requires the survivor to relinquish their claim. For example, in Canada, the Indian Residential Schools Settlement Agreement's Personal Credits programme was transmissible within families. If the primary survivor did not want to use their credit, they could assign it to children and grandchildren. The credit was worth CAD\$3,000. In the Scottish Redress Scheme, the survivor can assign their claim to a beneficiary.

We considered the Tasmanian model of setting a maximum value for each whānau, in which a whānau would need to distribute money among its members, potentially creating difficulties. Further, setting a maximum for whānau would create unfairness between members of differently sized whānau. As the ground of the claim is the damage that each whānau member experience(d), the value of their respective claims should be independent. Moreover, the Tasmanian limit to biological children does not reflect the diverse constitution of many whānau in Aotearoa New Zealand.

It is no accident that the \$10,000 value we propose for the whānau harm payment is identical to the whakatau payment. Our generic justifications for the \$10,000 value are the same as those for the whakatau payments and do not need to be repeated.

The claims of impacted whānau members do not depend on a successful survivor's claim. Subject to appropriate privacy considerations, an impacted whānau member's claim should not require the direct survivor's involvement or agreement.

Eligible whānau would have been cared for by one or more survivors. They might be the survivor's children, or another member of their whānau who was cared for by the survivor. Impacted whānau who are also direct survivors would be eligible for either a whānau harm payment or redress as direct survivors. This dual eligibility follows from the differing bases for each payment. Whakatau and standard claims acknowledge tūkino experienced in and as a result of care. Whānau harm payments recognise intergenerational harms. However, a

harmed whānau member would only be entitled to one harmed whānau payment regardless of the number of direct survivors who cared for them.

We also discussed having earnings derived from a capital investment to fund scholarships or other benefits for whānau. This may be something for the programme to consider after its first period of development.

**The Design Group recommends that:**

54. Direct dependent and impacted whānau (family) members should be eligible for a whānau harm payment.
- Whānau eligible for a whānau harm payment are those who have been cared for by one or more survivors. They might be the survivor's children, or another member of their whānau who was cared for by the survivor.
  - Harmed whānau who are also direct survivors would be eligible for either a whānau harm payment or redress as direct survivors.
  - A harmed whānau member would only be entitled to one harmed whānau payment, regardless of the number of direct survivors who cared for them.
  - Whānau harm payments should each be \$10,000.

**Deducting prior payments**

The Royal Commission envisions deducting prior compensation/redress payments from redress monies that survivors would otherwise receive.<sup>33</sup> That suggestion only concerns payments that redress specific abuses.

Deducting prior payments may be appropriate for some standard claims. However, it is critical that deductions only apply when the grounds of the claim are identical. In many cases, that will not be true, as survivors will receive redress from the Survivor-Led Redress System for abuses and harms that were 'out of scope' in previous settlements.

For example, if a survivor is now eligible for a claim arising from torture in the form of solitary confinement, and that abuse was not included in their prior payment(s), it would be inappropriate to deduct any prior settlement value from the present payment(s).

Detailed design will need to consider how and when prior payments are deducted. Deduction of prior payments should be sensitive to the basis for those prior payments.

**6 Redress processes**

Processes for obtaining monetary redress should uphold the principles outlined in our response to ToR 1, specifically in terms of realising mana motuhake (self-determination) and survivor wellbeing, in such a way that facilitates utua kia ea (restoration and balance), enhances survivors' mana (dignity), and ensures āhurutanga (protection).

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<sup>33</sup> *He Purapura Ora*, p. 307.

Monetary redress processes must be transparent (mahia kia tika) to enable survivors to exercise agency within and with respect to the process. The programme should publish clear procedural guidelines, including the matrices.

Detailed design will need to develop more refined redress processes and set up protocols with relevant agencies, such as Archives New Zealand.

Transparency should also prevent survivors from forming false expectations about the speed or quantity of payments. Survivors should be kept informed about what is happening with their applications.

The Design Group expects that information about the redress process will be publicly available, and that survivors can access real-time information about the status of their claim(s) and expected timelines.

### **Whakatau payments**

Whakatau payments are payable at the point when the survivor engages with the Survivor-Led Redress System. After the survivor submits the form, we would expect monies to be paid within eight weeks, maximum.

We considered having survivors complete a statutory declaration indicating that they were in care and that they were subject to abuse. However, that would require legal counsel at the point the declaration was signed. We have determined that it would be better to have the survivor affirm that the statements made are true.

The survivor would need to indicate that they satisfy the grounds for payment – that is, they experienced tūkino in care. That information would make the survivor eligible for payment and register the survivor with the Survivor-Led Redress System. The form used would capture the relevant information, the survivor's identity, and the information needed to pay them. A good exemplar is the form used by Scottish Redress Scheme for a [fixed rate payment](#).<sup>34</sup>

Importantly, survivors do not need to describe their tūkino. They should be provided with several options that enable them to affirm that they experience(d) tūkino in care. Candidate options include selecting a box in an online form or, if they wished to provide more information, they might upload testimony in written, audio, or video form. Some survivors may prefer to provide the necessary information verbally, perhaps answering questions put to them by the navigator or whānau member. The design of the form is a matter for detailed design.

Survivors should apply for a whakatau payment by completing a short form online, by post, or in person. We expect that the application process will be highly accessible, with multiple entry points. Survivors should receive the support they need, if required, to complete the form in a non-traumatising, mana-respecting manner. The Survivor-Led Redress System should enable survivors to choose how they wish to engage with redress, including through agencies that

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<sup>34</sup> Redress Scotland, 2021.

are culturally appropriate. In addition, some survivors may need help to secure bank accounts and requisite identification documents.

Being assessed as eligible for a whakatau payment will make the survivor eligible for systemic support, including counselling. The form might prompt the survivor to permit someone from the Survivor-Led Redress System to reach out proactively with support, subject to privacy considerations.

### **Standard claims**

The survivor could begin the process of making a standard claim some time after engaging with the Survivor-Led Redress System, in accordance with a timeframe determined by the survivor.

The process for making the claim would depend on how quickly the survivor would like to proceed. While the Survivor-Led Redress System may have capacity limitations, the process should be as quick as possible. Timeframes within the process should be monitored and the survivor should get paid if the System fails to meet its timelines. Payments for elderly and/or those receiving end-of-life care and/or critically ill survivors should be prioritised (see [9 Advance and priority payments](#) below).

The amount paid will vary depending on the survivor's tūkino and their vulnerability. Therefore, the survivor will need to provide information about their tūkino and, potentially, their vulnerability. See [7 Evidence](#) below for more information on evidence needed.

The survivor should be able to decide what aspects of their tūkino they wish to have redressed. That means building flexibility into the programme.

The required information could be provided in a variety of ways. Some survivors may reuse testimony lodged with a previous process, such as the Confidential Listening and Advice Service, the Ministry of Social Development's historical claims process, ACC's sensitive claims process, and/or the Royal Commission. Other survivors may wish to provide testimony in writing, or by audio or video. Still others may wish to tell their story in person.

Survivors should be able to testify in a way, and in a place, where they are comfortable. Potentially, the survivor might make a written application from their home via the Internet. Equally, they could go to any location affiliated to the Survivor-Led Redress System.

Providing testimony is difficult for many survivors and it will be important for them to receive appropriate support throughout and after the process. The risk of retraumatisation requires āhurutanga (protection).

The Survivor-led Redress System should offer all survivors who are testifying accurate information, advice, and appropriate support. All survivors applying for a claim must be able to consult a lawyer, and obtain counselling, help with accessing records, and financial advice before, during, and after the claims process. Ideally, that support would be embedded in local, accessible, and trauma-trained organisations. That support could be provided remotely when that is what the survivor would prefer.

Legal counsel may be helpful for many survivors throughout the claims process. Lawyers will need to be appropriately trauma-trained and educated in the distinctive values and purposes of the Survivor-Led Redress System. The costs of legal counsel must not be taken from the survivor's monetary payment(s).

Because standard claims could include a wide range of tūkino, the information the survivor needs might draw from a range of institutions and, potentially, professionals. Most survivors will need significant support to navigate those organisations, and to obtain and understand the records they hold. They should not have to bear the monetary costs of getting and analysing the records and reports they use to support their application.

Wherever possible, survivors should have the choice of working with staff who are survivors. All staff will need to be disability- and trauma-trained. This reflects our recommendations in our response to ToR 3.

*He Purapura Ora* suggests the Royal Commission may make further recommendations on collective redress for survivor-involved bodies. We are not privy to the Royal Commission's present thinking on that matter. However, survivors who share a connection may benefit from going through redress processes together. How they are connected might vary, but having survivors to support survivors can be very valuable and is compatible with the collective ethic of te ao Māori. The monetary redress programme might provide funding to enable survivors to journey towards redress together. Such a provision reflects the principle of whanaungatanga (kinship).

With the survivor's permission, the process might involve representatives of offending institutions in one or more restorative processes as *He Purapura Ora* envisions.

Payments should come with authentic acknowledgements of responsibility and/or apologies if that is what the survivor wants (see complementary discussion of apologies in our response to ToR 4).

### **Whānau harm payments**

It is important that direct survivors receive priority over whānau members. This may be best achieved by delaying the opening of the programme to whānau harm payment claims until after the initial influx of direct survivors have lodged their claims and had them paid. If that is the best option, the actual timing of the delay would depend on the number of claims received and the resources available to process them.

The application for a whānau harm payment should be similar to that of the whakatau payment and be subject to similar evidentiary standards. The information it collects will be used to make the whānau member eligible for payment and to register the whānau member with the Survivor-Led Redress System.

How this application process addresses issues of privacy relating to the direct survivor(s) is an important function of detailed design.

The principle of mana motuhake suggests that applicants should be able to apply for a whānau harm payment in a way and in a place where they are comfortable, as described in relation to other payment processes above.

## 7 Evidence

To receive payments, survivors (or their whānau or nominated support person) will need to provide information about their tūkino and (potentially) their vulnerability. That information might be called evidence. *He Purapura Ora* takes the position that survivors are to be believed unless evidence emerges to the contrary. We strongly endorse that position.

### Whakatau payments

An eligible survivor would not need to describe their tūkino to receive a whakatau payment. They would, however, need to indicate (perhaps by ticking a box) that they experienced tūkino in a care setting that is in scope. That statement might be made as a solemn affirmation of its truth.

### Standard claims

As the name suggests, *He Purapura Ora* envisions standard claims as the main mechanism for monetary redress. This process would redress tūkino experienced in care and as a consequence of it.

The grounds for eligibility include that the survivor: was/is “at” a relevant care setting; was abused when there; was (potentially) especially vulnerable; and (potentially) is experiencing or experienced consequential harm.

Relevant evidence could include: that the survivor was “at” a relevant care setting when the abuse occurred;<sup>35</sup> what tūkino occurred in the care situation; in what ways the survivor was vulnerable; and what tūkino arose as consequential damage.

Providing that information will be difficult and complex. The navigator will play an important role in helping survivors obtain and provide the necessary evidence. While evidence of being abused or neglected might emerge from written and other records, most forms of abuse are unlikely to have been recorded. Therefore, it is likely that much of the evidence for the survivor’s tūkino in care will be testimony (verbal, written, or otherwise) from the survivor or others. Importantly, the absence of recorded tūkino is not evidence of that no tūkino occurred.

The programme may also need to establish where and in what way the survivor was in care, using procedures that are disabled- and trauma-informed and uphold the survivor’s mana. Importantly, the absence of records indicating that a survivor was in a care setting is not necessarily evidence of their absence from that setting. A survivor might not appear in records for many reasons and the credibility given to such records may need to depend on the quality of the specific form and collection of the relevant records.

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<sup>35</sup> *He Purapura Ora*, p. 296.

The Royal Commission notes that it is not “uncommon to find erroneous and hurtful information, including derogatory language about survivors and their whānau, in records”.<sup>36</sup> The principle of ‘believe survivors’ means that contradictions between survivors’ testimony and recorded information should not be automatically resolved by giving recorded data preference. The monetary redress programme will need to develop sensitive protocols to resolve such conflicts.

Most forms of tūkino in care are unlikely to have been recorded. Therefore, it is likely that much of the evidence for the survivor’s abusive care experience(s) will be testimony (verbal, written, or otherwise). That testimony would come from the survivor. It might also come from other survivors or other stakeholders. In some cases, there may be relevant written records.

Evidence of consequential harm might emerge from testimony. However, it is also possible for it to emerge from professional reports (e.g., medical or psychological evaluations) and other records. A large field of records might be relevant, and they may encompass the survivor’s entire life.

It is critical that assessment gives very little weight to the causal relationship between tūkino experienced in care and the post-care consequential damage. As indicated below, causal relationships need only meet the standard of plausibility.

The survivor should not bear the financial costs of providing testimony, or of obtaining any necessary records or other documentary evidence.

*He Purapura Ora* envisions that institutions and organisations named in such claims have a right to comment or reply.<sup>37</sup> The purpose of this right is to:

- give effect to natural justice;
- encourage institutions and organisations to contribute money to redress;
- encourage parties to engage in a restorative process; and
- improve the integrity of the programme.

However, the survivor would not need to engage with the comment or reply. There would be no requirement for a restorative process unless the survivor desired it.

### **Evidentiary standards or standard of proof**

An evidentiary standard concerns the degree to which an assessor must be satisfied of the truth of information (evidence) relevant to the survivor’s claim. Lower standards might be met by poorer-quality and/or less evidence; higher standards require better-quality and/or more information. Different parts of a claim might need to meet different standards.

*He Purapura Ora* advocates for two evidentiary standards.<sup>38</sup>

- Reasonable likelihood: A claim is not fanciful or remote and is more than merely plausible.

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<sup>36</sup> *He Purapura Ora*, p. 253.

<sup>37</sup> *He Purapura Ora*, p. 294.

<sup>38</sup> *He Purapura Ora*, p. 293.

- **Plausibility:** A claim is apparently reasonable or probable without necessarily being so.

These standards apply to different parts of the claim.

*He Purapura Ora* suggests that evidence for tūkino in care should meet the “reasonable likelihood” standard. Evidence of consequential harm should meet the “plausibility” standard.

The reason for having different standards is that a long-term harmful effect is shaped by experiences other than acts of abuse. That is, in part, why people can experience very different effects even when they have similar experiences of abuse. It can be hard to demonstrate that long-term effects are strongly linked with abusive experiences.

There are different ways to address the challenge of linking consequential harms to abusive acts and doing this in a sensitive and trauma-informed way is crucial. The best way to manage this may be to establish a list of harms that are plausibly linked to the experience(s) of tūkino in care. Our matrix is a good guide. If the survivor experiences a listed harm, or something similar, they are eligible for redress unless there is clear and compelling evidence that the harm was not caused in State care or a faith-based setting.

Note the plausibility standard concerns the linkage to tūkino experienced in care. Assessors might apply a higher standard to the facts of consequential damage.

*He Purapura Ora* observes the need “to protect the scheme’s integrity, since setting the standard [of evidence] too low may damage the scheme’s credibility and encourage fraudulent claims”.<sup>39</sup> We might also be concerned with fairness. If resources are limited, we might want to ensure they are distributed fairly among survivors.

We recommend the Royal Commission’s approach to standard claims. Further, we recommend that vulnerability in care should be assessed at the same standard of “reasonable likelihood”. This is because the quality of evidence for tūkino in care and vulnerability is likely to be similar.

Both whānau harm and whakatau payments should be assessed using the “plausibility” standard. This follows from the processes we recommend for making those claims.

**The Design Group recommends that:**

55. The assessment process for redress payments is founded on principles of the Survivor-Led Redress System and centred around believing survivors; and that:
  - evidence for whakatau (welcome) payments should primarily be survivor testimony. That testimony could be provided in the form of a solemn affirmation of its truth;
  - evidence for whānau (family) harm payments is likely to focus on survivor testimony. That testimony could be provided in the form of a solemn affirmation of its truth;

<sup>39</sup> *He Purapura Ora*, p. 293.

- evidence for standard claims is likely to be complex and difficult to provide, involving substantial testimony and some other evidence. Most survivors will need significant support and they should not bear the cost of that support;
- evidence for tūkino (abuse, harm, neglect and trauma) in care should be assessed using the standard of reasonable likelihood;
- evidence for tūkino as consequential damage should be assessed using the standard of plausibility. Assessors should only query the causal relationship between the harm adduced and tūkino suffered in care if the relationship is implausible on its face;
- evidence for whānau harm and whakatau payments should be assessed using the plausibility standard; and
- assessors must address the need for integrity with sensitivity.

## 8 Assessing claims

The relevant evidence should be assessed through an assessment process. Assessment processes must be independent from the government to ensure credibility and to meet basic natural justice requirements.

The primary assessment process will be conducted by one or more adjudicators. For standard claims, the survivor should be able to choose adjudicator(s) according to their gender, cultural affiliation, and survivor experience. All adjudicators must be trauma-informed; some must be disability- and trauma-trained to work with those survivor populations.

If the adjudicators require more information to assess the application, they may request it from the survivor or their representative.

Most assessment should not be in person. In-person assessment, such as interviews, is very costly, creates delays, and is highly stressful for survivors.

Adjudicators may meet with the applicant if the applicant wishes, but that will rarely be necessary.

With the survivor's permission, information from the application might be useful to adjudicate the claims of other survivors, as 'similar fact' evidence or similar.

The results of all assessments should be conveyed to the survivor or their representative in writing. Those assessments should clearly explain the outcome of the process and what further steps are available to the survivor. In the event of rejection, the applicant should have the reason(s) for rejection explained to them in writing and the opportunity to correct any factual errors that might have contributed to their rejection. At the same time, the failed applicant might be put in contact with relevant support services.

Anyone who applies for a whakatau or whānau harm payment and is rejected is, in effect, also excluded from the Survivor-Led Redress System. This requires sensitive management.

The Design Group recommends that:

56. Assessment processes must be independent from the government to ensure credibility and to meet basic natural justice requirements. This means:
- survivors should be able to choose assessors according to their gender, cultural affiliation, and survivor experience;
  - the assessment process should not be in-person, unless the survivor wishes to have an interview, or the assessors have an over-riding need to meet the survivor; and
  - the results of all assessments should clearly explain the outcome and be conveyed to the survivor or their representative in writing.

## 9 Advance and priority payments

Many survivors are older and/or receiving end-of-life care and/or have multiple complex comorbidities and have been waiting many years for redress. It seems reasonable to begin to make advance payments as soon as possible, and no later than June 2024, to ensure that all survivors can receive monetary redress.

We define “older people” as being older than 50 years. In stipulating that figure, we respond to the statistical fact that survivors have shorter life expectancies than the rest of the population. Being a person who is disabled, Pacific, or Māori is also associated with shorter life expectancy.

However, it is important to distinguish the need for advance payments in different payment structures.

### Whakatau payments

We believe an advance whakatau payment scheme is not necessary because the simplicity of the whakatau assessment means that if whakatau payments can be available for some survivors in 2024, they should be available to all. We recommend advance payments **only** if the general whakatau provision cannot be implemented before June 2024.

We also discussed prioritising (fast-tracking) whakatau payments for survivors who apply after the opening of the monetary redress programme and who are older, and/or receiving end of life care and/or experience critical illness. However, the information needed to make these payments should be so minimal that fast-tracking should be unnecessary.

### Standard claims

Beginning in 2024, survivors eligible for an advance payment would include those who are older people or receiving end-of-life care or living with multiple and complex comorbidities and who state they will seek a standard claim. The advance payment could be deducted from the eventual survivor’s settlement(s). Detailed design should determine the value of those payments.

After the full programme is implemented in 2025, the programme should provide the option for survivors to request prioritising the claims of older people, survivors receiving end-of-life care, and survivors living with multiple and complex comorbidities.

We discussed whether the programme might lower the age of eligibility for prioritisation after it pays all of those originally entitled to a priority payment. A detailed schedule for prioritising claims in an accessible and cost-effective manner should be a priority for detailed design.

In addition to prioritising on the basis of age, end-of-life status and significant comorbidity, some survivor cohorts should be eligible for early redress. Given their experiences, it seems right that survivors who have been tortured receive advance payment and priority. That should include a substantial number of Lake Alice survivors. It may also include survivors tortured in other care settings.

We do not recommend prioritising payments for whānau harm claimants. Priority should be reserved for direct survivors.

**The Design Group recommends that:**

57. Survivors that are older people or receiving end-of-life care or living with multiple and complex comorbidities and/or have been tortured receive advance payment and/or priority. This means:
- if whakatau (welcome) payments are not generally available as of June 2024, older survivors, survivors receiving end-of-life care, and survivors experiencing multiple complex and comorbidities should be immediately entitled to a priority whakatau payment;
  - older survivors, survivors receiving end-of-life care, and survivors experiencing multiple complex and comorbidities should be entitled to an advance payment as of June 2024;
  - older survivors, survivors receiving end-of-life care, and survivors experiencing multiple complex and comorbidities should be entitled to a priority standard claims process; and
  - survivors who have been tortured should be entitled to an advance payment and a priority standard claims process.

## 10 Redress for deceased survivors

Redress for deceased claimants is in keeping with tikanga (customs). It also recognises the intergenerational effects of abuse in care on whānau.

Deceased survivors should be eligible for whakatau payments. Whānau might nominate a member to receive the payment, or it might be the next of kin.

As the Royal Commission stipulates,<sup>40</sup> claims for deceased survivors should only proceed when, and if, the survivor has indicated they wished to pursue a monetary payment and that there is no reason to think they did not wish for their whānau to receive the money.

It may be more difficult for whānau to continue with a deceased survivor's standard claim. The survivor's privacy must be respected. Where the survivor dies after lodging a claim, that claim might simply continue. Whānau might nominate a member to receive the payment, or it might go to the next of kin.

However, if the deceased survivor had not lodged a standard claim but indicated that they wished to do so, the detailed design process should explore how the Survivor-led Redress System can work with whānau to obtain redress for their deceased survivor. The programme might, for example, use testimony already provided to the Royal Commission and/or another body. Alternatively, our recommended whānau harm payments might displace the alternative of having whānau lodge and pursue standard claims on behalf of deceased survivors.

We do not recommend that a survivor's deceased whānau members who were impacted should be able to claim a redress payment. If the impacted whānau member dies after initiating their claim, then, if they are eligible, appropriate succession law should apply. But if the impacted whānau member dies before they initiate a claim, they should not be eligible.

**The Design Group recommends that:**

58. Deceased survivors are eligible for monetary redress payments.

## 11 Appeals process

Following recommendations in *He Purapura Ora*, the monetary redress processes must include an appeals process within the Survivor-Led Redress System. Appeals processes must apply the principles, and be informed by the purposes and constraints, of the System.

The first phase of the appeal should be within the Survivor-Led Redress System. However, if the survivor is not satisfied with the result of their appeal, they should have the right to appeal to the ordinary courts. The courts must apply the principles and purposes, and be informed by the constraints, of the System.

**The Design Group recommends that:**

59. Monetary redress processes must include appeals processes that apply the principles, purposes, and procedures of the Survivor-Led Redress System.

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<sup>40</sup> *He Purapura Ora*, pp. 208–281.

## 12 Supporting survivors through redress

Monetary redress is only part of the larger redress system. Other aspects of the Survivor-Led Redress System address present needs.

Different survivors will need different supports to make monetary redress applications and to work through the Survivor-Led Redress System. The principle of *he mana tō tēnā, tō tēnā – ahakoa ko wai* (all people have dignity, regardless of who they are) includes the requirement that support must match the needs and goals of survivors. Engaging disabled survivors may require robust engagement initiatives. The System may require specialist expertise in engaging with survivors who experience disabilities.

Underscoring the importance of monetary redress as part of a holistic system, we emphasise the role of navigation support (see our response to ToR 2) as essential to the operation of this complex system. Navigation and guidance will be critical to supporting most survivors to obtain monetary redress. This may involve directly helping survivors to manage the various monetary redress processes. It will also involve connecting survivors with other services they need in the course of seeking monetary redress, such as psychological counselling, *rongoā Māori* (Māori medicine), records access, logistical support, and financial advice.

Some survivors may require special financial advice. Some will not be familiar with managing large amounts of money. Others will be in circumstances where receiving a sum of money is suboptimal for their welfare. While those considerations should not prevent survivors from receiving and controlling their monies, they may need robust financial advice. Some survivors may need help with basic financial needs, such as getting a bank account.

As the Royal Commission suggests, some survivors will need or prefer to convert their redress money into an annuity.<sup>41</sup>

The Royal Commission envisages the monetary redress programme will develop and operate a survivor investment fund in which some survivors chose to pool some of their monetary redress monies. If a sufficient number of survivors wish to choose this option, then the Survivor-Led Redress System will require a professional financial investment arm.

Other survivors will wish to invest their money with a national or international financial investment agency. Navigation or guidance support may help them understand and/or connect with the appropriate financial advice service.

## 13 Relation of payments to other income and entitlements

We endorse the Royal Commission's position that redress payments should not affect the survivor's eligibility for other benefits and should be tax-free.<sup>42</sup> This protection is common in overseas programmes.

Survivors may be deterred from seeking a redress payment if they believe that it would negatively affect their eligibility for other entitlements or their income.

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<sup>41</sup> *He Purapura Ora*, p. 307.

<sup>42</sup> *He Purapura Ora*, p. 307.

It may require State action to ensure that all parts of government understand that recognition payments are not income. The Survivor-Led Redress System should publish accessible information about the non-effects of receiving redress payments on other benefits and entitlements.

**The Design Group recommends that:**

60. Redress payments do not affect the survivor's eligibility for other benefits or income, and should be tax-free.

#### 14 Eligibility of incarcerated persons

Present or past experiences of incarceration and/or conviction should have no effect on the applicant's eligibility for a monetary payment. Overseas, some incarcerated people, or people who have been convicted of certain categories of offences, have been precluded from obtaining monetary redress. Similarly, for a period in Aotearoa New Zealand, people categorised as "High Tariff Offenders" could not receive redress payments.

Those practices were unjust. Redress payments are owed to survivors because of what they experienced in care, and how that has affected their lives subsequently. Whether or not a survivor has committed criminal acts is irrelevant to their grounds for eligibility.

**The Design Group recommends that:**

61. Present or past experiences of incarceration and/or conviction have no bearing on the applicant's eligibility for a monetary payment

#### 15 Data management

The Survivor-Led Redress System will need access to a high-quality records system.

A redress process, particularly one that differentiates payments according to the severity of the survivor's experience, will need to collect a large amount of personal data. Further, a redress system that will involve multiple suppliers providing many services to a large community of people will require a seamless information management system, automated workflows, and accounting.

The questions of how that data is stored, who can access it, who is responsible for it, and how long it will be kept are serious challenges that require careful attention. Answering those challenges will involve elements of Māori data sovereignty.

Although a significant investment will be needed, the information management system will be an integral part of the monetary redress programme and will provide the critical enabler to link it together. We will want survivors to be able to authorise the use of testimony provided in one domain (e.g., counselling) for use in another, (e.g., differentiated payments). However, that data transfer must remain under the control of the survivor and only occur when authorised by the survivor.

We also want to ensure that survivors are not subjected to the suboptimal systems experienced in the health, social services, and education sectors. An interoperable group of systems that can support automated workflows, approvals, and reporting will be the basis of a resilient, sustainable, and efficient system.

**The Design Group recommends that:**

62. Early investment is made into a high-quality information management system capable of receiving, organising, and providing a complex set of data in different formats that are put to different uses. The collection, storage, and use of that information will need to meet legal requirements, be human rights compliant (including compliance with privacy), and satisfy the demands of Māori data sovereignty. The collection, storage, and use of that information will need to meet legal requirements, be human rights compliant (including privacy), and satisfy the demands of Māori data sovereignty.

## 16 Reviews and reports

Returning to our ToR 1 principles, we expect redress to develop procedurally and substantively. Not only will the survivor population that is engaged with redress change over time, so will the resources available. It is necessary that the programme builds in periodic reviews of the monetary redress payments processes and outcomes to ensure that redress remains effective and relevant.

Reflecting the transparency objective, we would expect the programme to produce public reports on the number of claims and amounts paid out, in different categories, and provide basic analysis of that information according to, for example, gender, region, age, ethnicity, type of care settings involved, and types of tūkino.

**The Design Group recommends that:**

63. The monetary redress payment processes and outcomes should be subject to regular strategic review; and should publish regular comprehensive reports on its operations. Those reports need to protect survivors' privacy.

# Term of Reference 5: Immediate priorities and critical issues for detailed design and implementation planning

## 1 Introduction

Our Terms of Reference ask us to provide “an outline of critical issues that will need to be considered as part of the detailed design and implementation planning”.

Six months of high-level design and consultation saw rapid progression through multiple layered and complex topics. The next phase – detailed design – will need to turn our strategic vision into implementable operational policies and procedures. While we do not want to preempt what will be developed in the detailed design, and we recognise that process will involve innovation and flexibility, some components will be imperative as a foundation for developing the *Survivor-Led Redress System*. In this section, we highlight a range of factors, system components, and approaches that are important to clarify as design and policy development enters the next stage, and offer recommendations to guide those next steps.

This section has three functions. The first, *Imperatives for detailed design and implementation*, sets out a number of higher-level imperatives that need to guide detailed design and implementation planning. The second, *Views on the Crown Response Unit’s expected detailed design activities*, offers recommendations concerning six points for detailed design identified in our Terms of Reference. The third and final section proposes a recommended timeline for design and policy development and implementation.

## 2 Imperatives for detailed design and implementation

This section addresses the following imperatives:

- the need for an appropriate ‘mindset’ in detailed design and implementation;
- the importance of maintaining survivor leadership and expertise within the detailed design phases; and
- prescribed system components including processes and structures to develop and sustain survivor confidence.

### **Mindset shifts required**

The proposed Survivor-Led Redress System is a unique opportunity to use public policy and design to devise a system that will not be directly controlled by government. Although we can draw on examples such as ACC and the Reserve Bank, new mindsets about governance and operational capabilities, benefits realisation, and relationships with Cabinet are required to ensure an effective and efficient detailed design and implementation.

The task of government is to provide the framework for redress functions that are independent of government. Our vision is for a system based on a commissioning model where diverse community-based stakeholders engage with, support, advocate for, and walk alongside survivors, according to each survivor’s needs and wishes. Commissioning of such services and support will be guided by survivors and build on existing trusted relationships, while acknowledging diverse survivor communities will require unique and agile responses.

Success will be realised by the significant representation of survivors in all parts of decision-making and leadership, and the detailed design process being well resourced and mandated to execute the high-level design. It is imperative that those involved in the detailed design process understand, endorse, and actualise the principle of mā tātou, mō tatou (by survivors, for survivors) – nothing should be done for survivors without the involvement of survivors.

### **Survivor leadership and building trust through independence**

The complementary principles of mā tātou, mō tātou and mana motuhake (self-determination) place survivor needs and aspirations as central to the development, implementation, and operation of the Survivor-Led Redress System.

The independence of the design, implementation, and operations of the Survivor-Led Redress System, alongside survivor autonomy, requires:

- strategic and operational distance between the State and faith-based settings (perpetrators) and survivors. This is essential to build survivors' trust in the System; and
- survivors to be central to the leadership of each stage of system development, from the moment the high-level design proposals are presented to the Minister for the Public Service. This is essential to ensure continuity between the high-level design and the development of the detailed design. It is also essential to maintain strong survivor voice, resourcing, and continuity of relationships.

#### **The Design Group recommends that:**

64. The government establishes an interim kaitiaki (guardian) leadership group composed of survivors with experience in policy and design. This group should be empanelled now, begin its work when the high-level design proposal is given to the Minister for the Public Service, and continue to provide governance and support to design and policy development throughout the design and implementation phase.
65. With the implementation of the above recommendation, the interim kaitiaki leadership group is involved with any design response to the release of the Royal Commission's final report. This is especially important should further redress-related recommendations emerge or if there are material differences between the high-level strategy outlined in this report and the detailed design.

### **A sustainable, principles- and evidence-based system**

The Survivor-Led Redress System principles are foundational underpinnings for the design and proposed operating system. To achieve our stated System goals of seamless delivery within a broad environment, early investment will be required.

**The Design Group recommends that:**

66. The system that is developed and implemented is governed, led, and trusted by survivors.
67. Interim governance or leadership should be informed by survivor voice and representation.
68. Design and policy development and implementation activities must be underpinned and driven by survivor voice, experiences, and aspirations.
69. The Crown Response Unit retains a form of the current survivor leadership as an interim kaitiaki (guardian) governance group.

A key aspect to the success of these proposals will be an integrated data, information, and insights system; work on this should be prioritised. The Survivor-Led Redress System will require considerable information and evidence in the course of its operation, for and through commissioning, assessing, and monitoring and evaluating mechanisms. Those functions will require collecting, creating, and using high-quality data, including evidence and insights to guide decision-making and best actions. There are significant gaps in the information available currently. Because of shortcomings in the quality of the data about survivors, their tūkino, and their needs, combined with the historical and current dearth of ethical survivor-facing programmes, evidence and information gathering represents a significant piece of work.

The need to gather detailed information about survivor populations and existing service providers means that a priority requirement is to forecast demand and need scenarios to help set the scale of the Survivor-Led Redress System so that the right investment can be made at the right times. The System must be funded in a manner that is sustainable over the long term. This will be critical for realising the full benefits of the System; namely that investing in and committing to redress for survivors now will minimise the ongoing costs of tūkino that would otherwise be incurred by future generations and society at large.

**The Design Group recommends that:**

70. Survivor-Led Redress System principles should be central and used as criteria for all aspects of the policy development process.
71. Aligned system-level outcomes (or benefits) should be developed early to drive delivery targets and measures over time.
72. Early investment into development will be necessary to implement the Survivor-Led Redress System on time.
73. The development process must enable the sustainability of the Survivor-Led Redress System. This should be a priority in the early planning stages.

**Maintaining survivor confidence**

Survivors abused and neglected by State and faith-based settings have been waiting far too long for redress. They require an innovative, agile, and dedicated set of supports and services to remedy their tūkino.

Despite the urgency of this work, we also understand the need to build services and connections over time. It will take time to design and implement the Survivor-Led Redress System.

In light of survivors' histories of trauma, and lack of trust in public institutions, it is vital that survivor confidence is supported during the detailed design phase. It is essential that survivors see prompt action and receive information about relevant developments.

Those involved in the detailed design must engage with the Royal Commission's final report, and it would be appropriate for the interim kaitiaki governance group to decide how the Royal Commission's final recommendations should interface with the high-level design recommendations. In addition, ongoing policy development will need to engage and co-design with targeted survivor cohorts.

It is imperative that policy development and implementation do not wait upon the Royal Commission's final report. Too much time has already elapsed, and many older survivors and survivors are receiving end-of-life care and living with multiple comorbidities and they are now at risk of dying before receiving appropriate redress.

The detailed design phase must include procedures that enable those survivors to engage with the process and become eligible for advance and priority redress payments, supports, and services. Developing and refining process prototypes for prioritised groups should provide repeatable and scalable versions for adaption for other survivor groups.

We recommend that the detailed design process rapidly develop and publish both a web portal and postal arrangements by which survivors could provide Expressions of Interest (EOI) in the policy development process. Regular pānui should keep survivor communities informed about relevant developments. The EOI process could also be used to identify survivors who will be eligible for advance redress and prioritised claims. Detailed design should explore how best to communicate with different survivor groups, including disabled people.

Building support for the Survivor-Led Redress System among survivors and the wider public will require communication that is timely and truthful, and demonstrates clear progress.

**The Design Group recommends that:**

74. Highest priority survivor groups are identified, such as older people, survivors receiving end-of-life care, and survivors living with multiple comorbidities
75. Urgent action is taken to implement the Survivor-Led Redress System to respond to needs and wishes of those identified as highest priority.
76. Survivors are regularly informed about progress and further expectations regarding ongoing communication, including Cabinet approval and potential timing. This should include prioritising activities to understand how best to communicate with different survivor communities during this interim period.
77. The interim kaitiaki group is involved with any design response to the release of the Royal Commission's final report. This is especially important should further redress-

related recommendations emerge or if there are material differences between the high-level strategy outlined in this report and the detailed design.

- 78. Detailed design includes targeted consultations with stakeholder survivor cohorts.
- 79. The detailed design process includes an Expression of Interest facility.

### 3 Views on the Crown Response Unit's expected detailed design activities

#### Funding mechanisms

Detailed design is asked to recommend funding mechanisms to enable non-State care, inclusive of faith-based organisations, to contribute to the costs of the Survivor-Led Redress System and to assess the System's broader fiscal implications and constraints.

There is a risk that fiscal concerns might be used to exclude survivors of non-State care settings in the Survivor-Led Redress System unless, and until, funding mechanisms are agreed with the relevant non-State care organisations. That risk is not acceptable.

It is imperative that the Survivor-Led Redress System includes survivors of non-State organisations. It may be advantageous for the State to agree some funding mechanisms with those organisations. However, it is not acceptable to have a two-tier system with some survivors receiving second-class redress. It is the responsibility of the State to ensure that all survivors obtain redress.

As soon as possible, the government should make a public statement concerning the inclusion of non-State care survivors in the Survivor-Led Redress System.

Recommendation 62 of the Royal Commission's *He Purapura Ora* report states that the Crown should fund redress for all survivors. The Crown might ask for or require contributions from other offending organisations. But eligibility for redress components, including monetary payments, should not depend on whether the non-State agency (such as a faith-based organisation) is willing and able to pay.

While it is wholly appropriate for non-State agencies responsible for tūkinu to pay their share of the costs of the Survivor-Led Redress System, it is not appropriate to delay or deny redress if those agencies fail to meet their obligations.

Therefore, as we indicated previously, detailed design will need to ascertain the Survivor-Led Redress System's broad fiscal implications. The System's funding must be set up to deliver on the requirements of independence. Because the funding mechanisms and allocation(s) must be adequate and sustainable, this will require providing significant resources up-front through an investment model that we expect will meet the State's moral, legal, and human rights obligations while delivering medium- and long-term social dividends and cost savings.

To expand briefly, we expect that the Survivor-Led Redress System will help transition people out of dependencies; generate broad health improvements that reduce downstream medical costs; break cycles of poverty and crime; and push funding into community agencies in ways

that spur growth in employment and personal development, thereby generating medium- and long-term cost savings.

**The Design Group recommends that:**

80. The government announces an inclusive redress system.
81. The State must fund redress to all survivors.
82. The State must separately arrange contributions from non-State organisations so as to ensure survivor safety and confidence.
83. Funding mechanisms should commit resources over the long term and be structured to enable effective organisational autonomy.
84. Cost assumptions should acknowledge the long-term opportunity to reduce overall social costs to government.

**The detail of potentially complex intersections with other systems**

Detailed design must ascertain how the Survivor-Led Redress System will interface with existing organisations and service. That is, it must identify how the capacities of existing organisations connect with supports offered by the System, to help avoid duplication or the creation of support gaps.

Leveraging existing services will help the Survivor-Led Redress System to be stood up faster, work more efficiently, and reach more survivors. In addition to the need to develop and test new survivor-centric services, the scale of immediate demand might require the use of existing service delivery partner processes. This exercise, however, must be informed by survivor's experiences and the principles of the System. As the Royal Commission reports, survivors' interactions with existing organisations and services are often ineffectual and retraumatising.

Therefore, while engaging with and drawing on the resources of these organisation may help bring more resources on line quickly and efficiently, it is of the utmost importance that the work of those agencies with the Survivor-Led Redress System is trauma-informed and makes sense to and resonates with survivors. Only where the values and goals of existing organisations overlap with those of the System should they be asked or commissioned to work with survivors.

The learning from existing services such as the Survivor Experience Service (the former Listening Service) will provide important intelligence for the emergent system. Other organisations may take up roles in providing various redress and associated services. Detailed design will need to develop commissioning criteria and protocols to ensure that commissioned services are appropriate for survivors.

It would be inappropriate for offending (perpetrator) organisations to be given general commissions to deliver services. However, such engagements might operate on a case-by-case basis for survivors who wish to continue or start working with that organisation, perhaps in the context of a restorative process.

At the same time, it will be necessary to determine which existing services and supports survivors are already engaged with. This scoping exercise must have a survivor-perspective that begins with existing relationships and what those organisations need in terms of development. Then the focus can turn to what survivors themselves need to engage with new services and supports, and what their preferences and needs are.

The principle of mana motuhake demands that survivors decide who they will work with and how. Specifically, detailed design should account for the challenges survivors experience and be sufficiently agile to respond to the unique needs of different survivor groups.

The goal is a system that develops in accordance with survivor experiences and expectations of quality services, and that partners with organisations and services that have an explicit commitment to the principles and aspirations underpinning the Survivor-Led Redress System.

**The Design Group recommends that:**

85. Detailed design assesses how existing organisations can contribute to the Survivor-Led Redress System.
86. Assessment should consider the survivor-related history and practices of potentially contributing organisations.
87. Assessment includes determining which organisations survivors already have relationships with.
88. Commissioned organisations commit to the principles and purposes of the Survivor-Led Redress System.

**Workforce capability and capacity development**

Detailed design will need to ascertain the workforce needs of the Survivor-Led Redress System, including where existing services need to be supported or expanded and where new services may need to be established. That scoping exercise may require a staged implementation within the System.

This is a critical exercise. Untrained staff, even when well intentioned, can inflict further trauma on survivors. At a minimum, all staff working in relevant roles and directly with survivors need to be trauma-informed and practice-informed by disability rights.

Some of the requirements for the Survivor-Led Redress System may already exist; in other cases, organisations will need to develop services and supports. At the same time, services available to some survivor populations may need to be extended to unserved populations. Detailed design will need to identify gaps in the existing services and supports, and devise appropriate development strategies.

Further, this report consistently underlines the need to have survivors to deliver components of the Survivor-Led Redress System. The principle of mā tātou, mō tatou (by survivors, for survivors) means that survivors working with the System should be, wherever possible, working with other survivors. Doing this will require significant training and development among survivor communities. While the survivor population has significant professional

expertise and non-professional skills in a range of relevant areas, a Survivor-led Redress System will require both short- and medium-term development opportunities.

**The Design Group recommends that:**

89. Organisations and staff working in and with the Survivor-led Redress System must become appropriately trained.
90. Solutions including support and development of survivor, peer, community, and whānau as a workforce are identified. Professional and survivor advice (and support) may be one and the same.
91. Capacity building of survivor communities should be explored and prioritised.

**Issues related to natural justice, including determining the liability of alleged perpetrators**

We do not recommend that Survivor-Led Redress System makes findings of liability. However, such recommendations might emerge from the Royal Commission or from legislative changes arising in the government policy agenda. We are not party to that work.

It will, however, be important for detailed design to develop protocols for informing the police about potentially criminal offences. We anticipate that the Survivor-Led Redress System will receive or be party to information about criminal offences and will need to develop mechanisms to manage such situations.

In those circumstances, it is important that the survivor retains control over what happens with information that they disclose. If not, survivors might be deterred from coming forward for support if, for example, they believe the information that they provide will be used against themselves or their whānau. The implication of mana motuhake must, of course, be balanced against the need to ensure the ongoing safety of vulnerable members of the community.

As a related point, the government may wish to work with the Survivor-Led Redress System on a process for expunging criminal records for those whose criminality resulted directly from their tūkino in care. This would extend the existing 'clean slate scheme'.

**The Design Group recommends that:**

92. The detailed design process establishes protocols with the New Zealand Police and other authorities for providing information about potential criminal offences.
93. Those protocols centre the mana motuhake (self-determination) of the survivor.
94. The government explores how the 'clean slate scheme' might extend to survivors.

**Potential legislative amendments**

Detailed design will be asked to advise on the legislation required to give effect to the Survivor-Led Redress System. This might include, for example, legislation to facilitate information sharing and record creation, or the exclusion of acknowledgement payments from the means testing used for other benefits.

Equally, legislation may be required to set up the entity at the centre of the Survivor-Led Redress System in accordance with the principle of being survivor-led. Given the proposed

staged system roll-out, a phased approach to legislative change may be needed. In the first instance, legislation will be required to set up the management and governance of the central entity and to put in place checks and balances. This could include the ability to monitor risks of, for example, over-reaching expansion of scope and potential budgetary overspends or overcommitments. The central entity will also require the capacity to effect necessary changes.

It is also clear, given the system-level change and number of interaction points outlined in the report, that potential exists for consequential changes to a number of pieces of legislation. However, hard-wiring expectations into primary legislation may impede the agility needed by the Survivor-Led Redress System. Other mechanisms (e.g., orders in council, MOUs) may be useful and should be explored.

**The Design Group recommends that:**

95. The government enacts the legislation required to empower the Survivor-Led Redress System. That legislation must be adequate to enact the needs, purposes, and principles of the System.<sup>43</sup>
96. The government enacts whatever legislative changes are necessary to require the provision of information to monitor implementation, and follow-up as necessary.
97. The government enacts legislation to empower the Survivor-Led Redress System to ensure that a process of continuous quality improvement, in relation to the implementation of the System, is undertaken.

**The form of the body that operates the Survivor-Led Redress System and its governance**

We have recommended that the Survivor-Led Redress System is established as a structure of devolved decision-making and power sharing, while being centrally coordinated and managed. We have referred to the structure as a hub and spoke model, which is also known as a devolved/distributed model.

Detailed design will need to explore the best way of operationalising the structure. This will require the development and implementation of a survivor-led governance and management structure of the central entity, as well as the commissioning of service and support functions.

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<sup>43</sup> We have pointed out changes needed for the Crimes Act 1961, Oranga Tamariki Act 1989, Public Finance Act 1989, and Crown Entities Act 2004 as priorities in establishing the Survivor-Led Redress System. However, the Royal Commission also referred to the following Acts as needing amendments:

- New Zealand Bill of Rights Act 1990
- Human Rights Act 1993
- Limitations Act 1950 and 2010
- Accident Compensation Act 2001
- Mental Health Compulsory Assessment and Treatment Act 1992
- Crown Proceedings Act 1950
- Charities Act 2005
- Health and Safety at Work Act 2015
- Adoption Act 1955.

Work around all these Acts would need to be started in the detailed design.

Integral to commissioning is understanding how survivors prefer to engage with the Survivor-Led Redress System, such as through existing trusted survivor networks and/or through specified non-government organisations. We also acknowledge the possibility that some survivor cohorts may wish to establish their own service and support delivery function.

#### 4 *Staging the Survivor-Led Redress System*

In recognition that the proposed Survivor-Led Redress System involves significant complexity alongside opportunities to build efficiency, equitability, and efficacy, the System will need to be scaled up over time. It bears repeating that central to the development and implementation of the System is survivor voice and determination.

We propose the following time periods, with a range of actions to be considered.

##### **Immediate period, November 2023 to June 2024**

- Establish an interim kaitiaki (guardian) leadership group for detailed design.
- Establish an approach to system prototyping, and prioritised implementation.
- Developing the form and function of the central entity, terms of reference for those involved in detailed design, job descriptions for staff (e.g., navigators), and protocols to enable ongoing survivor leadership.
- Develop standards for managing to the principles of the Survivor-Led Redress System.
- Develop and test prototype design for early implementation to priority groups, including developing requirements for making monetary payments.
- Establish the approach to early redress funding.
- Begin high-level long-term development project planning.
- Consider approach(es) to necessary legislative and related changes.

##### **Interim period, June 2024 to June 2025**

- Establish the central entity.
- Prototype delivery for early and prioritised implementation, including whakatau payments.
- Undertake detailed long-term development project planning.
- Collate learning from prototypes.
- Develop procurement strategy and principles.
- Develop investment strategy and principles.
- Agree and deliver on bulk investment.
- Develop survivor governance strategy and principles.
- Establish ongoing system governance.

##### **Early period, June 2025 to June 2030**

- Implement strategies, principles, and project planning.

- Conduct ongoing sector-specific reviews.
- Implement sector-specific reforms.

**Maturing period, June 2030 to June 2040**

- Conduct comprehensive review in 2030.
- Strategically implement review recommendations.

**Poem – Meet us there**

*Hear us now  
we are the voices that were never heard.*

*Hearts broken; bodies stolen  
in the darkness of the night, in the light of the day.*

*Hear us now, the voices that were never heard, the faces that were never seen,  
see our eyes reflecting the ghosts of our past and the glimmer of hope for a new  
beginning.*

*Hear us now, see us now  
the lost and broken children still fighting to be free.*

*Meet us there as the ocean meets the sky  
where all things are possible, if you care to let it be.*

*Use the magic of the sun's rays as they bounce off the glistening sea  
for in that moment the impossible might just be possible  
if you dare to believe enough, to love enough  
for that broken child to be heard, to be seen*

*To be some-one – to be me.*

Proactively released under commitment to open government

## Part 3 – Appendices

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## Appendix 1: Poems

*The following poems were written by a Design Group member over the course of the redress design period. They record the feelings of the Design Group as they were progressing through this task. Translations for Te Reo Māori words and phrases are included in the glossary.*

### Ko te aroha

Life has been hard, but it has been purposeful,  
full of strength and determination,  
to do better,  
to be better,  
for you, for us, for all those who have suffered at the hands of others.

Love is what binds us all together the search for it,  
the touch of it,  
the feel of it,  
as it takes you forward,  
hold on to it and never let it go,

Love and nourish all that is on your pathway,  
Ahakoa he iti, he pounamu.  
Believe in it, for love can melt the hardest of hearts,  
the lost of souls ... desperately searching for that next breath.

Do not lose sight of who you are,  
of what you have become and from where you have begun,  
for in your story is the healing that many are still searching for,

be strong, be courageous and with love surrounding you,  
let your voice be heard.

*Coming together as a group of survivors meant all our collective hurt and pain came with us.*

*This was difficult for many of us as we tried to anchor ourselves into the responsibility we had signed up for on behalf of all survivors.*

*We soon realised that our strength was to be found in what we shared, not what was different. And that love was the thread that would hold us together on this journey.*

## Who is the demon here?

I can hear it calling my name,  
I can hear it telling me who I am,  
forcing me to be who I am not.  
Don't tell me who I am  
for I am not  
I am me.  
I can see you,  
I can smell you.

Who is the demon here?  
You left my small body lying limp and afraid surrounded by the confusion, the hurt and the  
loneliness.  
I can see you staring back at me,  
I can see the rage burning in your eyes,  
that anger wasn't mine to receive but no one cared.

I feel you demon,  
inside my every being,  
forcing me to love you,  
to search for love,  
to be unloved.

I am coming to get you now ...  
I am rising up to be who I was always meant to be,  
you are not my demon anymore.

... I am here Nanny,  
I'm still here waiting for you,  
please come and get me now,  
I'm no longer broken,  
you can take your baby home now,  
please take your baby home.

*To give justice to the task ahead we had to dig deep into our individual abuse experiences and memories. Revisiting our trauma was a reminder that no one came to save us and that those that abused us were still very much alive in our minds.*

## Words

Those are not our words,  
please don't tell us what to say.

We can't speak,  
the space is too raw,  
it hurts too much,  
suffocating  
we can't breathe...  
Our words are our own,  
fully formed in the darkness,  
in the silence of the night.

So hear us now...  
We will use the words that we have felt but never spoken.  
These words hold our pain,  
our tears,  
our loss.

They are bloody words,  
filthy words,  
soulless words,  
But they are our words.

We are not a trauma,  
an enhancement,  
an assessment,  
a principle or a function.

We are the life,  
the story,  
the blood flow that runs deep into the healing and restoration for the peace that we never  
had.

*As we faced the somewhat daunting task of digesting the written material from the Royal Commission and our Terms of Reference, we were reminded that as children we didn't have the words to describe what was happening to us. It was challenging to see the words on the paper that described our lives.*

## Milk and honey

Systems, the system, what system,  
were designed to reinforce colonial and patriarchal traditions,  
all fitting perfectly into their dream of the land of milk and honey.

Our starting place is messy,  
it is chunky and it won't fit into the box that it is intended to.

We are not perfectly designed,  
our stories are not sanitised,  
... until now they have been untold,

exposing the shame of the nation is one thing,  
washing the blood off the hands of the abusers is another,

Healing the hearts of the many, is both our dream and our reality.

*As we began to think about designing a system for redress, we remembered the impact that the "system" had on our lives.*

*The "system" had hidden our abuse and we were now tasked with developing solutions that would not only expose this but also provide healing from that.*

## Journey

Take me home to my ūkaipō...  
I can't see the light,  
... am I alive?

I can feel the swirling winds of Tāwhirimātea,

Is this the world in which I now belong...  
so harsh,  
punishing,  
fierce and unstoppable.

The karanga is lost in my soul,  
nau mai ki te ao mārama ...

Te kore, te po

Why am I here?  
breathing but not...  
the swirling...  
there it is again,  
taking me forward to places I don't want to be...  
this is not my Hawaiki  
my ūkaipō...

... but that light is in the distance beckoning me forward...  
at last am I free?

*This writing speaks to the kōrero we had about the structure, services, and supports that would need to be in place to support survivors to enter the Survivor-Led Redress System and find their Hawaiki – the place they aspire to reach.*

## Eyes wide open

So many eyes looking in  
like stars in the night skies sparkling bright for the hope that they see  
others dull and haunted,  
caught in the rage that lies within,

so many eyes with so many expectations...  
... to lie with eyes wide open,

dreaming those dreams that once we never dared to dream,  
eyes wide open, looking in.

The ghosts that remain, the pain that seeks to subside,  
the love that hopes for the sun ray that seeps into the opening,

eyes wide open looking in and what of me who see the eyes  
full of hope and expectation of love and of rage  
what of me?

Are my eyes open,  
is my heart open...  
to one another,  
to each other...

eyes wide open  
looking in.

*At about mid-point through our design process, we started to feel the enormity of the task and the responsibility we were holding on behalf of all survivors.*

*We knew we were only going to get one chance at this, and we needed to get it right.*

## Where will we land?

How do we keep our hearts in place as we rise up for the recognition that is our life.

Will our hearts be lost to the system  
as the System groans on its axis to respond  
bleeding out across our faces as we expose ourselves to the harshness of the four winds.

Will the winds sweep us up together,  
placing us gently in a way we've never felt before,  
or will the winds be fierce,  
howling its brutal justification back at us.

And as the winds die down  
what will be left  
In the stillness of the day, where will we land

Who are we now?

*We were getting to the point in the process of realising there may be a light at the end of the tunnel. The design was emerging, and we dared to start imagining how different the lives of survivors might be with the support of the Survivor-Led Redress System.*

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## What were you thinking?

As our bodies were being brutalised and our hearts were being ripped into a million pieces what were you thinking?

When our body was dead, and our mask was on for the world around us to see what were you thinking?

Were we thinking of this day  
this time of possibilities, of the life we didn't get to live.

How would we have thought of the life we should have been living  
did we see it as a picture - truncated into a nice, neat frame?

When each part of our lives looked much the same as the other – soaked in the pain & emptiness fuelled by regret and despair.

Too many tears of loss of nothingness, of the sadness that arrives when you see no hope on the horizon

What were you thinking?

*As we worked through the weeks and more and more detail began to emerge, the realisation that we were creating potential for change was powerful. This was something most of us, as survivors would never have imagined would be possible.*

## Money

Money came and went in our lives  
It didn't help or make life any better  
– it was, what it was  
– no connection, no meaning – money lost, money gone.

Pain then, pain now – nothing has come, and nothing has left.

Money will give me redress for the pain that I was caused,  
still the pain remains.

Money, money – whose money it is?  
Blood money – your money, my money ... money.

*This was the most challenging section of the entire report. It was painful to think about our abuse through a monetary lens.*

*This poem speaks to the inharmonious relationship between survivors' abuse and trauma and financial compensation.*

## Beyond this time

The journey has been a long and lonely path  
There is no beginning and there will be no end.

A time and a season entered our hearts and our minds  
for all those who came before us and those who are still to come.

For what was taken from us, from the depths of our souls, will be the very thing that holds us  
together throughout the fullness of time.

For that is love, that binds you and me and us and them.

Ko te aroha  
Ko te mea nui.

*We realise that all survivor redress pathways will be unique – and we will all find our way  
towards healing and restoration in our own way.*

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## For just a moment

Rest now for just a moment  
our time is almost done  
stories still to be told  
love still to be found  
pain still to be felt.

And who are we to stop now.

So much still to do  
for the life of others  
for our lives  
for their lives

Take us to the mountain and let us climb to the top...  
and there we will see the rough seas begin to calm in our hearts and in our minds

in this life – our life.

*As the group began finalising the content for the report, we felt a mix of excitement and apprehension – excitement that we would have a product ready within the timeframe for the incoming Minister, while at the same time apprehensive as we knew there was still so much work to be done.*

## We were never enough

We were never enough for this world,  
too much to care for, too much to love,  
too bold, too angry, too bad, too lost.

Hidden in plain sight,  
voices dimmed, pain unseen ...  
too much for this world.

Rising now to shape our place, to hear our voice,  
restoring all that was taken ...  
in a moment  
in a second  
in a lifetime

Too much for this world.

*As we got towards the end of our design process, we began to think more and more about the potential of the Survivor-Led Redress System to reshape not only the lives of survivors but also the future generation.*

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## Meet us there

Hear us now  
we are the voices that were never heard.

Hearts broken; bodies stolen  
in the darkness of the night, in the light of the day.

Hear us now, the voices that were never heard, the faces that were never seen,  
see our eyes reflecting the ghosts of our past and the glimmer of hope for a new beginning.

Hear us now, see us now  
the lost and broken children still fighting to be free.

Meet us there as the ocean meets the sky  
where all things are possible, if you care to let it be.

Use the magic of the sun's rays as they bounce off the glistening sea  
for in that moment the impossible might just be possible  
if you dare to believe enough, to love enough  
for that broken child to be heard, to be seen

To be some-one – to be me.

*This is the last poem, which calls for courageous leadership, compassion, and change.*

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## Appendix 2: Te Tiriti o Waitangi position statement background paper

This background paper and accompanying statement represents the survivors (our/we) charged with developing high-level design advice for a system to provide redress resources to claimants who have survived abuses in a range of settings. We hope this statement reaches out to all people who have experienced the tūkino (abuse, harm, neglect and trauma) we describe. We are united by atrocities committed against our hearts, minds, bodies, souls, and cultures, by people and institutions charged by law to maintain our safety.

The tūkino we survived happened in care settings and institutions run, regulated, contracted, endorsed, or incentivised by the State. These included domestic settings, family settings, medical settings, faith-based and spiritual settings, and educational settings.

This statement is our perspective on how the tūkino we experienced, and the redress we are designing, relate to Te Tiriti o Waitangi. We acknowledge the complexity of the relationship. Some survivors are iwi beneficiaries (tangata whenua), some survivors are here by virtue of the signing of Te Tiriti o Waitangi (tangata Tiriti), and some survivors view their relationship differently.

Our aspirations are for:

1. the breaches of Te Tiriti o Waitangi relating to Māori survivors of abuse to be recognised; and
2. the guarantees made in Te Tiriti to inform remedies for the harms and losses experienced by all survivors, through the foundations and operation of the *Survivor-Led Redress System*.

This background paper provides the context and justification for a survivor-centred consideration of Te Tiriti o Waitangi, as part of achieving justice and redress for all survivors who have experienced and continue to experience harm.

### The guarantees of Te Tiriti o Waitangi

The differences between the English and Māori Treaty texts have generated considerable debate, particularly regarding their application.<sup>44</sup> This has driven the development of Treaty principles, which, recently stated in WAI 2575, include partnership, active protection, equity, and options.<sup>45</sup> In looking at the guarantees of the Treaty, we will consider the Māori text only,<sup>46</sup> in keeping with the rule of contraproferentum.<sup>47</sup>

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<sup>44</sup> Waitangi Tribunal, 1987.

<sup>45</sup> Waitangi Tribunal, 2021.

<sup>46</sup> Mutu, 2010.

<sup>47</sup> The international law of contraproferentum holds that where there is ambiguity between two texts, a provision should be read against the offering party (McNair, 1961). The language of the offering party in this case is the English Treaty, which will be excluded from this analysis.

Te Tiriti o Waitangi, signed by the majority of signatories, guaranteed certain protections to Māori. These guarantees were made in the preamble, Te Tiriti's several articles, and as an insert in the minutes of the Te Tiriti signing, taken by Colenso:

- Preamble: the guarantee of peace and peaceful habitation, and the arrangement of kāwanatanga (government) over Europeans living in a state of lawlessness, so that no evil will come to Māori;<sup>48</sup>
- Article 1: the allowance of the Queen's kāwanatanga by the heads of tribal groupings over their lands, kāwanatanga understood as constituting the Queen's control of her subjects;<sup>49</sup>
- Article 2: the recognition and guarantee of the tino rangatiratanga (paramount and ultimate power and authority) of rangatira "over their lands, their villages and all their treasured possessions (taonga)";<sup>50</sup>
- Article 3: the guarantee of the Queen's "care for all the Māori people of New Zealand" and allowance of "the same customs as the people of England";<sup>51</sup> and
- a minuted part of the discussion preceding the signing of Te Tiriti, referred to by some as Article 4, which assured that Māori custom (and other faiths) would be protected.<sup>52</sup>

Te Tiriti o Waitangi was signed by rangatira (chiefs) from various rohe (regions) around the country – approximately 540 over a period of 10 months. Not all Iwi (tribes) signed, but despite that, the Crown declared sovereignty over the whole of Aotearoa New Zealand in November 1840. Soon after the signing of Te Tiriti, it was evident that the Crown was in breach of its promises. Calls to honour Te Tiriti were made by hapū (sub-tribes) and Iwi from the early 1840s, and since the establishment of the Waitangi Tribunal in 1975, thousands of claims have been brought by Iwi, hapū and Māori collective and individual claimants regarding ongoing and systemic breaches of Te Tiriti. These claims have more recently included survivors of State and faith-based tūkino (e.g., WAI 160, WAI 286, WAI 1656, WAI 2615, WAI 2915).

### **Breaches of Te Tiriti o Waitangi with respect to survivors of State and faith-based tūkino**

The rationale and behaviours of the State in its management of children in need was founded in colonialism and a desire to manipulate and control social and cultural structures in Aotearoa New Zealand.

The deliberate marginalisation of Māori pursued through government laws and policies saw the dismantling and destruction of Māori social structures over time. Whānau (families), hapū, and Iwi became dislocated and impoverished through land loss and were further marginalised and oppressed with the imposition of Pākehā (European) systems, culture, norms, and religion.<sup>53</sup> Māori assimilation was viewed as beneficial, and was actively pursued via faith-based structures and educational and child welfare systems.

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<sup>48</sup> Mutu, 2010, p. 23.

<sup>49</sup> Mutu, 2010, pp. 22, 24.

<sup>50</sup> Mutu, 2010, p. 25.

<sup>51</sup> Mutu, 2010, pp. 26-7.

<sup>52</sup> Colenso, 1890, cited in Ward, 2011, pp. 91-2; Came et al., 2020, p. 439.

<sup>53</sup> Reid et al., 2017.

From the late 1920s, Māori living conditions and children came under increased scrutiny by child welfare officers. The poverty experienced by Māori households was judged as neglectful or attributed to character or racial defects,<sup>54</sup> and Māori children were labelled as delinquents.<sup>55</sup> Disproportionate numbers of Māori children and adolescents were brought before the courts and in contact with the child welfare system, and this escalated in the 1950s. Other mechanisms utilised for removal and institutionalisation included the Borstals Act 1924, Mental Defectives Amendment Act 1928, the Education Act 1964, and the Adoption Act 1955/1962. These mechanisms were also applied to Pākehā children who, for similar reasons, came to the attention of child welfare or other authorities.

In manipulating the lives of tangata whenua (Iwi) and tangata Tiriti (Pākehā and tauīwi), the State exploited its authority and legislative powers. It exploited its advantage in determining the future lives of children by owning, funding, and incentivising systems. The State excluded others, including families, communities, and children themselves from determining their futures.

Additionally, the State exploited its advantages by failing to uphold standards of care in the settings it owned, funded, or incentivised. Despite its legislative powers, it purposefully refused to ensure that while children were within these settings, sometimes run by third parties (including religious orders), their physical, sexual, emotional, and psychological safety was paramount. The impacts of these abuses are wide ranging; experienced directly and most profoundly by the children removed from their whānau, but extending to whānau members, wider society, and subsequent generations.<sup>56</sup> The actions of the State in these respects were abusive, negligent, and in relation to Māori survivors, constitute clear breaches of Te Tiriti guarantees.

### **Abusive rather than honourable kāwanatanga**

The kāwanatanga that resulted in the removal of tamariki (children) and rangatahi (youth) from their communities in number contravened the assurances of no harm to Māori, made in the Te Tiriti preamble. The Crown's actions impacted significantly and negatively upon Māori communities, causing pain and anguish for whānau members and considerable losses for and harms to the children and young people themselves. Further, these actions extended beyond the control of the Queen's subjects guaranteed in Article 1, as understood by rangatira signatories. The decision-making was paternalistic and excluded Māori, far removed from the partnership implied in the text.

### **Breach of tino rangatiratanga**

As discussed in the WAI 2915 Oranga Tamariki Urgent Inquiry,<sup>57</sup> Article 2 "*is nothing less than a guarantee of the right to continue to organise and live as Māori. Fundamental to that is the right to care for and raise the next generation.*" The kāwanatanga exercised as described above, denied whānau, hapū, and Iwi tino rangatiratanga (self-determination) with respect to their taonga (treasures) in the form of kāinga (homes) (Waitangi Tribunal, 2021), and the right

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<sup>54</sup> Labrum, 2002.

<sup>55</sup> Dalley, 1998.

<sup>56</sup> Savage et al., 2021.

<sup>57</sup> Waitangi Tribunal, 2021, p. 12.

to determine the care of their tamariki and mokopuna (grandchildren). Specifically, the consolidation of colonial legislative and political infrastructure actively discouraged and discredited tangata whenua ways of caring for and protecting their tamariki (MacDonald, 2023). Taonga is read as including children, given that they are highly valued members and descendants of whānau, hapū, and Iwi.<sup>58</sup>

### **Survivors' rights and opportunities were undermined**

Guarantees of both equality and equity under Article 3 were breached with respect to Māori survivors of tūkino. There were little to no protections in place for tamariki and rangatahi, and Māori survivors did not get to enjoy the rights and privileges accorded to other citizens of Aotearoa New Zealand. Sitting outside of, but alongside Te Tiriti rights, are those rights enshrined in the Universal Declaration of Human Rights (UN Assembly, 1948) that ought to have been ensured for all survivors. These include the rights to freedom and safety from harm, to not suffer torture or slavery, to equal recognition and protection under the law, and to an adequate standard of living and education. In addition, the impacts of tūkino have significantly affected survivors' life prospects, and the guarantees of equal opportunities and freedom from discrimination under the Human Rights Act 1993. The treatment and experiences of survivors also contravened a raft of rights guaranteed in the United Nations (UN) Convention on the Rights of the Child (1989), and the UN Declaration on the Rights of Indigenous Peoples ((UNDRIP) 2007) (see Annex A). In total, the losses and harms incurred by survivors of abuse produced unfair and unjust health, social, and economic inequalities, with intergenerational effects.

Ngā morehu Māori (Māori survivors) incurred additional losses resulting from their forced removal from whānau, hapū, and Iwi, namely disconnection from whenua (land), whakapapa (genealogy), whānau, and ngā Atua (Māori deities). The loss of self, identity, and belonging has had a profound effect on wellbeing, which extends beyond the survivor to their tamariki and mokopuna. The forced removal and transfer of children from one group to another contravenes both the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and UNDRIP (Articles 7 and 8). The loss of whānau, hapū, and Iwi members as well as mātauranga (knowledge), te reo Māori (language), me ōna tikanga (its customs) in this way constitutes cultural genocide.

### **Disregard of tikanga Māori**

The disregard of customary practices such as matua whāngai (Whangai parent) and tamaiti whāngai (whāngai child)<sup>59</sup> breached all four Te Tiriti articles. Regarding Article 1, prohibiting whāngai (Māori customary form of child placement and care, with people other than

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<sup>58</sup> Dhyrberg, 2001.

<sup>59</sup> Tamaiti whāngai does not align with the tauwiwi practice of adoption. That is, tamaiti whāngai were cared for by matua whāngai and were, for all intents and purposes, kept within the whānau and whānau groupings (hapū) to ensure that the tamariki remained connected to who they are and where they come from. There were varying reasons for the practice of matua whāngai and tamaiti whāngai, including caring for tamariki whose parents had died or were sick or struggling for some reason. Some whānau would give their firstborn to the child's grandparents to ensure ancestral and tribal knowledge was passed on, and tamariki were also given to those who could not conceive, or chose not to conceive, including takatāpui. Relational connections and values were the guiding factors for such decisions, as well as openness or transparency.

biological parents) through the Native Lands Act 1909 and then the Adoption Act 1955 was the Crown legislatively controlling tangata whenua collectivism and succession to land. In terms of Article 2, the imposition of those Acts negated the tino rangatiratanga of rangatira to exercise relational activities that ensured identity through connection to whenua (land), whānau, and whakapapa. Article 3 was breached through not upholding the guarantee to care for Māori, and Article 4 through the failure by the Crown to ensure the protection of Māori custom.

Disregarding tikanga Māori in relation to matua whāngai and tamaiti whāngai affected all tamariki Māori (Māori children) who were forcibly removed through legislative practice and or social welfare practice conventions and placed in State and faith-based settings, educational, health, and foster care, and adoption arrangements. Had these practices remained intact and available to whānau, these tamariki would not have been denied their ancestral right to be cared for by their matua whāngai. Tikanga Māori is also disregarded more broadly through the refusal to acknowledge the responsibilities and rights of whānau, hapū, and Iwi in respect to their children,<sup>60</sup> with that authority placed exclusively in courts and State agencies.<sup>61</sup>

### **Survivors prioritised in the *Survivor-Led Redress System***

The Survivor-Led Redress System exists for the restoration, reconciliation, and recompense of survivors and their whānau first and foremost. While whānau, hapū, and Iwi suffered considerable losses (i.e., cultural genocide) through the forced removal and abuse of tamariki and mokopuna, we do not consider that the System is a redress mechanism for hapū and Iwi. Other mechanisms such as the Waitangi Tribunal are available for that purpose.

Restoration and redress may include Iwi in two ways. First, where restoration requires the reconnection of survivors with their whānau, hapū, and Iwi, we consider it critical that Iwi entities recognise their role in enabling and facilitating this (and are appropriately resourced to do so). Second, Iwi providers of health, social, and other services must be part of the range of options available to survivors in the Survivor-Led Redress System.

### **Tangata Tiriti survivors of tūkino (abuse, harm, neglect and trauma)**

Where Te Tiriti o Waitangi forms part of the foundation for the Survivor-Led Redress System, we anticipate that its benefits, in terms of good governance and equity, will also be enjoyed by tangata Tiriti survivors. However, this does not in any way confer, transfer, or apply Te Tiriti rights that were guaranteed to tangata whenua.

### **What does this mean for Te Tiriti o Waitangi with respect to redress?**

The protections and promises of Te Tiriti o Waitangi were not realised for Māori survivors of State and faith-based tūkino. It is critical, therefore, that action to realise restoration and redress for Māori survivors is inclusive of those Te Tiriti guarantees. We recommend the following in order that those guarantees are upheld and that the associated aspirations and benefits are realised for all survivors.

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<sup>60</sup> Mikaere, 1994.

<sup>61</sup> *Pūao-te-ata-tū* report of Ministerial Advisory Committee, 1988.

1. Te Tiriti o Waitangi is a fundamental component of the Survivor-Led Redress System's foundations, and the detailed design and implementation.
2. An independent survivor-led redress entity is established that is Te Tiriti o Waitangi-led and Māori-centric.
  - a. **Māori-centric.** The Design Group supports the establishment of a Māori-led independent redress system for survivors. By Māori-centric, we mean that it is underpinned by Māori concepts and values, mātauranga, te reo, and tikanga Māori, and that there is Māori leadership at all levels in the System and associated entity. This is fitting for two reasons: Māori are the indigenous peoples of Aotearoa New Zealand, the jurisdiction within which the Survivor-Led Redress System exists; and Māori are over-represented in the survivor population.
  - b. **Te Tiriti-led.** As the document signed by Māori and Crown representatives that enabled British settlement and that the Crown agreed to honour, Te Tiriti o Waitangi is a central framework that must inform the Survivor-Led Redress System. Further, the harms experienced by Māori survivors both arise from and constitute breaches of Te Tiriti o Waitangi guarantees. It is therefore appropriate that Te Tiriti (articles and principles) informs any potential remedies available to Māori survivors of abuse in care. Through being Te Tiriti-led, the Survivor-Led Redress System will also enable the aspirations and benefits of Te Tiriti to be realised for all survivors.
  - c. There is significant overlap between 'Māori-centric' and 'Te Tiriti-led', but these focuses are not the same and should not be conflated. Te Ao Māori existed prior to and extends beyond Te Tiriti o Waitangi; both focuses are therefore needed.
3. In terms of governance, structure, and operations, the Survivor-Led Redress System and entity must give effect to the provisions of Te Tiriti o Waitangi through ensuring honourable kāwanatanga, rangatiratanga, and equity, underpinned by Māori ways of knowing, being, and doing (mātauranga, te reo, me ōna tikanga).
4. For survivors, giving effect to Te Tiriti o Waitangi will entail the upholding of survivor self-determination and autonomy, consideration of restoration and redress in light of the opportunities lost to survivors based on an aspirational rather than median benchmark, and the rights of survivors to choose their social, cultural, and spiritual paths through the Survivor-Led Redress System.

## **Annex A: Guarantees of UNCROC and UNDRIP denied to survivors of abuse**

### *UN Convention on the Rights of the Child (UNCROC, 1989)*

Article 3(1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 5: Respecting responsibilities, rights and duties of parents, members of extended family or community provided by local custom, legal guardians or other persons legally responsible for the child.

Article 8: Preservation of identity including nationality, name and family relations as recognised by law.

Article 9(3): Maintaining personal relations and direct contact with parents on a regular basis except if contrary to child's best interests.

Article 12(1): States Parties shall assure to the child who is capable of forming his or her own views to Express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 24: States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care Services.

Article 20 (1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

### *United Nations for the Declaration of Indigenous Rights*

Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 7: 1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of persons; 2) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8: Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 9: Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.

Article 11: Indigenous peoples have the right to practise and revitalise their cultural traditions and customs.

Article 13: Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures and to designate and retain their own names for communities, places and persons.

Article 14(3): States shall, in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children, including those living outside their communities, to have access, when possible to an education in their own culture and provided in their own language.

Article 22 1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

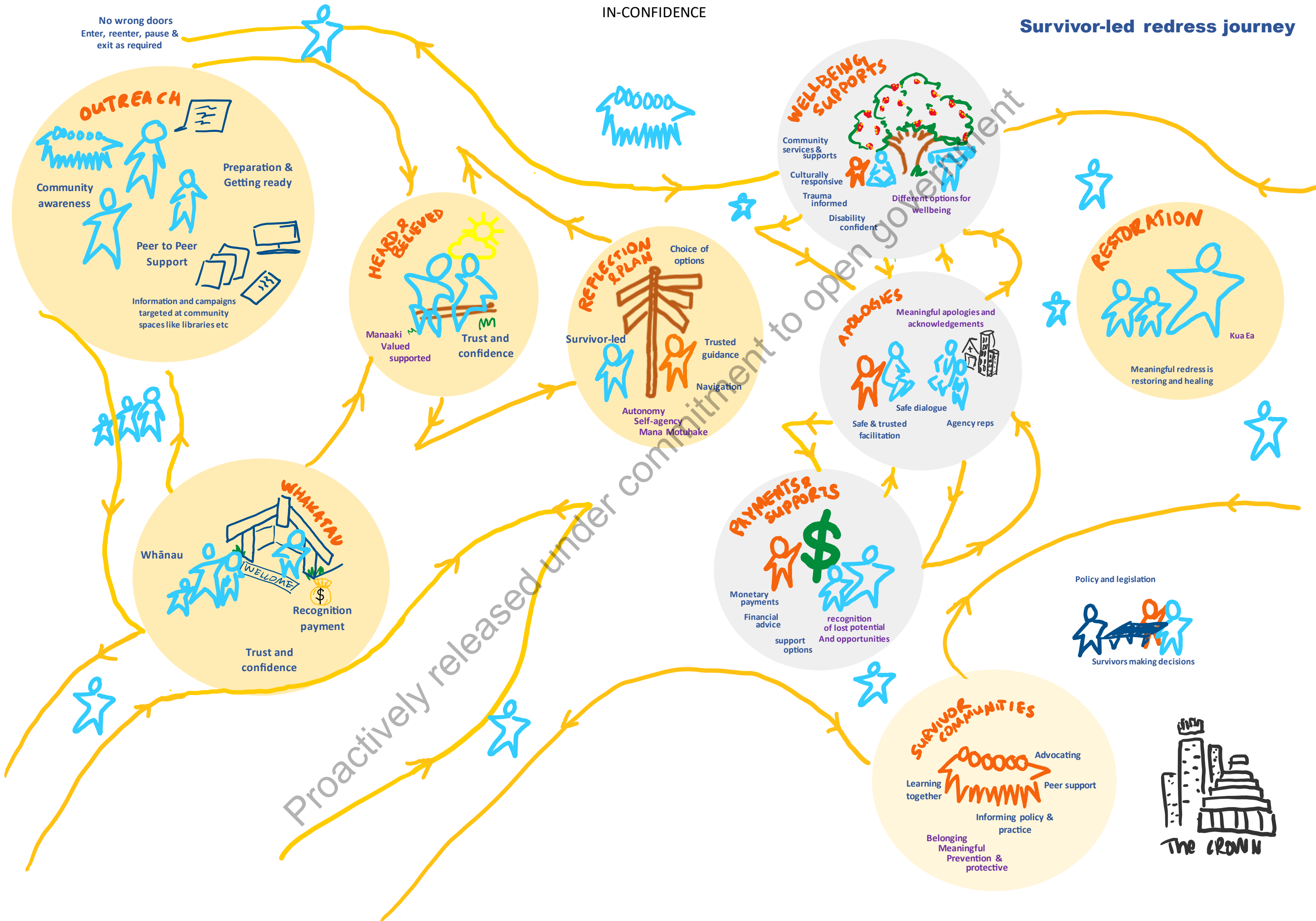
22(2): States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 33 (1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

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## Appendix 3: Survivor-led redress journey diagram

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## Appendix 4: Monetary values for tūkino experienced in care

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#### Appendix 4 - Monetary values for tūkino experienced in care

Level	Monetary Value	General Characterisation	Tūkino	Representative Specific Characterisations
Level 1	\$30,000	One or more type of tūkino of lesser severity, or was infrequent, or of shorter duration	Neglect and Maltreatment	Substandard education; injurious limits on access to the skills, equipment or equipment that people with disabilities need and/or failing to provide the support needed in a dignified manner. Living in a harsh / bleak / loveless environment: not celebrating birthdays. Injurious circumstances of powerlessness and being subject to dominating control. Living in a climate of uncertainty and fear. Unacceptably punitive approach to enuresis; (bedwetting); Excessive level of physical chores and coerced labour. Poor care when ill. Inadequate or poor quality food. Complusory public nudity; or similar.
			Whānau, Racial and/or Cultural Abuse Emotional and/or Psychological Abuse	Separation from and/or concealing evidence of sibling. Denying contact with whānau. disconnection from culture, language, whakapapa or identity as a result of being placed in care institutions where a survivor’s own culture is not recognised. Being subject to assimilative practices. Being persistently ethnically/or culturally misidentified, or where their cultural connections are discouraged; or similar.
			Physical Abuse	Persistent, verbal abuse, such as demeaning or humiliating treatment or comments including, name calling, racist or discriminatory treatment. Living in an environment wherein the person is treated as an inferior, where their self-respect is undermined and/or where they are subject to frequent micro-aggressions, gaslighting, and invalidation; or similar. Witnessing thephysical / sexual abuse of other children or at risk persons; or similar.
			Sexual Abuse Spirtual Abuse Abusive and/or neglectful practice	Infrequent incidents of physical abuse including striking (with or without an implement), shaking, throwing, kicking, or similar conduct, which may or may not have caused injury; or similar. This includes incidents where the physical abuse was corporal punishment or physical chastisement that was excessive, arbitrary or cruel. Occasional peer bullying Exposure to harmful sexual behaviours causing fear, distress and alarm. These behaviours may include, for example: nonconsensual voyeurism, or exposure to sexual images or materials; nonconsensual instances of the use of sexualised language or gestures; incidents of nonconsensual sexual touching over clothing ; or similar. Misuse of religious authority, concepts or practices to coerce; or similar. Lack of due care and attention in the placement of children or at risk persons; being wrongfully taken into care; multiple placements during childhood; or similar.
Level 2	\$60,000	One or more type of severe tūkino, or tūkino that is less severe but more frequent or of longer duration	Neglect and Maltreatment	That which was specified at lower levels, but was more serious or of a longer duration. Failure to provide access to appropriate education; Failure to provide access to the skills, equipment or equipment that people with disabilities need ; or similar.
			Whānau, Racial and/or Cultural Abuse	That which specified at lower levels and also either protracted and systemic name-calling / derogatory remarks in relation to the person or their whānau amounting to clear and damaging emotional abuse ; or similar. Severe racial harassment; or similar.
			Emotional and/or Psychological Abuse	Persistent and protracted emotional abuse that was denigrating and demeaning; or similar. Witnessing the very severe physical / sexual abuse of other children or at risk persons; or similar.
			Physical Abuse	Over-reliance on corporal punishment, corporal punishment which was excessive, general rough-handling which was tantamount to a lower end physical assault; or similar. Severe peer bullying. Severe medical malpractice. Or similar experiences of physical abuse.
Level 3	\$90,000	One or more type of tūkino of greater severity that was frequent, and/or lasted for several years	Sexual Abuse	A single incident of non-penetrative sexual touching under clothing or bedding ; or similar. Repeated exposure to abusive sexual behaviours, such as the child being encouraged to behave in a sexual way ; or similar.
			Spirtual Abuse	Unwarranted ostracism/shaming; being subject to the severe misuse of spiritual concepts or values (e.g. that homosexuality is caused by demonic possession); or similar.
			Abusive and/or neglectful practice	That which was specified at the lower level, but was more severe and/or misuse of of secure/solitary confinement for less than 48 hours; or similar.
			Neglect and Maltreatment	That which was specified at lower levels, but was of greater severity or lasted several years; or similar.
Level 4	\$120,000	One or more type of tūkino of grave severity that was frequent, and/or lasted for several years	Whānau, Racial and/or Cultural Abuse	That which was specified at lower levels, but was of greater severity. Includes overtly discriminatory or harmful treatment, including systemi racism, by a caregiver or care institution; or similar.
			Emotional and/or Psychological Abuse	Very severe emotional abuse over a significant period of time; or similar. Witnessing the grave physical / sexual abuse of other children or at risk persons; or similar.
			Physical Abuse	Physical abuse, including manifestly excessive corporal punishment / beating by staff or peers which was tantamount to a severe physical assault or constituted a protracted experience of bullying; or similar. Medical malpractice of great severity. Prescribed or coercive misuse of pharmacological drugs; or similar.
			Sexual Abuse	Sexual abuse, including sexual touching; or similar. Being made to masturbate another person; or similar.
Level 5	\$150,000	One or more type of tūkino of extreme severity that was frequent, and/or lasted for a significant portion of the person's life to date	Spirtual Abuse	Unwarranted excommunication and/or humiliation; being subject to the severe misuse of spiritual concepts or values; or similar.
			Abusive and/or neglectful practice	That which was specified at lower levels but of greater severity. Misuse of of secure/solitary confinement for 48-96 hours at a time; or multiple shorter such experiences; or similar.
			Neglect and Maltreatment	That which was specified at lower levels, but was grave or lasted several years and would be likely to lead to serious long term impairment; or similar.
			Whānau, Racial and/or Cultural Abuse	That which was specified at lower levels, but was grievous in character and/or lasted for one or two years. Sustained and grievous discriminatory or harmful treatment, including systemic or overt racism, by a caregiver or care institution because of a survivor’s identity; or similar.
Level 6	\$200,000	Cases of such extraordinary severity that they cannot be recognised by a lower award. <b>Should be less than 2% of the total awards.</b>	Emotional and/or Psychological Abuse	Sustained, and grave emotional abuse of an extent and duration that is not adequately reflected at previous levels; Witnessing extremely severe physical / sexual abuse of other children or at risk persons; or similar.
			Physical Abuse	Grievous violent physical abuse (equivalent to an assault occasioning grievous bodily harm), or repeated serious physical abuse over a protracted period of time. Greivouis medical malpractice. Instances of torture. Prescribed or coercive misuse of pharmaceutical drugs causing severe pain; or similar.
			Sexual Abuse	That which was specified at lower levels, but was grievous and persistant for one or two years. Also includes grievous sexual abuse, including oral, vaginal and/or anal penetration; or similar.
			Spirtual Abuse	That which was specified at lower levels, but was grievous and persistent for one or two years. Includes unwarranted excommunication, or similar.
Level 7	\$250,000	Cases of such extraordinary severity that they cannot be recognised by a lower award. <b>Should be less than 1% of the total awards.</b>	Abusive and/or neglectful practice	That which was specified at lower levels but of grievous severity. Misuse of of secure/solitary confinement for more than 96 hours at a time; or multiple shorter such experiences; or similar.
			Neglect and Maltreatment	That which was specified at lower levels, but was extremely severe or lasted several years; or similar.
			Whānau, Racial and/or Cultural Abuse	That which was specified at lower levels, but was extremely servere and/or lasted several years; or similar.
			Emotional and/or Psychological Abuse	That which was specified at lower levels, but was extremely severe. Includes sustained, extremely severe emotional abuse of an extent, duration and frequency that take it beyond the type of abuse described at Level 4. Witnessing the extraordinary physical / sexual abuse of other children or at risk persons; or similar.
Level 8	\$300,000	Cases of such extraordinary severity that they cannot be recognised by a lower award. <b>Should be less than 0.5% of the total awards.</b>	Physical Abuse	Repeated instances of extremely severe physical violence; frequent prescribed or coercive misuse of pharamaceutical drugs causing severe pain; or similar. Extremely severe medical malpractice.
			Sexual Abuse	That which was specified at lower levels, but was extremely severe or lasted several years, also includes repeated instances of the most serious sexual abuse, including oral, vaginal and/or anal penetration; or similar.
			Spirtual Abuse	That which was specified at lower levels, but was extremely severe and lasted several years; or similar.
			Abusive and/or neglectful practice	That which was specified at lower levels but of extreme severity. Misuse of of secure/solitary confinement in a manner that constitutes torture; or similar.

## Appendix 5: Monetary values for tūkino experienced as consequential harm

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Appendix 5 - Monetary values for tūkino experienced as consequential harm

Level	Monetary Value	General Characterisation	Tūkino	Specific Characterisation
Level 1	\$30,000	One or more type of tūkino of lesser severity, or was infrequent, or of shorter duration	Psychological consequences	May have a diagnosed psychological disorder and/or moderate manifestations of (one or more) of the following examples: anxiety, mental distress, stress, nightmares, enuresis, aggression, panic states, hyper-vigilance, retaliatory rage, depression, difficulties with personal relationships, humiliation, shame, whakamā, low self-esteem and/or the internalisation of inferiority or stigma; or similar
			Physical consequences Financial consequences Social, cultural & whānau consequences Spiritual consequences Dysregulated behaviour (implusivity, criminal offending, substance use disorders, violence to self and/or to others)	Infrequent experiences of episodic pain; or similar. No impairment Short period(s) of unemployment; or similar Low level cultural, communal or whānau disconnection; or similar. May include social capital deficiencies and/or some degree of societal exclusion. Mildly impaired spiritual life; or similar  Modest detrimental effects on well-being (inclusive of physical and mental health); or similar
Level 2	\$60,000	One or more type of severe tūkino, or tūkino that is less severe but more frequent or of longer duration	Psychological consequences	May have a diagnosed psychological disorder and/or moderate manifestations of (one or more) of the following examples: anxiety, mental distress, stress, nightmares, enuresis, aggression, panic states, hyper-vigilance, retaliatory rage, depression, difficulties with personal relationships, humiliation, shame, whakama, low self-esteem and/or the internalisation of inferiority or stigma; or similar
			Physical consequences Financial consequences Social, cultural & whānau consequences Spiritual consequences Dysregulated behaviour (implusivity, criminal offending, substance use disorders, violence to self and/or to others)	Infrequent pain or physical suffering and/or modest physical and/or cognitive impairment. One of more period(s) of unemployment of modest duration. Severe cultural, communal or whānau disconnection. May include severe social capital deficiencies and/or societal exclusion. Serverely impaired spiritual life  Severe detrimental effects on well-being (inclusive of physical and mental health)
Level 3	\$90,000	One or more type of tūkino of greater severity that was frequent, and/or lasted for several years	Psychological consequences	May have a diagnosed psychological disorder that may require moderate treatment; and/or chronic and/or severe manifestations of (one or more): anxiety, mental distress, stress, nightmares, enuresis, aggression, panic states, hyper-vigilance, retaliatory rage, depression, difficulties with personal relationships, humiliation, shame, whakama, low self-esteem and/or the internalisation of inferiority or stigma; or similar. May have suicidal ideation.
			Physical consequences Financial consequences Social, cultural & whānau consequences Spiritual consequences Dysregulated behaviour (implusivity, criminal offending, substance use disorders, violence to self and/or to others)	Frequent pain and/or physical suffering and/or severe physical and/or cognitive impairment; or similar. One of more period(s) of unemployment of a protracted duration (Totalling 2+ years); or similar. Very severe cultural, communal or whānau disconnection; or similar. May include very severe social capital deficiencies and/or societal exclusion. Very severe impairment to spiritual life; or similar  Very severe detrimental effects on well-being (inclusive of physical and mental health); or similar
Level 4	\$120,000	One or more type of tūkino of grave severity that was frequent, and/or lasted for several years	Psychological consequences	May have a diagnosed psychological disorder that may require continued robust treatment; and/or chronic and/or grave manifestations of (one or more): anxiety, mental distress, stress, nightmares, enuresis, aggression, panic states, hyper-vigilance, retaliatory rage, depression, difficulties with personal relationships, humiliation, shame, whakama, low self-esteem and/or the internalisation of inferiority or stigma; or similar. May have attempted suicide.
			Physical consequences Financial consequences Social, cultural & whānau consequences Spiritual consequences Dysregulated behaviour (implusivity, criminal offending, substance use disorders, violence to self and/or to others)	Chronic and grave pain, physical suffering and/or grave physical and/or cognitive impairment; or similar. One of more period(s) of chronic unemployment (Totalling 5+years); or similar. Grievous cultural, communal or whānau disconnection; or similar. May include grievous social capital deficiencies and/or societal exclusion. Gravely impaired spiritual life; or similar.  Grave detrimental effects on well-being (inclusive of physical and mental health); or similar.
Level 5	\$150,000	One or more type of tūkino of extreme severity that was frequent, and/or lasted for a significant portion of the person's life to date	Psychological consequences	May have a diagnosed psychological disorder that may require continued intense treatment; and/or chronic and/or extremely severe manifestations of (one or more): anxiety, mental distress, stress, nightmares, enuresis, aggression, panic states, hyper-vigilance, retaliatory rage, depression, difficulties with personal relationships, humiliation, shame, whakama, low self-esteem and/or the internalisation of inferiority or stigma; or similar. May have attempted suicide more than once.
			Physical consequences Financial consequences Social, cultural & whānau consequences Spiritual consequences Dysregulated behaviour (implusivity, criminal offending, substance use disorders, violence to self and/or to others)	Chronic extreme pain or physical suffering and/or extreme physical and/or cognitive impairment; or similar. One of more period(s) of unemployment of protracted duration (Totalling 10+ years); or similar. Protacted and extremely severe cultural, communal or whānau disconnection; or similar. May include extremely severe social capital deficiencies and/or societal exclusion. Prolonged and harmful extremely severe impairment to spiritual life; or similar  Extremely severe detrimental effects on well-being (inclusive of physical and mental health); or similar.
Level 6	\$200,000	Behaviour holds serious and grave imminent threat to self and others. Person is unable to function independently or take care of themselves – level of disability is extreme. Person has multiple distinct and significant problems. Problems are pervasive, impacting functioning in every domain of their life (social, physical, psychological, financial,	Psychological consequences	The survivor has an extreme psychological disorder.
			Physical consequences Financial consequences Social, cultural & whānau consequences Spiritual consequences Dysregulated behaviour (implusivity, criminal offending, substance use disorders, violence to self and/or to others)	Extraordinary pain or physical suffering or impairment. Unable to be employed Extraordinarily impaired cultural or whānau disconnection and/or social exclusion Extraordinarily impaired spiritual life  Use has extraordinarily detrimental effects on well-being (inclusive of physical and mental health)

## Appendix 6: Glossary

Ahakoia he iti, he pounamu	[from poem] Although small, it is a greenstone
Awhi	Embrace
Hapū	Sub-tribe
Hapori	Community
Hawaikii	[concept] ancestral homeland
Hinengaro	Mind
ICCPR	The International Covenant on Civil and Political Rights is a multilateral treaty that commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.
ICERD	The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention. A third-generation human rights instrument, the Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races. The Convention also requires its parties to criminalize hate speech and criminalize membership in racist organizations
ICESCR	International Covenant on Economic, Social and Cultural Rights. ICESCR is an international human rights treaty adopted in 1966. It ensures the enjoyment of economic, social and cultural rights, including the rights to: education. fair and just conditions of work.
Iwi	Tribe
Kaimahi	Personnel, employee, worker
Kaitiaki	Guardian
Karanga	ceremonial call
Kaupapa	Topic, plan, programme
Kāwanatanga	Government
Kōrero	Talk, speak, discussion
Ko te aroha. Ko te mea nui	[from poem] Love. It's what matters most.
Mā tātou, mō tātou	[concept] Survivor-led, by survivors, for survivors.
Mana	Dignity [of the person in the context of this report]
Mana motuhake	[concept] independence, self-determination, autonomy and in the context of this report, survivor-led
Manaaki	Ethos of care
Mātauranga, te reo, me ōna tikanga	Māori ways of knowing, being, and doing
Mauri	Mauri is the life force or essence, and is a property of all things. Therefore, mauri reflects not only <i>“the vitality, integrity, and energy within a person”</i> but <i>“the nature of relationships in the</i>

	<i>wider environment</i> ". There are various states of mauri, ranging from mauri noho through to mauri ora
Mauri noho	Mauri noho might be characterised as a deep wounding of the spirit, reflected in indicators such as trauma, deprivation, disconnection, powerlessness, insecurity, whakamā (shame) and hopelessness
Mauri ora	Mauri ora might be characterised as a state of flourishing, reflected in indicators such as thriving and living well, rangatiratanga, connectedness, fulfilment, purpose, hope and valued roles in the collective.
Mokopuna	Grandchildren
Nau mai ki te ao mārama	[from poem] welcome to the world of light.
Pātūwatawata	[concept] The pātūwatawata (the fortified village) is a redress 'space' – virtual and physical as needed – that will be created within the redress system. This will constitute a protected space or sanctuary for survivors while they plan, navigate and work through their own redress pathway.
Rangatahi	Youth
Rangatiratanga	Self-determination
Tangata whenua	Indigenous peoples
Tangata takatāpui	Takatāpui is a Māori word, historically meaning 'intimate companion of the same sex'. The term was reclaimed in the 1980s and used by individuals who were gay, lesbian, bisexual, transgender, intersex or part of the rainbow community. The use of 'takatāpui' as an identity is a response to western ideas of sex, sexuality and gender, and emphasises one's identity as Māori as inextricably linked to their gender identity, sexuality or variation of sex characteristics.
Take-Utu-Ea	[concept] The restorative process of Take-Utu-Ea underpins redress itself, most notably apologies/acknowledgements and monetary payments. <ul style="list-style-type: none"> <li>Take refers to the issue or harm that brings survivors to redress, namely the tūkino (abuse, harm, neglect and trauma) they have experienced. In a process of determination, it is expected that the survivor and State or faith-based perpetrators agree to the nature of the take/issue/harm.</li> <li>Utu means to make a response, to balance or provide reciprocity in some form, and is agreed on the basis of what is deemed appropriate recompense or restoration. This involves some recognition of differences of magnitude of a breach or harm, and the general principle of "obtaining an equivalent."</li> <li>Ea is the outcome of restoring harmony in the relationship between survivor and State or faith-based perpetrator or reaching "a resolution satisfying all parties so that the matter is resolved."</li> </ul>
Tāwhirimātea	In Māori tradition, Tāwhirimātea is the god of the weather.

Te Ao Māori	Māori worldview
Te kore, te po	[from poem] The nothingness, the darkness
Tikanga	Customs
Tinana	Body
Tūkino	Abuse, harm, neglect and trauma
Ūkaipō	[from poem] Origin, mother, source of sustenance, real home.
UNCAT	The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention Against Torture (UNCAT)) is an international human rights treaty under the review of the United Nations that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world
UNCRDP	The Convention on the Rights of Persons with Disabilities is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. Parties to the convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that persons with disabilities enjoy full equality under the law.
UNCROC	United Nations Convention on the Rights of the Child (UNCROC) is a comprehensive human rights treaty that enshrines specific children's rights in international law. It was adopted by the United Nations in 1989 and defines universal principles and standards for the status and treatment of children worldwide.
UNDRIP	The Declaration on the Rights of Indigenous Peoples (UNDRIP or DOTROIP) is a legally non-binding resolution passed by the United Nations in 2007. It delineates and defines the individual and collective rights of Indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education, and other issues. Their ownership also extends to the protection of their intellectual and cultural property. The Declaration "emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations." It "prohibits discrimination against indigenous peoples," and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development".
Utua kia ea	Is a process that must be undertaken to account for tūkino and support survivors and their whānau to reclaim their mana (dignity) to achieve a state of restoration and balance.
Wai	Water or fluid
Wai ora	A source of wellbeing
Wairua	Spirit
Wānanga	Deliberation, deliberations

Whakapapa	Genealogy
Whakatau	Welcome
Whānau	Family

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